

# SENATE . . . . . No. 2216

---

Senate, November 8, 2017 -- Text of Amendment #143 (Senator Rodrigues et al) to the Senate Committee Bill furthering health empowerment and affordability by leveraging transformative health care (Senate, No. 2202)

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

1 by inserting the following 8 sections:-

2 "SECTION \_\_. Chapter 32A of the General Laws, as so appearing, is hereby amended by  
3 inserting after section 4A the following new section:-

4 Section 4B. (a) The commission or any entity with which the commission contracts to  
5 provide or manage health insurance benefits, including mental health services, shall not impose a  
6 retroactive claims denial, as defined in section 1 of chapter 175, for behavioral health services, as  
7 defined in section 1 of chapter 175, on a provider unless:

8 (i) Less than six months have elapsed from the time of submission of the claim by  
9 the provider to the commission or other entity responsible for payment;

10 (ii) The commission or other entity has furnished the provider with a written  
11 explanation of the reason for the retroactive claim denial, and a description of additional  
12 documentation or other corrective actions required for payment of the claim.

13 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
14 permitted after six months if:

15 (i) The claim was submitted fraudulently;

16 (ii) The claim payment is subject to adjustment due to expected payment from  
17 another payer and not more than 12 months have elapsed since submission of the claim; or

18 (iii) The claims, or services for which the claim has been submitted, is the subject of  
19 legal action.

20 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
21 (b), the commission or other entity shall notify a provider at least 15 days before imposing the  
22 retroactive claim denial and the provider shall have six months to determine whether the claim is  
23 subject to payment by a secondary insurer. Notwithstanding the contractual terms between the  
24 provider and insurer, an insurer shall allow for submission of a claim that was previously denied  
25 by another insurer due to the insured's transfer or termination of coverage.

26 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
27 substance use disorder program licensed by the department of public health under Chapters 18,  
28 111, 111B, or 111E , a behavioral, substance use disorder, or mental health professional who is  
29 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
30 consistent with law and who has provided services under an express or implied contract or with  
31 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
32 directly or indirectly from the commission or other entity.

33 SECTION \_\_. Chapter 118E of the General Laws, as so appearing, is amended by  
34 inserting after section 38 the following new section: -

35           38A. (a) The division or any entity with which the division contracts to provide or  
36 manage health insurance benefits, including mental health services, shall not impose a retroactive  
37 claims denial, as defined in section 1 of chapter 175, for behavioral health services, as defined in  
38 section 1 of chapter 175, on a provider unless:

39           (i)     Less than six months have elapsed from the time of submission of the claim by  
40 the provider to the division or other entity responsible for payment;

41           (ii)    The division or other entity has furnished the provider with a written explanation  
42 of the reason for the retroactive claim denial, and a description of additional documentation or  
43 other corrective actions required for payment of the claim.

44           (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
45 permitted after six months if:

46           (i)     The claim was submitted fraudulently;

47           (ii)    The claim payment is subject to adjustment due to expected payment from  
48 another payer and not more than 12 months have elapsed since submission of the claim; or

49           (iii)   The claims, or services for which the claim has been submitted, is the subject of  
50 legal action.

51           (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
52 (b), the division or other entity shall notify a provider at least 15 days before imposing the  
53 retroactive claim denial and the provider shall have six months to determine whether the claim is  
54 subject to payment by a secondary insurer. Notwithstanding the contractual terms between the

55 provider and insurer, an insurer shall allow for submission of a claim that was previously denied  
56 by another insurer due to the insured's transfer or termination of coverage.

57 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
58 substance use disorder program licensed by the department of public health under Chapters 18,  
59 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is  
60 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
61 consistent with law and who has provided services under an express or implied contract or with  
62 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
63 directly or indirectly from the division or managed care entity.

64 SECTION \_\_. Section 1 of Chapter 175 of the General Laws, as so appearing, is amended  
65 by inserting before the definition of "Commissioner" the following new definition:

66 "Behavioral Health", mental health and substance use disorder prevention, recovery and  
67 treatment services including but not limited to inpatient 24 hour levels of care, 24 hour and non  
68 24 hour diversionary levels of care, intermediate levels of care and outpatient services

69 and by inserting after the definition of "Resident" the following new definition:

70 "Retroactive Claim Denial", an action by a) an insurer, b) an entity with which the  
71 insurer subcontracts to manage behavioral health services, c) an entity with which the Group  
72 Insurance Commission has entered into an administrative services contract or a contract to  
73 manage behavioral health services, or d) the executive office of health and human services acting  
74 as the single state agency under section 1902(a)(5) of the Social Security Act authorized to  
75 administer programs under title XIX, to deny a previously paid claim for services and to require

76 repayment of the claim, impose a reduction in other payments, or otherwise withhold or affect  
77 future payments owed a provider in order to recoup payment for the denied claim.

78 SECTION \_\_. Section 108 of chapter 175 of the General Laws, as so appearing, is hereby  
79 amended by adding the following new subsection at the end thereof: -

80 (a) No insurer shall impose a retroactive claims denial, as defined in section 1 of chapter  
81 175, for behavioral health services, as defined in section 1 of chapter 175, on a provider unless:

82 (i) Less than six months have elapsed from the time of submission of the claim by  
83 the provider to the insurer or other entity responsible for payment;

84 (ii) The insurer or other entity has furnished the provider with a written explanation  
85 of the reason for the retroactive claim denial, and a description of additional documentation or  
86 other corrective actions required for payment of the claim.

87 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
88 permitted after six months if:

89 (i) The claim was submitted fraudulently;

90 (ii) The claim payment is subject to adjustment due to expected payment from  
91 another payer and not more than 12 months have elapsed since submission of the claim; or

92 (iii) The claims, or services for which the claim has been submitted, is the subject of  
93 legal action.

94 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
95 (b), the insurer shall notify a provider at least 15 days before imposing the retroactive claim

96 denial and the provider shall have six months to determine whether the claim is subject to  
97 payment by a secondary insurer. Notwithstanding the contractual terms between the provider and  
98 insurer, an insurer shall allow for submission of a claim that was previously denied by another  
99 insurer due to the insured's transfer or termination of coverage.

100 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
101 substance use disorder program licensed by the department of public health under Chapters 18,  
102 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is  
103 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
104 consistent with law and who has provided services under an express or implied contract or with  
105 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
106 directly or indirectly from an insurer.

107 SECTION \_\_. Chapter 176A of the General Laws, as so appearing, is amended by  
108 inserting after section 8 the following new section:-

109 Section 8A (a) The corporation shall not impose a retroactive claims denial, as defined in  
110 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on  
111 a provider unless:

112 (i) Less than six months have elapsed from the time of submission of the claim by  
113 the provider to the corporation;

114 (ii) The corporation has furnished the provider with a written explanation of the  
115 reason for the retroactive claim denial, and a description of additional documentation or other  
116 corrective actions required for payment of the claim.

117 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
118 permitted after six months if:

119 (i) The claim was submitted fraudulently;

120 (ii) The claim payment is subject to adjustment due to expected payment from  
121 another payer and not more than 12 months have elapsed since submission of the claim; or

122 (iii) The claims, or services for which the claim has been submitted, is the subject of  
123 legal action.

124 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
125 (b), the corporation shall notify a provider at least 15 days before imposing the retroactive claim  
126 denial and the provider shall have six months to determine whether the claim is subject to  
127 payment by a secondary payer. Notwithstanding the contractual terms between the provider and  
128 secondary payer, the payer shall allow for submission of a claim that was previously denied by  
129 the corporation due to the insured's transfer or termination of coverage.

130 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
131 substance use disorder program licensed by the department of public health under Chapters 18,  
132 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is  
133 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
134 consistent with law and who has provided services under an express or implied contract or with  
135 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
136 directly or indirectly from an insurer.

137 SECTION \_\_. Chapter 176B of the General Laws, as so appearing is hereby amended by  
138 inserting after section 7C the following new section:-

139 Section 7D (a) The corporation shall not impose a retroactive claims denial, as defined in  
140 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on  
141 a provider unless:

142 (i) Less than six months have elapsed from the time of submission of the claim by  
143 the provider to the corporation;

144 (ii) The corporation has furnished the provider with a written explanation of the  
145 reason for the retroactive claim denial, and a description of additional documentation or other  
146 corrective actions required for payment of the claim.

147 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
148 permitted after six months if:

149 (i) The claim was submitted fraudulently;

150 (ii) The claim payment is subject to adjustment due to expected payment from  
151 another payer and not more than 12 months have elapsed since submission of the claim; or

152 (iii) The claims, or services for which the claim has been submitted, is the subject of  
153 legal action.

154 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
155 (b), the corporation shall notify a provider at least 15 days before imposing the retroactive claim  
156 denial and the provider shall have six months to determine whether the claim is subject to  
157 payment by a secondary payer. Notwithstanding the contractual terms between the provider and



158 secondary payer, the payer shall allow for submission of a claim that was previously denied by  
159 the corporation due to the insured's transfer or termination of coverage.

160 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
161 substance use disorder program licensed by the department of public health under Chapters 18,  
162 111, 111B, or 111E , a behavioral, substance use disorder, or mental health professional who is  
163 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
164 consistent with law and who has provided services under an express or implied contract or with  
165 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
166 directly or indirectly from an insurer.

167 SECTION \_\_. Chapter 176G of the General Laws, as so appearing, is hereby amended by  
168 inserting after section 6A the following new section:-

169 Section 6B. (a) No insurer shall impose a retroactive claims denial, as defined in section  
170 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on a  
171 provider unless:

172 (i) Less than six months have elapsed from the time of submission of the claim by  
173 the provider to the insurer or other entity responsible for payment;

174 (ii) The insurer or other entity has furnished the provider with a written explanation  
175 of the reason for the retroactive claim denial, and a description of additional documentation or  
176 other corrective actions required for payment of the claim.

177 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be  
178 permitted after six months if:

179 (i) The claim was submitted fraudulently;

180 (ii) The claim payment is subject to adjustment due to expected payment from  
181 another payer and not more than 12 months have elapsed since submission of the claim; or

182 (iii) The claims, or services for which the claim has been submitted, is the subject of  
183 legal action.

184 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph  
185 (b), the insurer shall notify a provider at least 15 days before imposing the retroactive claim  
186 denial and the provider shall have six months to determine whether the claim is subject to  
187 payment by a secondary insurer. Notwithstanding the contractual terms between the provider and  
188 insurer, an insurer shall allow for submission of a claim that was previously denied by another  
189 insurer due to the insured's transfer or termination of coverage.

190 (d) For the purposes of this subsection, provider shall mean a mental health clinic or  
191 substance use disorder program licensed by the department of public health under Chapters 18,  
192 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is  
193 licensed under Chapter 112 of the General Laws and accredited or certified to provide services  
194 consistent with law and who has provided services under an express or implied contract or with  
195 the expectation of receiving payment, other than co- payment, deductible or co-insurance,  
196 directly or indirectly from an insurer.

197 SECTION \_\_. The Division of Medical Assistance is hereby authorized and directed to  
198 develop an internal process for the reconciliation of claims due to retroactive eligibility changes  
199 and/or duplicate enrollments in cases that involve multiple payers for services provided to  
200 MassHealth enrollees. This process shall not require provider involvement. The division shall

201 report to the senate and house committees on ways and means on this process no longer than five  
202 months after enactment of this legislation."