SENATE DOCKET, NO. 1137 FILED ON: 1/20/2011

SENATE . . . . . No. 821

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 establishing accountability for managed care organizations..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mark C. Montigny	

SENATE DOCKET, NO. 1137 FILED ON: 1/20/2011

SENATE . . . . . No. 821

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 821) of Mark C. Montigny for legislation to establish accountability for managed care organizations. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1752* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing accountability for managed care organizations..

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 231 of the General Laws, as appearing in the 2008 official edition, is hereby amended by inserting after section 85AA the following three sections:-

Section 85BB. As used in this section and sections 85CC and 85DD the following words shall have the following meanings:

“Carrier”, as defined in section 1 of chapter 176O.

"Enrollee", an individual who is enrolled in a health care plan, including covered dependents.

"Health care plan", any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

10 "Health care treatment decision", a determination made by a carrier or managed care
11 entity for a health care plan that affects the quality of the diagnosis, care, or treatment provided
12 to the plan's insureds or enrollees.

13 “Insured”, an enrollee, covered person, insured, member, policyholder or subscriber of a
14 carrier or managed care entity, including covered dependents and including an individual whose
15 eligibility as an insured of a carrier or managed care entity is in dispute or under review.

16 "Managed care entity", any entity which delivers, administers, or assumes risk for health
17 care services with systems or techniques to control or influence the quality, accessibility,
18 utilization, or costs and prices of such services to a defined enrollee population.

19 Section 85CC.

20 (a) A carrier or managed care entity for a health care plan shall exercise
21 ordinary care when making health care treatment decisions and shall be liable for damages for
22 harm to an insured or enrollee proximately caused by its failure to exercise such ordinary care.

23 (b) A carrier or managed care entity for a health care plan shall be liable for
24 damages for harm to an insured or enrollee proximately caused by the health care treatment
25 decisions made by its employees, agents, apparent agents or representatives who are acting on its
26 behalf and over whom it has the right to exercise influence or control or has actually exercised
27 influence or control which results in the failure to exercise ordinary care.

28 (c) It shall be a defense to any action asserted against a carrier or managed care
29 entity for a health care plan that:

30 (1) neither the carrier or managed care entity, nor any employee,
31 agent, apparent agent or representative for whose conduct such carrier or managed care entity is
32 liable under subsection (b) controlled, influenced, or participated in the health care treatment
33 decision; and

34 (2) a carrier or managed care entity did not deny or delay payment for
35 any treatment prescribed or recommended by a provider to the insured or enrollee.

36 (d) The standards in subsections (a) and (b) shall not create an obligation on the
37 part of a carrier or managed care entity to provide to an insured or enrollee treatment that is not
38 covered by the health care plan of the insured or enrollee.

39 (e) This chapter does not create any liability on the part of an employer, or
40 employer group purchasing organization, that purchases coverage or assumes risk on behalf of its
41 employees, a pharmacy licensed by the board of registration in pharmacy, or an organization of
42 health care providers that contracts with entities licensed or approved by the division of
43 insurance to assume risk for the care of a defined enrollee population or to provide health care
44 services with systems or techniques to control or influence the quality, accessibility, utilization
45 or cost of such services if such organization is not required to be licensed by the division of
46 insurance and such organization's health care providers may otherwise be subject to a
47 malpractice action pursuant to sections 60B to 60I, inclusive.

48 (f) Nothing in sections 85BB to 85DD, inclusive, shall be construed to diminish
49 the obligations of carriers or managed care entities as they existed prior to the effective date of
50 said sections, including but not limited to, the obligations of principals for the acts of their
51 agents.

52 Section 85DD. (a) The provisions of section 85K shall not apply to claims against

53 carriers and managed care entities arising under section 85CC.

54 (b) All claims filed pursuant to section 85CC shall be subject to sections 60B to

55 60I, inclusive.