SENATE DOCKET, NO. 2274 FILED ON: 1/17/2025

SENATE . . . . . No. 1534

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Feeney

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 to protect the independence of clinical decision making.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul R. Feeney	*Bristol and Norfolk*

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SENATE . . . . . No. 1534

By Mr. Feeney, a petition (accompanied by bill, Senate, No. 1534) of Paul R. Feeney for legislation to protect the independence of clinical decision making. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act to protect the independence of clinical decision making.

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 112 of the General Laws is hereby amended by inserting after section 4 the following sections:-

Section 4A. (a) For the purposes of sections 4A and 4B, the following words shall have the following meanings:-

"Board of Registration in Medicine", the board of registration in medicine established pursuant to section 10 of chapter 13.

"Board of Registration in Nursing", the board of registration in nursing established pursuant to section 13 of chapter 13.

"Clinician", a physician, nurse, physician assistant, psychologist, or independent clinical social worker, who is licensed to provide health services and registered in the commonwealth pursuant to chapter 112 to provide such services, and any other individual who is licensed to

provide health services and registered in the commonwealth pursuant to chapter 112 to provide such services.

"Clinician with independent practice authority", a physician registered to practice medicine in the commonwealth or a nurse practitioner, psychiatric nurse mental health clinical specialist, or nurse anesthetist who is registered to practice medicine in the commonwealth and who has independent practice authority pursuant to sections 80E and 80J of said chapter 112.

"Management services organization," a business that provides management or administrative services to a health care provider or provider organization for compensation.

"Health care practice", a business, regardless of form, through which a clinician with independent practice authority licensed by the Board of Registration in Medicine or the Board of Registration in Nursing offers health services; provided, however, that health care practice shall not include any entity that holds a license issued by the department of public health pursuant to sections 51, 51M, 51N or 52 of chapter 111.

"Physician", a doctor of medicine or doctor of osteopathy who is registered to practice medicine in the commonwealth pursuant to section 2 of chapter 112.

(b) A clinician with independent practice authority may practice at a health care practice that meets the following requirements: (1) the health care practice is wholly owned and controlled by one or more clinicians with independent practice authority who hold a certificate of registration that (i) is issued by the board of registration in medicine or the board of registration in nursing pursuant to the requirements of sections 2 and 80B of this chapter, and (ii) has not been suspended or revoked; or (2) the health care practice is conducted through a business organization formed as: (i) a professional corporation pursuant to chapter 156A; (ii) a nonprofit

organization, a nonprofit hospital services corporation organized under chapter 176A, a nonprofit medical services corporation organized under chapter 176B; (iii) a limited liability company organized under chapter 156C; provided, however, that there are no LLC provisions limiting or eliminating the licensee's liability for intentional tort or negligence; (iv) a partnership organized under chapter 108A, including, but not limited to, a registered limited liability partnership; provided, however, that the partnership has no provisions limiting or eliminating the licensee's liability for intentional torts or negligence; or (v) an organization similar to those organizations described in clauses (i) through (iv) of this subsection and organized under a comparable law of any other United States jurisdiction; organized under a comparable law of any other jurisdiction within the United States; provided, however, that all shares of the organization shall be owned by clinicians with independent practice authority.

(c) It shall constitute the unauthorized practice of medicine in violation of section 6 of this chapter for any person or entity to own a health care practice other than a clinician with independent practice authority who holds a certificate of registration that is issued by the board of registration in medicine or the board of registration in nursing pursuant to the requirements of sections 2 or 80B and has not been suspended or revoked. This section shall not apply to a health care facility or entity that holds a license issued by the department of public health pursuant to sections 51, 51M, 51N or 52 of chapter 111.

(d)(1) Nothing in this section shall prohibit a clinician with independent practice authority from practicing medicine as an employee of a health care facility or entity that holds a license issued by the department of public health pursuant to sections 51, 51M, 51N or 52 of chapter 111.

(2) An entity that provides compensation to one or more clinicians with independent practice authority, including, but not limited to a health care facility licensed pursuant to sections 51, 51M, 51N or 51, shall not directly or indirectly interfere with, control, or otherwise direct the professional judgment or clinical decisions of such clinicians with independent practice authority. Conduct prohibited under this paragraph shall include, but not be limited to, controlling, either directly or indirectly through discipline, punishment, threats, adverse employment actions, coercion, retaliation or excessive pressure, regarding: (i) the amount of time spent with patients, including the time permitted to triage patients in the emergency department or evaluate admitted patients; (ii) the time period within which a patient must be discharged; (iii) decisions involving the patient's clinical status, including, but not limited to, whether the patient should be kept in observation status, whether the patient should receive palliative care and where the patient should be placed upon discharge; (iv) the diagnosis, diagnostic terminology or codes that are entered into the medical record; or (v) any other conduct the department of public health determines by regulation would interfere with, control or otherwise direct the professional judgement or clinical decisions of clinicians with independent practice authority. Such entities shall not limit the range of clinical orders available to clinicians either directly or by configuring the medical record to prohibit or significantly limit the clinical order options available. Nondisclosure or non-disparagement agreements regarding subsections (i) through (v), inclusive, between a clinician with independent practice authority and any person or entity shall be considered void and unenforceable. If a court of competent jurisdiction finds a policy, contract or contract provision void and unenforceable pursuant to this section, the court shall award the plaintiff reasonable attorney's fees and costs. Nothing in this section shall limit the ability of any

person to bring any action relating to defamation, disclosure of confidential or proprietary information or trade secrets or similar torts.

(e) All health care practices shall provide written certification that the health care practice meets the requirements in this section to the board of registration in medicine or the board of registration in nursing at the time of formation and on a biennial basis thereafter. If a practice's owners consist of individuals registered solely with the board of registration in medicine or the board of registration in nursing, the practice shall provide the certification to the applicable board. If the practice's owners consist of individuals registered with both boards, the practice shall provide the certification to the board of registration in medicine, which shall transmit a copy to the board of registration in nursing. Health care practices shall, at the time that such clinicians with independent practice authority are hired or affiliated with the practice and within 30 days of providing certification to the applicable board pursuant to this section, provide a copy of the most recent certification to all clinicians with independent practice authority who: (i) engage in providing health services at the practice; and (ii) do not hold any ownership interest in the practice.

(f) All health care practices shall file with the applicable board a registration application containing such information as the board may reasonably require, including, but not limited to: (i) the identity of the applicant and of the clinicians with independent practice authority which constitute the practice; (ii) any management services organization under contract with the health care practice; (iii) a certified copy of the health care practice's certificate of organization, if any, as filed with the secretary of the commonwealth, or any applicable partnership agreement; (iv) the address of the health care practice; (v) the services provided by the health care practice; and (vi) any information the board, in consultation with the health policy commission and the center

for health information and analysis, deems relevant for the state health plan and focused assessments pursuant to section 22 of chapter 6D and the health care resources inventory pursuant to section 9 of chapter 12C. The application shall be accompanied by a fee in an amount to be determined pursuant to section 3B of chapter 7. All health care practices registered in the commonwealth shall renew their certificates of registration with the board every 2 years. The board shall share information relevant to the state health plan and focused assessments pursuant to section 22 of chapter 6D with the commission and information relevant to the health care resources inventory pursuant to section 9 of section 12C with the center.

(g) All health care practices with more than 1 clinician with independent practice authority that constitutes the practice shall designate a clinician with independent practice authority at the practice to serve as medical director; provided, however, that the designated clinician shall hold a certificate of registration that (i) is issued by the Board of Registration in Medicine or the Board of Registration in Nursing pursuant to the requirements of sections 2 or 80B of this chapter that is not suspended or revoked; and (2) is present in the state and is substantially engaged in delivering care or managing the practice. The director shall be responsible for implementing policies and procedures to ensure compliance with local ordinances and state and federal statutes and regulations governing the practice of medicine or the practice of nursing, including regulations promulgated and policies established by the applicable board. The board may impose discipline against the licenses of the medical director and the clinicians with independent practice authority who own and control the health care practice for failure of the practice to comply with local ordinances and state and federal statutes and regulations governing the practice of medicine or the practice of nursing, including regulations promulgated and policies established by the applicable board.

(h) The board of registration in medicine and board of registration in nursing may promulgate regulations to establish minimum requirements for the conduct of a health care practice, including, but not limited to: (i) compliance with section 4A of chapter 112; (ii) maintenance and access to medical records; and (iii) in the event of a planned closure of the health care practice or an unplanned event that prevents the health care practice from continuing operations, the development of a continuity plan to: (1) ensure access to medical records, (2) provide notice to patients; and (3) assist patients with transitioning to a new provider. If a practice's owners consist of individuals registered solely with the board of registration in medicine or the board of registration in nursing, the practice shall comply with the applicable board's regulations. If the practice's owners consist of individuals registered with both boards, the practice shall comply with the regulations issued by the board of registration in medicine. Each board shall consult with the other when promulgating regulations.

Section 4B. (a) A health care practice shall maintain ultimate control over clinical decisions.

(b) A management services organization shall not exercise control over, or be delegated the power to do, any of the following: (i) owning or otherwise determining the content of patient medical records; (ii) selecting, hiring or firing any owner of or clinician associated with the health care practice based, in whole or in part, on clinical competency or proficiency; (iii) setting the parameters under which a practice shall enter into contractual relationships with third-party payers; (iiiv) setting the parameters under which a practice shall enter into contractual relationships with clinicians for the delivery of care; (iv) making final decisions regarding coding and billing procedures for patient care services; or (vi) approving the selection of medical equipment and medical supplies for the practice.

(c) A health care practice shall maintain ultimate decision-making authority over: (i) personnel decisions involving clinicians, including, but not limited to, employment status, compensation, hours or working conditions; (ii) coding or billing decisions; (iii) the selection and use of property, including, but not limited to, real property, medical equipment or medical supplies for the delivery of patient care services; (iv) the number of patients seen in a given period of time or the amount of time spent with each patient; (v) the appropriate diagnostic test for medical conditions; (vi) the use of patient medical records; and (vii) referral decisions.

(d) A violation of this section shall constitute the unauthorized practice of medicine in violation of section 6 or the unauthorized practice of nursing in violation of section 80E, 80H or 80J. Any provision of a contract or agreement that has the effect of violating this section shall be void and unenforceable. If a court of competent jurisdiction finds a policy, contract or contract provision void and unenforceable pursuant to this section, the court shall award the plaintiff reasonable attorney's fees and costs.

(e) The department of public health shall promulgate regulations to effectuate the purposes of this section.