

SENATE No. 2296

The Commonwealth of Massachusetts

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

SENATE, February 8, 2018

The committee on Ways and Means, to whom was referred the Senate Bill to protect access to confidential healthcare (Senate, No. 591),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2296).

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

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

An Act to protect access to confidential healthcare.

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 176O of the General Laws is hereby amended by striking out
2 section 27, as appearing in the 2016 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 27. (a) The division shall develop a common summary of payments form to be
5 used by all carriers in the commonwealth and provided to health care consumers with respect to
6 provider claims submitted to a payer. The common summary of payments form shall be written
7 in an easily readable and understandable format showing the consumer's responsibility, if any,
8 for payment of any portion of a health care provider claim. The division shall allow the
9 development and use of forms that may be exchanged securely through electronic means.
10 Carriers shall not be obligated to issue a summary of payments form for provider claims that
11 consist solely of requests for co-payment.

12 (b) Carriers shall issue common summary of payments forms at the member level for
13 each insured member. Carriers may establish a standard method of delivery of summary of
14 payments forms. All carriers shall permit the following individuals to choose, in writing, an

15 alternative method of receiving the common summary of payments form: (i) a subscriber who is
16 legally authorized to consent to care for the insured member; (ii) an insured member who is
17 legally authorized to consent to that member's own care; or (iii) another party who has the
18 exclusive legal authorization to consent to care for the insured member. The alternative methods
19 of receiving the common summary of payments form shall include, but not be limited to: (A)
20 sending a paper form to the address of the subscriber; (B) sending a paper form to the address of
21 the insured member; (C) sending a paper form to any alternate address upon request of the
22 insured member; or (D) allowing the subscriber, the insured member or both to access the form
23 through electronic means; provided, however, that such access is provided in compliance with
24 any applicable state and federal laws and regulations pertaining to data privacy and security
25 including, but not limited to, subpart A of 45 CFR 160 and subpart C of 45 CFR 164, chapters
26 93H and 93I of the General Laws and 201 C.M.R. 17.00.

27 (c) All carriers shall also permit an individual not authorized under subsection (b) but
28 who is legally authorized to consent to care for an insured member to request, and shall
29 accommodate a reasonable request by such individual to receive, the forms on behalf of the
30 member through any of the alternative methods listed in subsection (b), provided that the
31 individual clearly states in writing that the disclosure of all or part of the information could
32 endanger the individual or the insured member. Upon receipt of such a request, carriers shall not
33 inquire as to the reasons for, or otherwise seek to confirm, the endangerment.

34 (d) The preferred method of receipt selected pursuant to subsection (b) shall be valid until
35 the insured member submits a request in writing for a different method; provided, however, that
36 a carrier shall not be required to maintain more than 1 alternate address for a member. Carriers

37 shall comply with an insured member's request pursuant to this subsection not later than 3
38 business days after receipt of the request.

39 (e) Carriers shall not specify or describe sensitive health care services in a common
40 summary of payments form. The division shall define sensitive health care services for the
41 purposes of this section. In determining that definition, the division shall consider the
42 recommendations of the National Committee on Vital and Health Statistics and similar
43 regulations in other states and shall consult with experts in fields including, but not limited to,
44 infectious disease, reproductive and sexual health, domestic violence and sexual assault and
45 mental health and substance use disorders.

46 (f) In the event that the insured member has no liability for payment for any procedure or
47 service, carriers shall permit all insured members who are legally authorized to consent to care,
48 or parties legally authorized to consent to care for the insured member, to request suppression of
49 common summary of payments forms for a specific service or procedure, in which case the
50 common summary of payments forms shall not be issued; provided, however, that the insured
51 member clearly makes the request orally or in writing. The carrier may request verification of the
52 request in writing following an oral request. Carriers shall not require an explanation as to the
53 basis for an insured member's request to suppress the common summary of payments forms,
54 unless otherwise required by law or court order.

55 (g) The insured member's ability to request the preferred method of receipt pursuant to
56 subsection (b) and to request suppression of the common summary of payments forms pursuant
57 to subsection (f) shall be communicated in plain language and in a clear and conspicuous manner
58 in evidence of coverage documents, member privacy communications and on every common

59 summary of payments form and shall be conspicuously displayed on the carrier's member
60 website and online portals for individual members.

61 (h) The division shall promulgate regulations necessary to implement and enforce this
62 section, which shall include requirements for reasonable reporting by carriers to the division
63 regarding compliance and the number and type of complaints received regarding noncompliance
64 with this section.

65 (i) The division, in collaboration with the department of public health, shall develop and
66 implement a plan to educate providers and consumers regarding the rights of insured members
67 and the responsibilities of carriers to promote compliance with this section. The plan shall
68 include, but not be limited to, staff training and other education for hospitals, community health
69 centers, school-based health centers, physicians, nurses and other licensed health care
70 professionals, as well as administrative staff including, but not limited to: (i) all staff involved in
71 patient registration and confidentiality education; and (ii) billing staff involved in processing
72 insurance claims. The plan shall be developed in consultation with groups representing health
73 care insurers, providers and consumers, including consumer organizations concerned with the
74 provision of sensitive health services.

75 SECTION 2. The regulations required pursuant to subsection (h) of section 27 of chapter
76 176O of the General Laws shall take effect not later than 3 months after the effective date of this
77 act.

78 SECTION 3. Subsection (i) of section 27 of chapter 176O of the General Laws shall take
79 effect 6 months after the effective date of this act.

80 SECTION 4. Subsections (b) to (g), inclusive, of section 27 of chapter 176O of the
81 General Laws shall take effect 9 months after the effective date of this act; provided, however,
82 that any carrier that has the capacity to provide electronic access to the common summary of
83 payments forms prior to that date shall do so.