HOUSE DOCKET, NO. 418 FILED ON: 1/13/2015

HOUSE . . . . . No. 1034

The Commonwealth of Massachusetts

PRESENTED BY:

Alan Silvia

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 relative to the financing and providing of health care services, including adult foster care, involving federal and state health care programs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alan Silvia	*7th Bristol*
Paul A. Schmid, III	*8th Bristol*
Carole A. Fiola	*6th Bristol*

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HOUSE . . . . . No. 1034

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1034) of Alan Silvia, Paul A. Schmid III and Carole A. Fiola relative to the financing and providing of health care services, including adult foster care, involving federal and state health care programs. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the financing and providing of health care services, including adult foster care, involving federal and state health care programs.

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 118E of the General Laws, as appearing in the 2012 Official Edition is hereby
2 amended by striking out section 41 and inserting in place thereof the following section:

3 "Section 41. Administration and regulations governing acts involving Federal and State
4 health care programs for providing adult foster care and other medical services in compliance
5 with Federal law.

6 (a) Making or causing to be made false statements or representations

7 Whoever—

8 (1) knowingly and willfully makes or causes to be made any false statement or
9 representation of a material fact in any application for any benefit or payment under a Federal
10 health care program (as defined in subsection (f) of this section),

11 (2) at any time knowingly and willfully makes or causes to be made any false statement
12 or representation of a material fact for use in determining rights to such benefit or payment,

13 (3) having knowledge of the occurrence of any event affecting

14 (A) his initial or continued right to any such benefit or payment, or

15 (B) the initial or continued right to any such benefit or payment of any other individual in
16 whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to
17 disclose such event with an intent fraudulently to secure such benefit or payment either in a
18 greater amount or quantity than is due or when no such benefit or payment is authorized,

19 (4) having made application to receive any such benefit or payment for the use and
20 benefit of another and having received it, knowingly and willfully converts such benefit or
21 payment or any part thereof to a use other than for the use and benefit of such other person,

22 (5) presents or causes to be presented a claim for a physician's service for which payment
23 may be made under a Federal health care program and knows that the individual who furnished
24 the service was not licensed as a physician, or

25 (6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets
26 (including by any transfer in trust) in order for the individual to become eligible for medical
27 assistance under a State plan, if disposing of the assets results in the imposition of a period of
28 ineligibility for such assistance.

29 shall

30 (i) in the case of such a statement, representation, concealment, failure, or conversion by
31 any person in connection with the furnishing (by that person) of items or services for which

32 payment is or may be made under the program, be guilty of a felony and upon conviction thereof
33 fined not more than $25,000 or imprisoned for not more than five years or both, or

34 (ii) in the case of such a statement, representation, concealment, failure, conversion, or
35 provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon
36 conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or
37 both. In addition, in any case where an individual who is otherwise eligible for assistance under a
38 Federal health care program is convicted of an offense under the preceding provisions of this
39 subsection, the administrator of such program may at its option (notwithstanding any other
40 provision of such program) limit, restrict, or suspend the eligibility of that individual for such
41 period (not exceeding one year) as it deems appropriate; but the imposition of a limitation,
42 restriction, or suspension with respect to the eligibility of any individual under this sentence shall
43 not affect the eligibility of any other person for assistance under the plan, regardless of the
44 relationship between that individual and such other person.

45 (b) Illegal remunerations

46 (1) Whoever knowingly and willfully solicits or receives any remuneration (including
47 any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

48 (A) in return for referring an individual to a person for the furnishing or arranging for the
49 furnishing of any item or service for which payment may be made in whole or in part under a
50 Federal health care program, or

51 (B) in return for purchasing, leasing, ordering, or arranging for or recommending
52 purchasing, leasing, or ordering any good, facility, service, or item for which payment may be
53 made in whole or in part under a Federal health care program,

54 shall be guilty of a felony and upon conviction thereof, shall be fined not more than
55 $25,000 or imprisoned for not more than five years, or both.

56 (2) Whoever knowingly and willfully offers or pays any remuneration (including any
57 kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any
58 person to induce such person—

59 (A) to refer an individual to a person for the furnishing or arranging for the furnishing of
60 any item or service for which payment may be made in whole or in part under a Federal health
61 care program, or

62 (B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or
63 ordering any good, facility, service, or item for which payment may be made in whole or in part
64 under a Federal health care program,

65 shall be guilty of a felony and upon conviction thereof, shall be fined not more than
66 $25,000 or imprisoned for not more than five years, or both.

67 (3) Paragraphs (1) and (2) shall not apply to—

68 (A) a discount or other reduction in price obtained by a provider of services or other
69 entity under a Federal health care program if the reduction in price is properly disclosed and
70 appropriately reflected in the costs claimed or charges made by the provider or entity under a
71 Federal health care program;

72 (B) any amount paid by an employer to an employee (who has a bona fide employment
73 relationship with such employer) for employment in the provision of covered items or services;

74 (C) any amount paid by a vendor of goods or services to a person authorized to act as a
75 purchasing agent for a group of individuals or entities who are furnishing services reimbursed
76 under a Federal health care program if—

77 (i) the person has a written contract, with each such individual or entity, which specifies
78 the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of
79 the value of the purchases made by each such individual or entity under the contract, and

80 (ii) in the case of an entity that is a provider of services (as defined in the federal code),
81 the person discloses (in such form and manner as the Secretary requires) to the entity and, upon
82 request, to the Secretary the amount received from each such vendor with respect to purchases
83 made by or on behalf of the entity;

84 (D) a waiver of any coinsurance under part B of subchapter XVIII of the federal code by
85 a Federally qualified health care center with respect to an individual who qualifies for subsidized
86 services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.];

87 (E) any payment practice specified by the Secretary in regulations promulgated pursuant
88 to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in
89 regulations under any applicable Federal or State law;

90 (F) any remuneration between an organization and an individual or entity providing items
91 or services, or a combination thereof, pursuant to a written agreement between the organization
92 and the individual or entity if the organization is an eligible organization under any applicable
93 Federal or State law or if the written agreement, through a risk-sharing arrangement, places the
94 individual or entity at substantial financial risk for the cost or utilization of the items or services,
95 or a combination thereof, which the individual or entity is obligated to provide;

96 (G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health
97 Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing
98 imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses
99 (i) through (iii) of 42 USC section 1320a–7a (i)(6)(A) are met with respect to the waiver or
100 reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible
101 individual (as defined in 42 USC section 1395w–114 (a)(3) , 42 USC section 1320a–7a (i)(6)(A)
102 shall be applied without regard to clauses (ii) and (iii) of that section);

103 (H) any remuneration between a federally qualified health center (or an entity controlled
104 by such a health center) and an MA organization pursuant to a written agreement described in 42
105 USC section 1395w–23 (a)(4);

106 (I) any remuneration between a health center entity described under clause (i) or (ii) of 42
107 USC section 1396d (l)(2)(B) and any individual or entity providing goods, items, services,
108 donations, loans, or a combination thereof, to such health center entity pursuant to a contract,
109 lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health
110 center entity to maintain or increase the availability, or enhance the quality, of services provided
111 to a medically underserved population served by the health center entity; and

112 (J) a discount in the price of an applicable drug (as defined in paragraph (2) of 42 USC
113 section 1395w–114a (g)) of a manufacturer that is furnished to an applicable beneficiary (as
114 defined in paragraph (1) of such section) under the Medicare coverage gap discount program
115 under said section 1395w–114a .

116 (c) False statements or representations with respect to condition or operation of
117 institutions

118 Whoever knowingly and willfully makes or causes to be made, or induces or seeks to
119 induce the making of, any false statement or representation of a material fact with respect to the
120 conditions or operation of any institution, facility, or entity in order that such institution, facility,
121 or entity may qualify (either upon initial certification or upon recertification) as a hospital,
122 critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the
123 mentally retarded, home health agency, or other entity (including an eligible organization under
124 42 USC section 1395mm (b) of this title) for which certification is required under subchapter
125 XVIII of this chapter or a State health care program (as defined in section 1320a–7 (h) of this
126 title), or with respect to information required to be provided under section 1320a–3a of this title,
127 shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or
128 imprisoned for not more than five years, or both.

129 (d) Illegal patient admittance and retention practices

130 Whoever knowingly and willfully—

131 (1) charges, for any service provided to a patient under a State plan approved under
132 subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates
133 established by the State (or, in the case of services provided to an individual enrolled with a
134 medicaid managed care organization under Federal and State law under a contract under
135 applicable Federal and State statutes or under a contractual, referral, or other arrangement under
136 such contract, at a rate in excess of the rate permitted under such contract), or

137 (2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to
138 be paid under a State plan approved under applicable Federal and State Law, any gift, money,

139 donation, or other consideration (other than a charitable, religious, or philanthropic contribution
140 from an organization or from a person unrelated to the patient)—

141 (A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate
142 care facility for the mentally retarded, or

143 (B) as a requirement for the patient's continued stay in such a facility,

144 when the cost of the services provided therein to the patient is paid for (in whole or in
145 part) under the State plan,

146 shall be guilty of a felony and upon conviction thereof shall be fined not more than
147 $25,000 or imprisoned for not more than five years, or both.

148 (e) Violation of assignment terms

149 Whoever accepts assignments described in 42 USC section 1395u (b)(3)(B)(ii) or agrees
150 to be a participating physician or supplier under section 42 USC 1395u (h)(1) and knowingly,
151 willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a
152 misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for
153 not more than six months, or both.

154 (f) "Federal health care program" defined

155 For purposes of this section, the term "Federal health care program" means—

156 (1) any plan or program that provides health benefits, whether directly, through
157 insurance, or otherwise, which is funded directly, in whole or in part, by the United States
158 Government (other than the health insurance program under chapter 89 of title 5); or

159 (2) any State health care program, as defined in 42 USC section 1320a–7 (h).

160 (g) Liability under subchapter III of chapter 37 of title 31

161 In addition to the penalties provided for in this section or 42 USC section 1320a a –7a,
162 claim that includes items or services resulting from a violation of this section constitutes a false
163 or fraudulent claim for purposes of subchapter III of chapter 37 of title 31.

164 (h) Actual knowledge or specific intent not required

165 With respect to violations of this section, a person need not have actual knowledge of this
166 section or specific intent to commit a violation of this section."

167 This act includes criminal penalties for acts involving Federal and State health care
168 programs; including Bribes or Rebates for Ordering or Recommending Services; Penalties;
169 Exceptions.

170 This act shall take effect upon the day of its passage.