SENATE DOCKET, NO. 2274 FILED ON: 2/19/2021

SENATE . . . . . No. 655

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 anti-corrupt insurance medical examinations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sal N. DiDomenico	*Middlesex and Suffolk*

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SENATE . . . . . No. 655

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 655) of Sal N. DiDomenico for legislation relative to unfair and deceptive insurance practices. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *571* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to anti-corrupt insurance medical examinations.

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

SECTION 1. Chapter 93A of the General Laws as appearing in the 2018 Official Edition, shall be amended by inserting after Section 11 the following section:-

Section 12. (a) An act or practice of an insurance carrier that has violated or violates any of the following prohibitions concerning an insured or healthcare provider in the Commonwealth of Massachusetts shall be deemed an unfair and deceptive practice in the business of insurance under Chapter 93A and Chapter 176D as appearing in the 2018 Official Edition:

(1) Insurance carriers shall not enter into any agreement with one or more healthcare providers or their employer that limit the right or obligation of any healthcare provider to voluntarily assist a patient in good faith with claims for insurance coverage, including but not

limited to any limitation on the certification and delivery of medical records or the availability for giving testimony;

(2) Insurance carriers shall not threaten a healthcare provider, insured, or lawyer for an insured with criminal charges;

(3) Insurance carriers shall not purport to give criminal releases to any healthcare provider, insured, or lawyer for an insured; and

(4) Insurance carriers shall not enter into confidential settlement agreements with any healthcare provider for an insurance claimant or with a lawyer for an insurance claimant for matters arising in such capacities.

(b) The above-listed prohibitions in paragraphs (a)-(c) are not deemed to implement new rules, but rather to clarify existing prohibitions and expectations concerning the business of insurance in the Commonwealth, and therefore shall be deemed to apply retroactively.

(c) A medical examination or medical record review by a healthcare provider selected by an insurance company shall be invalid and not independent of the insurance carrier if:

(1) performed by a healthcare provider who has been selected by an insurance company to conduct such an examination or a review in the prior 12 months; or

(2) an insurance company has already selected or engaged a different healthcare provider who completed a medical examination or medical record review of the insured related to the same event underlying the insurance claim; or

(3) the insurance company provides the healthcare provider with its position concerning any fact related to the underlying insurance claim.

(d) Nothing herein limits the ability of or creates the right for an insurance carrier to report any particular matter to a court, law enforcement or a government agency of competent jurisdiction.

(e) When acting in the scope of their employment, SIU investigators for insurance carriers shall be deemed to constitute state actors subject to constitutional limitations and to act under color of state law. The insurance carrier that employs an SIU investigator shall be vicariously liable for the actions of such SIU investigator. Insurance carriers that employ an SIU investigator shall not be immune from liability for the acts of its SIU investigators. Nothing herein is intended to grant additional powers or rights to SIU investigators or their employers, but rather to clarify the scope of their obligations and the limitations on their powers and rights.

SECTION 2. Chapter 176D of the General Laws as appearing in the 2018 Official Edition, shall be amended by inserting after Section 14 the following section:-

Section 15. (a) An act or practice of an insurance carrier that has violated or violates any of the following prohibitions concerning an insured or healthcare provider in the Commonwealth of Massachusetts shall be deemed an unfair and deceptive practice in the business of insurance under Chapter 93A and Chapter 176D as appearing in the 2018 Official Edition:-

(1) Insurance carriers shall not enter into any agreement with one or more healthcare providers or their employer that limit the right or obligation of any healthcare provider to voluntarily assist a patient in good faith with claims for insurance coverage, including but not limited to any limitation on the certification and delivery of medical records or the availability for giving testimony;

(2) Insurance carriers shall not threaten a healthcare provider, insured, or lawyer for an insured with criminal charges;

(3) Insurance carriers shall not purport to give criminal releases to any healthcare provider, insured, or lawyer for an insured; and

(4) Insurance carriers shall not enter into confidential settlement agreements with any healthcare provider for an insurance claimant or with a lawyer for an insurance claimant for matters arising in such capacities.

(b) The above-listed prohibitions in paragraphs (a)-(c) are not deemed to implement new rules, but rather to clarify existing prohibitions and expectations concerning the business of insurance in the Commonwealth, and therefore shall be deemed to apply retroactively.

(c) A medical examination or medical record review by a healthcare provider selected by an insurance company shall be invalid and not independent of the insurance carrier if:

(1) performed by a healthcare provider who has been selected by an insurance company to conduct such an examination or a review in the prior 12 months; or

(2) an insurance company has already selected or engaged a different healthcare provider who completed a medical examination or medical record review of the insured related to the same event underlying the insurance claim; or

(3) the insurance company provides the healthcare provider with its position concerning any fact related to the underlying insurance claim.

(d) Nothing herein limits the ability of or creates the right for an insurance carrier to report any particular matter to a court, law enforcement or a government agency of competent jurisdiction.

(e) When acting in the scope of their employment, SIU investigators for insurance carriers shall be deemed to constitute state actors subject to constitutional limitations and to act under color of state law. The insurance carrier that employs an SIU investigator shall be vicariously liable for the actions of such SIU investigator. Insurance carriers that employ an SIU investigator shall not be immune from liability for the acts of its SIU investigators. Nothing herein is intended to grant additional powers or rights to SIU investigators or their employers, but rather to clarify the scope of their obligations and the limitations on their powers and rights.