

SENATE No. 1752

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Establishing Accountability for Managed Care Organizations..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 231 of the General Laws, as appearing in the 2002 official edition,
2 is hereby amended by inserting after section 85AA the following three sections:-

3 Section 85BB. As used in this section and sections 85CC and 85DD the following words
4 shall have the following meanings:

5 "Carrier", as defined in section 1 of chapter 176O.

6 "Enrollee", an individual who is enrolled in a health care plan, including covered
7 dependents.

8 "Health care plan", any plan whereby any person undertakes to provide, arrange for, pay
9 for, or reimburse any part of the cost of any health care services.

10 "Health care treatment decision", a determination made by a carrier or managed care
11 entity for a health care plan that affects the quality of the diagnosis, care, or treatment provided
12 to the plan's insureds or enrollees.

13 “Insured”, an enrollee, covered person, insured, member, policyholder or subscriber of a
14 carrier or managed care entity, including covered dependents and including an individual whose
15 eligibility as an insured of a carrier or managed care entity is in dispute or under review.

16 "Managed care entity", any entity which delivers, administers, or assumes risk for health
17 care services with systems or techniques to control or influence the quality, accessibility,
18 utilization, or costs and prices of such services to a defined enrollee population.

19 Section 85CC.

20 (a) A carrier or managed care entity for a health care plan shall exercise ordinary care
21 when making health care treatment decisions and shall be liable for damages for harm to an
22 insured or enrollee proximately caused by its failure to exercise such ordinary care.

23 (b) A carrier or managed care entity for a health care plan shall be liable for damages for
24 harm to an insured or enrollee proximately caused by the health care treatment decisions made
25 by its employees, agents, apparent agents or representatives who are acting on its behalf and over
26 whom it has the right to exercise influence or control or has actually exercised influence or
27 control which results in the failure to exercise ordinary care.

28 (c) It shall be a defense to any action asserted against a carrier or managed care entity for
29 a health care plan that:

30 (1) neither the carrier or managed care entity, nor any employee, agent, apparent agent or
31 representative for whose conduct such carrier or managed care entity is liable under subsection
32 (b) controlled, influenced, or participated in the health care treatment decision; and

33 (2) a carrier or managed care entity did not deny or delay payment for any treatment
34 prescribed or recommended by a provider to the insured or enrollee.

35 (d) The standards in subsections (a) and (b) shall not create an obligation on the part of a
36 carrier or managed care entity to provide to an insured or enrollee treatment that is not covered
37 by the health care plan of the insured or enrollee.

38 (e) This chapter does not create any liability on the part of an employer, or employer
39 group purchasing organization, that purchases coverage or assumes risk on behalf of its
40 employees, a pharmacy licensed by the board of registration in pharmacy, or an organization of
41 health care providers that contracts with entities licensed or approved by the division of
42 insurance to assume risk for the care of a defined enrollee population or to provide health care
43 services with systems or techniques to control or influence the quality, accessibility, utilization
44 or cost of such services if such organization is not required to be licensed by the division of
45 insurance and such organization's health care providers may otherwise be subject to a
46 malpractice action pursuant to sections 60B to 60I, inclusive.

47 (f) Nothing in sections 85BB to 85DD, inclusive, shall be construed to diminish the
48 obligations of carriers or managed care entities as they existed prior to the effective date of said
49 sections, including but not limited to, the obligations of principals for the acts of their agents.

50 Section 85DD. (a) The provisions of section 85K shall not apply to claims against
51 carriers and managed care entities arising under section 85CC.

52 (b) All claims filed pursuant to section 85CC shall be subject to sections 60B to 60I,
53 inclusive.