

SENATE No. 766

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving patients' access to timely compensation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>

SENATE No. 766

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 766) of Story, Lewis and Eldridge for legislation improve patients' access to timely compensation [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act improving patients' access to timely compensation.

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

1 Chapter 231 of the General Laws is hereby amended by adding after section
2 60K appearing in the 2010 official edition the following new section:

3 Section 60L.

4 (a). Except as provided in this section a person shall not commence an action
5 against a provider of health care as defined in paragraph 7 of section 60 B of chapter 231 as
6 appearing in the 2004 official edition of the general laws unless the person has given the health
7 care provider written notice under this section of not less than 182 days notice before the action
8 is commenced.

9 (b). The notice of intent to file a claim required under (a) shall be mailed to
10 the last known professional business address or residential address of the health care provider
11 who is the subject of the claim.

12 (c). The 182 day notice period in Section 1 is shortened to 91 days if all of the
13 following conditions exist:

14 (1) The claimant has previously filed the 182 day notice required in (a)
15 against another health care provider involved in the claim.

16 (2) The 182 day notice period has expired as to the health care providers
17 described in (1).

18 (3) The claimant has filed a complaint and commenced an action alleging
19 medical malpractice against one or more of the health care providers described in subsection (1).

20 (4) The claimant did not identify and could not have reasonably have
21 identified a health care provider to which notice must be sent under (a) as a potential party to the
22 action before filing the complaint.

23 (d) The notice given to a health care provider under this section shall contain a
24 statement of at least all of the following:

25 (1) The factual basis for the claim.

26 (2) The applicable standard of care alleged by the claimant.

27 (3) The manner in which it is claimed that the applicable standard of care was
28 breached by the health care provider.

29 (4) The alleged action that should have been taken to achieve compliance with
30 the alleged standard of care.

31 (5) The manner in which it is alleged the breach of the standard of care was the
32 proximate cause of the injury claimed in the notice.

33 (6) The names of all health care providers the claimant is notifying under this
34 section in relation to the claim.

35 (e). 56 days after giving notice under this section, the claimant shall allow the
36 health care provider receiving the notice access to all of the medical records related to the claim
37 that are in the claimant's control, and shall furnish release for any medical records related to the
38 claim that are not in the claimant's control, but of which the claimant has knowledge. This
39 subsection does not restrict a health care provider receiving notice under this section from
40 communicating with other health care providers and acquiring medical records as permitted
41 under any other provision of law. This subsection does not restrict a patient's right of access to
42 his or her medical records under any other provision of law.

43 Within 154 days after receipt of notice under this section, the health care
44 provider against whom the claim is made shall furnish to the claimant or his or her authorized
45 representative a written response that contains a statement of each of the following:

46 (1) The factual basis for the defense to the claim.

47 (2) The standard of care that the health care provider claims to be applicable to
48 the action and that the health care provider complied with that standard.

49 (3) The manner in which it is claimed by the health care provider that there
50 was compliance with the applicable standard of care.

51 (4) The manner in which the health care provider contends that the alleged
52 negligence of the health care provider was not the proximate cause of the claimant's alleged
53 injury or alleged damage.

54 (f). If the claimant does not receive the written response required under
55 Section 7 within the required 154 day time period, the claimant may commence an action
56 alleging medical malpractice upon the expiration of the 154 day period.

57 (g) If at any time during the applicable notice period under this section a health
58 care provider receiving notice under this section informs the claimant in writing that the health
59 care provider does not intend to settle the claim s within the applicable notice period, the
60 claimant may commence an action alleging medical malpractice against the health care provider,
61 so long as the claim is not barred by the statue of limitations.

62 SECTION 2. The General Laws are herby amended by inserting after section
63 79K of chapter 233 as appearing in the 2010 official edition,the following new section:

64 Section 79L

65 As used in this section the following terms shall have the following meaning:

66 (1)“Health Care Provider”, means any of the following heath care
67 professionals licensed pursuant to chapter 112: a physician, podiatrist, physical therapist,
68 occupational therapist, dentist, optometrist, nurse, nurse practitioner, chiropractor, psychologist,
69 independent clinical social worker, speech-language pathologist, audiologist, marriage and
70 family therapist and a mental health counselor. The term shall also include any corporation,

71 professional corporation, partnership, limited liability company, limited liability partnership,
72 authority, or other entity comprised of such health care providers.

73 “Facility”, a hospital, clinic or nursing home licensed pursuant to chapter 111
74 or a home health agency. The term shall also include any corporation, professional corporation,
75 partnership, limited liability company, limited liability partnership, authority, or other entity
76 comprised of such facilities.

77 “Unanticipated outcome” means the outcome of a medical treatment or
78 procedure, whether or not resulting from an intentional act, that differs from an intended result of
79 such medical treatment or procedure.

80 (2) In any claim, complaint or civil action brought by or on behalf of a patient
81 allegedly experiencing an unanticipated outcome of medical care, any and all statements,
82 affirmations, gestures, activities or conduct expressing benevolence, regret, apology, sympathy,
83 commiseration, condolence, compassion, mistake, error, or a general sense of concern which are
84 made by a health care provider, facility or an employee or agent of a health care provider or
85 facility, to the patient, a relative of the patient, or a representative of the patient and which relate
86 to the unanticipated outcome shall be inadmissible as evidence in any judicial or administrative
87 proceeding and shall not constitute an admission of liability or an admission against interest.