

**SENATE . . . . . No. 553**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act to Define the Use of Observation Services.

*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. Section 8 of Chapter 118E of the General Laws, as appearing in the 2006  
2 official edition, is hereby amended by inserting after the definition of “Medical benefits” the  
3 following new definition:

4           “Observation Services”, health care services furnished on a provider’s premises,  
5 including the use of a bed and periodic monitoring by the provider’s nursing or other provider  
6 staff, which are reasonable and necessary to evaluate a patient’s condition or determine the need  
7 for a possible admission to the hospital as an inpatient. These services are covered only when  
8 ordered by the treating provider with clinical privileges as authorized by the hospital staff  
9 bylaws.

10           SECTION 2. Section 12 of chapter 118E of the General Laws, as so appearing, is further  
11 amended by inserting at the end thereof the following new paragraph:

12           The division and its contractors shall classify a beneficiary as requiring or receiving  
13 observation services based on the medical judgment of the treating health care provider after due

14 consideration of the beneficiary’s presenting signs and symptoms. The treating health care  
15 provider may authorize that observation services be provided up to 24 hours in circumstances  
16 when the beneficiary’s diagnosis and treatment course remains unclear and requires only  
17 continued monitoring or continued diagnostic assessment by clinical staff; provided however,  
18 that the treating health care provider may authorize an inpatient stay within 24 hours based on  
19 the diagnosis. For services extending beyond 24 hours in duration, should the diagnosis and the  
20 treatment course remain undetermined or the beneficiary require diagnostic testing and/or active  
21 treatment of his condition, that beneficiary shall be admitted to the facility as an inpatient. If  
22 such health care provider’s opinion, based on this evaluation, is that the beneficiary requires less  
23 than 24 hours in a facility and does not require inpatient level of care during this period, such  
24 beneficiary shall be classified as outpatient observation. Notwithstanding the provisions of this  
25 section, observation services shall not extend beyond 24 hours in duration under any  
26 circumstance. The division and its contractors shall not retroactively reclassify the beneficiary  
27 from inpatient to observation, for either a portion or the entire stay, after the determination by the  
28 treating health care provider that the beneficiary shall be admitted as an inpatient.

29 SECTION 3. Section 1 of chapter 176O of the General Laws, as so appearing, is hereby  
30 amended by inserting after the definition of “network” the following new definition:

31 “Observation Services”, health care services furnished on a provider’s premises,  
32 including the use of a bed and periodic monitoring by the provider’s nursing or other provider  
33 staff, which are reasonable and necessary to evaluate a patient’s condition or determine the need  
34 for a possible admission to the hospital as an inpatient. These services are covered only when  
35 ordered by the treating provider with clinical privileges as authorized by the hospital staff  
36 bylaws.

37 SECTION 4. Section 12 of chapter 176O, as so appearing, is further amended by  
38 inserting the following new subsection (f):

39 (f) Any classification of an insured as requiring or receiving observation services shall be  
40 based on the medical judgment of the treating health care provider after due consideration of the  
41 insured's presenting signs and symptoms. The treating health care provider may authorize that  
42 observation services be provided up to 24 hours in circumstances when the insured's diagnosis  
43 and treatment course remains unclear and requires only continued monitoring or continued  
44 diagnostic assessment by clinical staff; provided however, that the treating health care provider  
45 may authorize an inpatient stay within 24 hours based on the diagnosis. For services extending  
46 beyond 24 hours in duration, should the diagnosis and the treatment course remain undetermined  
47 or the insured require diagnostic testing and/or active treatment of his condition, that insured  
48 shall be admitted to the facility as an inpatient. If such health care provider's opinion, based on  
49 this evaluation, is that the insured requires less than 24 hours in a facility and does not require  
50 inpatient level of care during this period, such insured shall be classified as outpatient  
51 observation. Notwithstanding the provisions of this section, observation services shall not extend  
52 beyond 24 hours in duration under any circumstance. The carrier and its contractors shall not  
53 retroactively reclassify the insured from inpatient to observation, for either a portion or the entire  
54 stay, after the determination by the treating health care provider that the insured shall be admitted  
55 as an inpatient.

56 SECTION 5. The Commissioner of Insurance and the Office of Medicaid shall  
57 promulgate regulations no later than 90 days following the effective date of this Act. The  
58 regulations as set forth, shall be effective in contracts between carriers and health care providers  
59 that are entered into, renewed, or amended on or after the effective date of this Act.