

**NOTICE:** While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

## UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Thursday, March 25, 1999.

Met at ten minutes past one o'clock P.M.

### *Report.*

A report of the Bureau of Special Investigations (under the provisions of Section 15D(6) of the General Laws) submitting a report of its activities for the month of February 1999 (received Tuesday, March 23, 1999),— **was read and sent to the House for its information.**

### *Reports of Committees.*

By Mr. Norton, for the committee on Counties, on petition, a Bill authorizing the county commissioners of Plymouth County to convey certain land and easements in the town of Plymouth (Senate, No. 133);  
By the same Senator, for the same committee, on Senate, No. 134 and House, No. 1893, a Bill relative to the registry of deeds in Berkshire County (Senate, No. 134, changed in section 9 by striking out the last sentence contained in lines 19 through 22);  
By Ms. Murray, for the committee on Human Services and Elderly Affairs, on Senate, No. 579 and House, No. 1198, a Bill regarding the disclosure of information held by the Disabled Persons Protection Commission (Senate, No. 579);  
By the same Senator, for the same committee, on Senate, No. 580 and House, No. 1196, a Bill regarding the authority of the Disabled Persons Protection Commission (Senate, No. 580);  
By the same Senator, for the same committee, on Senate, No. 582 and House, No. 1197, a Bill regarding the definition of "disabled person" as used by the Disabled Persons Protection Commission (Senate, No. 582);  
By the same Senator, for the same committee, on Senate, Nos. 586 and 611 and House, No. 264, a Bill providing services to those persons graduating from high school or turning twenty-two (Senate, No. 611); and  
By the same Senator, for the same committee, on petition, a Bill preventing unnecessary institutionalization of certain disabled persons through home modifications (Senate, No. 631);  
**Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.**

By Ms. Murray, for the committee on Human Services and Elderly Affairs, on petition, a Bill establishing a trust fund to provide funding for research to find a cure for spinal cord injury (Senate, No. 625);  
**Read and, under Senate Rule 26A, referred to the Senate committee on Science and Technology.**

By Ms. Murray, for the committee on Human Services and Elderly Affairs, on Senate, No. 581 and House, No. 975, a Bill relative to the reporting of abuse of persons with disabilities (Senate, No. 581);  
**Read and, under Senate Rule 26, referred to the committee on Steering and Policy.**

By Mr. Norton, for the committee on Counties, ought NOT to pass:  
On the petition (accompanied by bill, Senate, No. 127) of Linda J. Melconian, Michael R. Knapik and Brian P. Lees for legislation relative to technical assistants employed by the Registry of Deeds;  
On the petition (accompanied by bill, Senate, No. 128) of Linda J. Melconian, Brian P. Lees, Michael R. Knapik, Benjamin Swan

and Joseph F. Wagner for legislation to regulate the appointment and removal of a second assistant register of deeds for Hampden County; and

On the petition (accompanied by bill, Senate, No. 129) of Linda J. Melconian, Brian P. Lees, Michael R. Knapik, Benjamin Swan and Joseph F. Wagner for legislation relative to designating a second assistant register of deeds in Hampden County;  
**Severally referred, under Senate Rule 36, to the committee on Steering and Policy.**

#### **PAPERS FROM THE HOUSE.**

##### **Reports**

Of the committee on Banks and Banking, asking to be discharged from further consideration of the petition (accompanied by bill, House No. 1134) of Robert M. Koczera relative to the confidentiality of certain information of financial institutions,— and recommending that the same be referred to the committee on Commerce and Labor.

Of the committee on Health Care, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 4000) of Thomas A. Golden, Jr., for legislation to improve water conservation and permit tenants to assume the responsibility for cost of water and sewer services; and

Of the petition (accompanied by bill, House, No. 4001) of Thomas A. Golden, Jr., for legislation to improve water conservation and permit tenants to assume the responsibility for cost of gas, electricity and water and sewer services;

And recommending that the same severally be referred to the committee on Housing and Urban Development.

Of the committee on Human Services and Elderly Affairs, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 3281) of Marie J. Parente and other members of the House relative to the licensing of au pair agencies and further regulating the employment of au pairs,— and recommending that the same be referred to the committee on Commerce and Labor.

Of the petition (accompanied by bill, House, No. 449) of Colleen M. Garry relative to the accreditation of programs providing early child care services,— and recommending that the same be referred to the committee on Education, Arts and Humanities.

Of the petition (accompanied by bill, House, No. 795) of Rachel Kaprielian and other members of the General Court that home health agencies be reimbursed for criminal background screening costs of prospective employees,— and recommending that the same be referred to the committee on Health Care.

Of the petition (accompanied by bill, House, No. 984) of Dennis M. Murphy for legislation to require correctional facilities to maintain on-site defibrillators,— and recommending that the same be referred to the committee on Public Safety.

Of the petition (accompanied by bill, House, No. 986) of Kathleen M. Teahan and Robert S. Creedon, Jr., for legislation to establish a prescription drug fund for the elderly,— and recommending that the same be referred to the committee on Taxation.

Of the petition (accompanied by bill, House, No. 263) of Angelo M. Scaccia for legislation to establish an office of quality assurance for mentally retarded persons; and

Of the petition (accompanied by bill, House, No. 2357) of Mary Jeanette Murray that provision be made for the Commonwealth to reimburse parents who care for certain retarded persons in their homes;

And recommending that the same severally be referred to the House committee on Ways and Means.

Of the committee on Natural Resources and Agriculture, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 2381) of Mary Jeanette Murray for legislation to authorize the town of Scituate to establish a fee for shellfish permits to be issued to certain residents of the town of Cohasset,— and recommending that the same be referred to the committee on Local Affairs.

Of the committee on Public Service, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 2037) of John A. Stefanini, Mary Jane Simmons, Brian M. Cresta and another relative to optometric services for active or retired public employees,— and recommending that the same be referred to the committee on Insurance.

**Were severally considered forthwith, under Senate Rule 36, and accepted, in concurrence.**

#### ***Orders of the Day.***

The Orders of the Day were considered, as follows:

The Senate Bill protecting the health and safety of Massachusetts consumers from certain managed care practices in the insurance industry (Senate, No. 1741) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

After remarks, Ms. Jacques moved that the bill be amended in section 30 by inserting after line 175 the following clause:—

"(8) No health care provider, as defined by section 1 of chapter 176O, nor any agent or employee thereof, shall provide information relative to unpaid charges for health care services as defined in said section 1 of said chapter 176O to a consumer reporting agency as defined by section 50 of chapter 93 while an internal or external appeal under this section is pending, or for 15 days following the resolution of such an appeal."

The amendment was adopted.

Mr. Tarr moved that the bill be amended by inserting after clause (8) the following clause:—

"(9) promulgate regulations and make legislative recommendations to assure the affordability of managed health insurance plans by consumers."

The amendment was *rejected*.

Mr. Tarr further moved that the bill be amended in section 1 by inserting after the word "quality", in line 21, the following

words:— "and affordability."

The amendment was *rejected*.

Mr. Tarr further moved that the bill be amended in section 1 by inserting after the word "Care", in line 56, the following words:— "and two persons who shall be citizens enrolled in health maintenance organizations in the commonwealth, one of which shall be a member of the American Association of Retired Persons, and one who shall be representative of the average enrollee in such organizations".

The amendment was *rejected*.

Mr. Tarr further moved that the bill be amended by inserting after the word "Care", in line 56, the following words:— "and one person who shall represent the Massachusetts division of the National Federation of Independent Business."

The amendment was *rejected*.

Mr. Tarr further moved that the bill be amended in section 36, by inserting after the word "personnel", in line 170, the following words:— "who shall be certified according to standards for such personnel established by the department of public health, in consultation with the advisory committee established in section 217 of chapter 111."

The amendment was *rejected*.

Mr. Tarr further moved that the bill be amended in section 39, by adding the following paragraph:—

"The division of health care finance and policy shall study the feasibility of establishing a system whereby every insurance and medical provider in the commonwealth employs a single, uniform format for submitting claims for payment for any durable medical good or service, or pharmaceutical item provided to an insured. Said system shall be designed to streamline the billing process, to reduce repetitiveness and confusion, and shall promote the efficiency of the system to the maximum extent possible. Said study shall evaluate various options for implementing such a system, and include the pilot design of a single claims form to be used by all providers and insurers in the commonwealth. Said division shall report the finding of said study, together with legislative recommendations for implementing such a system, not later than one year after the effective date of this act, by filing the same with the clerks of the house and senate, and the committee on health care and insurance."

After remarks, the amendment was *rejected*.

Mr. Tarr further moved that the bill be amended by striking out section 20 and inserting in place thereof the following section:— "SECTION 20. Chapter 176G of the General Laws is hereby amended by striking out section 1 and inserting in place thereof the following section:—

Section 1. The following words as used in this chapter shall, unless the context clearly requires otherwise, have the following meanings:

'Carrier', an insurance company authorized to provide accident and health insurance under chapter 175, a nonprofit hospital service corporation authorized under chapter 176A, or a nonprofit medical service corporation authorized under chapter 176B.

'Commissioner', the commissioner of insurance.

'Company', a corporation, a partnership, a business trust, an association, an organized group of persons whether incorporated or not, or any line of business division, department, subsidiary or affiliate of any thereof and any receiver, trustee or other liquidating agent of any of the foregoing while acting in such capacity.

'Evidence of Coverage', any certificate, contract or agreement issued to a member stating the health services and any other benefits to which the member is entitled.

'Group health maintenance contract', any health maintenance contract with any group of five or more persons, or the employer or representative of a group of five or more persons; provided, that 25 percent or more of those eligible in a group of less than 50 persons, are group contract enrollees; provided further, that, for the purposes of computing the percentage of group contract enrollment under this definition, persons in a group who are subscribers to a general or blanket policy of insurance issued pursuant to section 110 of chapter 175, or to a group hospital service plan issued pursuant to section 10 of chapter 175A, or to a group medical service plan issued pursuant to chapter 176B, shall be considered to be group contract enrollees.

'Health maintenance contract', any contract entered into by a health maintenance organization or a carrier, or both with a member or group of members whereby the health maintenance organization agrees to provide health services on a nondiscriminatory basis.

'Health maintenance organization', a company organized under the laws of the commonwealth, or organized under the laws of another state and qualified to do business in the commonwealth, which:

(1) provides or arranges for the provision of health services to voluntarily enrolled members in exchange primarily for a prepaid per capita or aggregate fixed sum.

(2) demonstrates to the satisfaction of the commissioner proof of its capacity to provide its members protection against loss of prepaid fees or unavailability of covered health services resulting from its insolvency or bankruptcy or from other financial impairment of its obligations to its members.

'Insolvent' or insolvency', the financial condition of a health maintenance organization which is insolvent or bankrupt, or a health maintenance organization which has a negative net worth.

'Managed hospital payment basis', agreements wherein the financial risk is primarily related to the degree of utilization rather than to the cost of services.

'Member' or enrollee', any individual who has entered into a health maintenance contract, or on whose behalf such an arrangement has been made, with a health maintenance organization or carrier or both for health services and any dependent of such individual who is covered by the same contract.

'Member grievance', any oral or written complaint submitted to the health maintenance organization which has been initiated by a member, or on behalf of a member with the member's consent, of the health maintenance organization, regarding any aspect of

the health maintenance organization relative to the member, in accordance with the requirements of this chapter. Oral grievances shall be documented in writing by the health maintenance organization and a copy of such written grievance shall be provided to the member by the health maintenance organization within 48 hours of receipt by the health maintenance organization.

'Net worth', the excess of total assets over total liabilities, as calculated in accordance with this chapter and in accordance with this chapter and in accordance with regulations of the commissioner which shall specify accounting standards which enable the commissioner to determine the financial capacity of the health maintenance organization to pay for health care services on a timely basis.

'Provider', any physician, hospital or other person licensed or otherwise authorized to furnish health care services.

'Uncovered expenditures', the costs to the health maintenance organization for health care services that are the obligation of the health maintenance organization, for which an enrollee may also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made that are acceptable to the commissioner."; and by inserting after section 29 the following section:—

"SECTION 29A. Chapter 176G of the General Laws is hereby amended by inserting after section 17A, as appearing in the 1996 Official Edition, the following four sections:—

Section 17B. (a)(1) Before approving an application for licensure as a health maintenance organization, the commissioner shall require that the applicant have an initial net worth of one million five hundred thousand dollars \$1,500,000 and give assurances satisfactory to the commissioner of its ability to satisfy the requirements of clause (2) of paragraph (a).

(2) Except as provided in clause (3) of this section, every health maintenance organization must maintain a minimum net worth equal to the greater of:

(i) \$1,000,000; or

(ii) 2 per cent of annual premium, revenues on the first \$150,000,000 of premium revenues on the premium in excess of \$150,000,000 as reported on the most recent annual financial statement filed with commissioner; or

(iii) An amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner; or

(iv) An amount equal to the sum of:

(A) 8 per cent of annual health care expenditures except those paid through direct capitation payments or managed hospital basis, as defined in this chapter, as reported on the most recent financial statement filed with the commissioner; and (B) 4 per cent of annual hospital expenditures paid through direct capitation payments or managed hospital payment basis, as defined in this chapter, as reported on the most recent financial statement filed with the commissioner.

(3) A health maintenance organization licensed before the effective date of this section 18 must maintain a minimum net worth of:

(a) 33 per cent of the amount required by clause (2) of paragraph (a) within 30 days of the effective date of this section;

(b) 66 per cent of the amount required by clause (2) of paragraph (a) within one year of the effective date of this section;

100 per cent of the amount required by clause (2) of paragraph (a) within two years of the effective date of this section.

(b)(1) Each health maintenance organization shall deposit with the commissioner or, at the discretion of the commissioner, in a custodian or controlled account with any organization or trustee acceptable to the commissioner, cash, securities, or any combination of these or other funds acceptable to the commissioner which at all times shall have a value of not less than \$300,000.

(2) The deposit and all income therefrom shall be considered an asset of the health maintenance organization in the determination of net worth.

(3) An organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other funds of equal amount and value. Any securities shall be approved by the commissioner before being deposited or substituted.

(4) The deposit shall be held in trust to be used exclusively to protect the interests of the enrollees of the health maintenance organization, providers which have furnished or are furnished health care services to enrollees, and to assure continuation of health care services to enrollees of an insolvent health maintenance organization. If the health maintenance organization is insolvent or bankrupt, the deposit shall be an asset subject to applicable provisions of law.

(5) The commissioner may reduce or eliminate the deposit requirement if the health maintenance organization deposits acceptable surety with the commissioner.

Every health maintenance organization shall, when determining net worth, include as liabilities an amount estimated in the aggregate to account for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to account for the expenses of adjustment or settlement of such claims. Such amounts shall be computed in accordance with regulations promulgated by the commissioner which shall include reasonable consideration by the commissioner of the ascertained experience and character of the health maintenance organization.

(d) The commissioner shall require each health maintenance organization to have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

(1) Insurance to cover the expenses to be paid for continued benefits after an insolvency;

(2) Insolvency reserves;

(3) Acceptable letters of credit; and

(4) Any other arrangements to assure that benefits are continued as specified above.

Section 17C. (a)(1) If at any time its uncovered expenditures exceed 10 per cent of its total health care expenditures, a health maintenance organization shall place an uncovered expenditures insolvency deposit of cash or securities that are acceptable to the commissioner with the commissioner or in a custodial or controlled account with any organization or trustee acceptable to the commissioner. Such deposit shall at all times have a fair market value in an amount of 120 per cent of the HMO's outstanding liability for uncovered expenditures for enrollees in the commonwealth, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a health maintenance organization is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

(2) The deposit required under this section is in addition to the deposit required under section 17B and shall be considered an asset of the health maintenance organization in the determination of net worth. All income from such deposits or trust accounts shall be assets of the health maintenance organization and may be withdrawn by the organization from such deposit or account quarterly with the approval of the commissioner.

(3) A health maintenance organization that has made a deposit may withdraw that deposit or any part thereof if (i) a substitute deposit of cash or securities of equal amount and value is made, (ii) the fair market value of the deposit made by the health maintenance organization exceeds the amount of the required deposit, or (iii) the required deposit under clause (1) is reduced or eliminated. Deposits, substitutions or withdrawals may be made only with the prior written approval of the commissioner.

(4) The deposit required under this section is in trust and may be used only as provided under this section. The commissioner may use the deposit of an insolvent health maintenance organization for payment of claims of enrollees and providers in the commonwealth for uncovered expenditures in the commonwealth. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the health maintenance organization.

(5) The commissioner may by regulation prescribe the time, manner and form for filing claims under clause (4).

(6) The commissioner may by regulation or order require health maintenance organizations to file annual, quarterly or more frequent reports as he deems necessary to demonstrate compliance with this section. The commissioner may require that the reports specify liabilities for uncovered expenditures as well as an audit opinion.

Section 17D. (a) In the event of the acquisition of the stock or all or substantially all of the assets of an insolvent health maintenance organization from and after the effective date of this section, the acquiring entity shall assume all outstanding liabilities of the insolvent entity for health care services provided to enrollees and shall pay all such liabilities in full, either at the time of the acquisition or within such period of time thereafter as shall be deemed reasonable by the commissioner under the circumstances of the acquisition. In making his determination, the commissioner shall: (1) determine the financial capacity of the acquiring entity for repayment purposes on a corporation-wide basis, including corporate affiliates, as well as on a line-of-business and/or divisional basis; (2) give particular regard to the needs of providers which are organized and operated as public charities in the commonwealth; and (3) give particular regard to the needs of institutional providers of care for which or whom the amount due from the insolvent health maintenance organization represents a material portion of that provider's total revenues.

Section 17E. (a)(1) Whenever the commissioner determines that the financial condition of any health maintenance organization is such that its continued operation might be detrimental to its enrollees, providers, other creditors, or the general public, or that it has violated any provision of this chapter, he shall order the health maintenance organization to take such action as may be reasonably necessary to rectify such condition or violation, including but not limited to one or more of the following:

(i) Reduce the total amount of present and potential liability for benefits by reinsurance or other methods acceptable to the commissioner;

(ii) Reduce the volume of new business being accepted;

(iii) Reduce expenses by specified methods;

(iv) Suspend or limit the writing of new business for a period of time;

(v) Increase the health maintenance organization's capital and surplus by contribution; or

(vi) Take such other steps as the commissioner may deem appropriate under the circumstances.

(2) For purposes of this section, the violation by a health maintenance organization of any law of this commonwealth to which such health maintenance organization is subject shall be deemed a violation of this chapter.

(3) The commissioner shall establish uniform standards and criteria for determining as early as possible that the continued operation of any health maintenance organization might be detrimental to its enrollees, providers, other creditors, or the general public and to set standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in clause (1) of this section."

The amendment was *rejected*.

Messrs. Lees and Tarr moved that the bill be amended in section 36, by inserting after the definition of "Prospective review" the following definition:—

"'Religious nonmedical provider', a provider who provides no medical care but who provides only religious nonmedical treatment or religious nonmedical nursing care."; and in said section 36, by adding the following paragraph:—

"Section 9. Nothing in this chapter shall be construed to restrict or limit the rights of health benefit plans to include as providers religious nonmedical providers, require such health benefit plans to utilize medically based eligibility standards or criteria in deciding provider status of religious nonmedical providers, use medical professionals or criteria to decide patient access to religious nonmedical providers, utilize medical professionals or criteria in making decisions in internal or external appeals from decisions denying or limiting coverage or care by religious nonmedical providers, or compel a participant or beneficiary to

undergo a medical examination or test as a condition of receiving coverage for treatment by a religious nonmedical provider, or require such health benefit plans to exclude religious nonmedical providers because they do not provide medical or other data otherwise required, if such data is inconsistent with the religious nonmedical treatment or nursing care provided by the provider." The amendment was adopted.

Mr. Lees moved that the bill be amended in section 1, after the word "designee;", in line 45, the following words:— "the director of consumer affairs and business regulations, or his designee; the chair of the board of registration of medicine, or his designee;". The amendment was *rejected*.

Mr. Rauschenbach moved that the bill be amended by adding the following section:—

"SECTION 41. On or before January 1, and no later than January 15, 2000, the house and senate committee on ways and means shall contract with an independent actuary for the purposes of having performed an actuarial analysis and assessment of the financial impact of the provisions of this act. Said actuarial analysis and assessment shall be completed no later than March 1, two thousand. Said actuarial analysis shall include, but need not be limited to, the impact of this act on private sector health insurance premiums, the group insurance commission budget and the costs of the medical assistance program administered under chapter 118E of the General Laws and the impact of this act on the availability and affordability of health insurance and the number of uninsured and underinsured residents of the commonwealth. If said actuarial analysis indicates that the provisions of this act have caused or contributed to an increase in private sector health insurance premiums or an increase in the group insurance commission budget or an increase in the cost of said medical assistance program equal to or in excess of three percentage points above the private sector premium rates or the group insurance commission budget or the costs of said medical assistance program in calendar year 1998 or if said actuarial analysis indicates that the provisions of this act have caused or contributed to an increase in the number of uninsured or underinsured residents of the commonwealth over the number of uninsured or underinsured residents in calendar year 1997, or if said actuarial analysis is not completed by March 1, 2000, then a special commission on quality affordable healthcare shall be created.

The special commission shall examine the reasons for the increase in the cost of private sector health insurance premiums, the group insurance commission budget and the costs of the medical assistance program administered under said chapter 118E as well as the reasons for an increase in the number of uninsured or underinsured persons and the impact on the affordability of quality healthcare in the commonwealth.

The special commission shall consist of two members of the senate, one of whom shall be the senate chair of the joint committee on health care and the other a member of the minority party, two members of the house of representatives, one of whom shall be the house chair of the joint committee on health care and the other a member of the minority party, the secretary of the executive office of administration and finance, the commissioner of public health, the commissioner of medical assistance, and six persons, one of whom shall be the president of the Massachusetts Medical Society, one of whom shall be a representative from the Associated Industries of Massachusetts, one of whom shall be a representative of the Massachusetts Association of hmos, one of whom shall be a representative of the Massachusetts Hospital Association, one of whom shall be a representative from the Ad-Hoc Committee to Defend Health Care, and one of whom shall be the executive director from Health Care For All.

Said commission shall be jointly chaired by the senate chair of the joint committee on health care, the house chair of the joint committee on health care and the secretary of administration and finance. The commission shall adopt such rules and establish such procedures, as it considers necessary for the conduct of its business. The commission may expend such funds as may be appropriated or made available therefor. No action of the commission shall be considered official unless approved by a majority vote of the commission.

The commission will report its findings, along with draft legislation, to the house and senate committees on ways and means within 90 days of its creation."

The amendment was adopted.

Messrs. Tisei, Tolman, Lynch, Lees and Tarr, Ms. Jacques and Mr. Pacheco moved that the bill be amended by inserting after section 3 the following section:—

"SECTION 3A. Chapter 149 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following section:—

Section 186. (a) As used in this section, the following words shall have the following meanings:

'Health care provider', an individual who is a licensed health care provider under the provisions of chapter 112, including but not limited to registered nurses, licensed practical nurses, physicians, physicians assistants, chiropractors, dentists, occupational therapists, physical therapists, optometrists, pharmacists, podiatrists, psychologists, and social workers, or any other health care provider who performs or performed health care related services for and under the control of a health care facility for wages or other remuneration or any health care provider who, pursuant to a contract with an health care facility, performs health care related services which are substantially controlled and directed by the health care facility.

'Health care facility', an individual, partnership, association, corporation, firm or trust or any person or group of persons that hire or otherwise contracts for the services of health care providers, including any hospital, clinic, convalescent or nursing home, charitable home for the aged, community health agency, or other provider of health care services licensed, or subject to licensing by, or operated by the department of public health; any facility defined in section 3 of chapter 111B; any private, county or municipal facility, department or unit which is licensed or subject to licensing by the department of mental health pursuant to section 19 of chapter 19, or by the department of mental retardation pursuant to section 15 of chapter 19B; any facility as defined in section 1 of chapter 123; the Soldiers' Home in Holyoke, the Soldiers' Home in Chelsea; or any facility as set forth in section 1 of chapter 19 or section 1 of chapter 19B and any person or group of persons acting directly or indirectly on behalf of or in the interest of any health care facility with the health care facility's consent.

'Manager', an individual to whom a health care provider has given the authority to direct and control the work performance of the affected health care provider, who has authority to take corrective action regarding the violation of the law, rule, or regulation, or activity, policy or practice, or violation of professional standards of practice of which the health care provider complains, or who has been designated by the health care facility on the notice required under subsection (h).

'Public body', (A) the United States Congress, a state legislature, or any popularly elected local government body or any member or health care provider thereof; (B) any federal, state or local judiciary, or any member or employee thereof, or any grand or petit jury; any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof; (D) any federal, state, or local law enforcement agency, prosecutorial office or police or peace officer; or (E) any division, board, bureau, office, committee or commission of any of the public bodies described in this subsection.

'Retaliatory action', the discharge, suspension or demotion, harassment, denial of a promotion or layoff of a health care provider or other adverse action taken against a health care provider affecting the terms and conditions of employment or of the contract under which the health care provider provides services to the health care facility.

(b) A health care facility shall not refuse to hire, terminate a contractual agreement with or take any retaliatory action against a health care provider because the health care provider does any of the following:

- (1) discloses, or threatens to disclose to a manager or to a public body an activity, policy or practice of the health care facility, or of another employer with whom the health care facility has a business relationship, that the health care provider reasonably believes is in violation of a law, rule, regulation promulgated pursuant to law, or of professional standards of practice, which the health care provider reasonably believes poses a risk to public health or safety; provided, that, for purposes of this section, public health and safety shall include the health and safety of an health care provider or of a patient in a health care facility; or
- (2) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice or violation of professional standards of practice of the health care facility, which the health care provider reasonably believes poses a risk to public health or safety by the health care facility, or by another employer with whom the health care facility has a business relationship; or
- (3) objects to, or refuses to participate in any activity, policy or practice of the health care facility, or of another employer with whom the facility has a business relationship, which the health care provider reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or in violation of professional standards of practice, which the health care provider reasonably believes poses a risk to public health or safety; or
- (4) participates in any committee or peer review process, files a report or a complaint, or an incident report discussing allegations of unsafe, dangerous or potentially dangerous care.

(1) Except as provided in paragraph (2), the protection against retaliatory action provided by clause (1) of subsection (b) shall not apply to a health care provider who makes a disclosure to a public body unless the health care provider has brought the violation of professional standards of practice, or activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law, which the health care provider reasonably believes poses a risk to public health or safety, to the attention of a manager of the health care provider by written notice and has afforded the health care facility a reasonable opportunity to correct the activity, policy or practice or violation of professional standards of practice. The attorney general shall adopt regulations to carry out this section, including a provision defining said reasonable opportunity for a health care facility.

(2) A health care provider is not required to comply with paragraph (1) if he: (I) is reasonably certain that the activity, policy or practice or violation of professional standards of practice is known to one or more managers of the health care facility and the situation is emergent in nature; (ii) reasonably fears physical harm as a result of the disclosure provided; or (iii) makes the disclosure to a public body as defined in clause (ii) or (iv) of the definition of public body' in subsection (a) for the purpose of providing evidence of what the health care provider reasonably believes to be a crime.

(d) Any health care provider or former health care provider aggrieved by a violation of this section may, within two years, institute a civil action in the superior court. The plaintiff shall notify the attorney general of said action, but failure to do so shall not prejudice said action in any manner. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein. The court may: (1) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this section; (2) reinstate the health care provider to the same position held before the retaliatory action, or to an equivalent position; (3) reinstate full fringe benefits and seniority rights to the health care provider; (4) compensate the health care provider for three times the lost wages, benefits and other remuneration, and interest thereon; and (5) order payment by the health care facility of reasonable costs and attorneys' fees. A health care provider may bring an action in the appropriate superior court or the superior court of Suffolk County for the relief provided in this subsection. The attorney general shall establish and maintain a register of all complaints made by health care personnel under this chapter.

(e)(I) Except as provided in paragraph (2), in any action brought by a health care provider under subsection (d), if the court finds said action was without basis in law or in fact, the court may award reasonable attorney's fees and court costs to the health care facility.

(2) A health care provider shall not be assessed attorneys' fees under paragraph (1) if, after exercising reasonable and diligent efforts after filing a suit, the health care provider moves to dismiss the action against the health care facility, or files a notice agreeing to a voluntary dismissal, within a reasonable time after determining that the health care facility would not be found liable for damages.

(f) Whenever he believes it to be in the public interest, the attorney general may bring an action in the name of the commonwealth against any health care facility violating subsection (b) or subsection (h) of this section. Such action may be brought in the superior court, and any party thereto may claim trial by jury. In any such action, the court may provide the

remedies set forth in subsection (d) and may, in addition, require the health care facility to pay to the commonwealth a civil penalty of not more than \$10,000 for each such violation, as well as the cost of reasonable attorneys' fees and expert witness fees. (g) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any health care provider under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract.

(h) A health care facility shall conspicuously display notices reasonably designed to inform it health care providers of their protection and obligations under this section, and use other appropriate means to keep its health care providers so informed. Each notice posted pursuant to this subsection shall include the name of the person or persons the health care facility has designated to receive written notifications pursuant to subsection (c). Any health care facility that violates this subsection shall be punished by a fine of not less than \$250 nor more then \$2,500. This subsection shall be enforced by the attorney general.

(I) The Attorney General shall have the authority to promulgate rules and regulations necessary and appropriate to enforce the provisions of this section."

The amendment was adopted.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twelve minutes past two o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 37 — nays 0):

#### **YEAS.**

Antonioni, Robert A.

Bernstein, Robert A.

Berry, Frederick E.

Brewer, Stephen M.

Clancy, Edward J., Jr.

Creedon, Robert S., Jr.

Jajuga, James P.

Joyce, Brian A.

Knapik, Michael R.

Lees, Brian P.

Lynch, Stephen F.

Magnani, David P.

Melconian, Linda J.

Montigny, Mark C.

Moore, Richard T.

Morrissey, Michael W.

Murray, Therese

Norton, Thomas C.

Nuciforo, Andrea F., Jr.

Creem, Cynthia Stone

Fargo, Susan C.

Glodis, Guy W.

Havern, Robert A.

Hedlund, Robert L.

Jacques, Cheryl A.

Pacheco, Marc R.

Panagiotakos, Steven C.

Rosenberg, Stanley C.

Shannon, Charles E.

Sprague, Jo Ann

Tarr, Bruce E.

Tisei, Richard R.

Tolman, Steven A.

Travaglini, Robert E.

Tucker, Susan C.

Walsh, Marian

Wilkerson, Dianne — 37.

#### **NAYS. — 0**

#### **ABSENT OR NOT VOTING.**

Rauschenbach, Henri S. — 1.

**The yeas and nays having been completed at twenty-three minutes past two o'clock P.M., the bill (Senate, No. 1746, printed as amended) was passed to be engrossed.**

#### **Sent to the House for concurrence.**

The House Bill relative to adoption and promoting the welfare of children (House, No. 3965, amended),— was read a third time. Pending the question on passing the bill to be engrossed, Mr. Lynch moved that the bill be amended by inserting after section 2 the following section:

"SECTION 2A. Chapter 29 of the General Laws is hereby amended by inserting after section 2VV the following section:— Section 2WW. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the



Adoption Affordability Assistance Fund which shall be expended subject to appropriation and which shall consist of revenues received from: (1) state appropriations; (2) gifts, grants and donations from public and private sources; (3) interest earned from fund reserves; (4) federal reimbursements, grants-in-aid and other receipts which may be used for the purposes set forth herein; and (5) any other monies credited or transferred to the fund from any other source. The monies deposited annually in the fund shall be allocated to the office of child care services and administered by the office in order to provide funding for below market rate loans to families to adopt children. The commissioner of said office shall promulgate rules and regulations necessary to carry out the purposes of this section. The books and records of the fund shall be subject to a biennial audit by the state auditor."; and By inserting after section 23 the following section:—

"SECTION 23A. The commissioner of child care services shall promulgate the rules and regulations required pursuant to section 2WW of chapter 29 of the General Laws not later than six months following the effective date of said section 2WW of said chapter 29."

After debate, the amendment was adopted.

Ms. Murray and Mr. Shannon moved that the bill be amended in section 8, in clause (4) of the second paragraph of section 26 of chapter 119 of the General Laws, by striking out the second to fifth paragraphs, inclusive, and inserting in place thereof the following three paragraphs:—

"The department of social services shall file a petition or, in the alternative, a motion to amend a petition pending pursuant this section, to dispense with parental consent to adoption, custody, guardianship or other disposition of the child under the following circumstances: (I) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of such parent; or (iii) the child has been in foster care in the custody of the state for 15 of the immediately preceding 22 months. For the purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, pursuant to section 24 or section 26 of chapter 119, that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home. For the purposes of this section, serious bodily injury' shall mean bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty. The department shall concurrently identify, recruit, process, and approve a qualified family for adoption. The department need not file such a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary for the safe return of the child to the child's home if reasonable efforts as set forth in section 29C are required to be made with respect to the child.

Notwithstanding the foregoing, the following circumstances shall constitute grounds for dispensing with the need for consent to adoption, custody, guardianship or other disposition of the child: (I) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of the parent."

The amendment was adopted.

Ms. Murray and Mr. Shannon further moved that the bill be amended in section 11, by striking out, in line 109, the word "evidentiary".

The amendment was adopted.

Mr. Magnani moved that the bill be amended in section 3, by inserting after the word "concern", in line 5, the following words: "and shall include the long-term well-being of the child".

The amendment was adopted.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at a quarter before three o'clock P.M., on motion of Ms. Murray, as follows, to wit (yeas 37 — nays 0):

YEAS.

Antonioni, Robert A.

Bernstein, Robert A.

Berry, Frederick E.

Brewer, Stephen M.

Clancy, Edward J., Jr.

Creedon, Robert S., Jr.

Creem, Cynthia Stone

Fargo, Susan C.

Montigny, Mark C.

Moore, Richard T.

Morrissey, Michael W.

Murray, Therese

Norton, Thomas C.

Nuciforo, Andrea F., Jr.

Pacheco, Marc R.

Panagiotakos, Steven C.

Glodis, Guy W.  
Havern, Robert A.  
Hedlund, Robert L.  
Jacques, Cheryl A.  
Jajuga, James P.  
Joyce, Brian A.  
Knapik, Michael R.  
Lees, Brian P.  
Lynch, Stephen F.  
Magnani, David P.  
Melconian, Linda J.

Rosenberg, Stanley C.  
Shannon, Charles E.  
Sprague, Jo Ann  
Tarr, Bruce E.  
Tisei, Richard R.  
Tolman, Steven A.  
Travaglini, Robert E.  
Tucker, Susan C.  
Walsh, Marian  
Wilkerson, Dianne — 37.

**NAYS. — 0**

**ABSENT OR NOT VOTING.**

Rauschenbach, Henri S. — 1.

**Ms. Melconian in the Chair, the yeas and nays having been completed at eleven minutes before three o'clock P.M., the bill (House, No. 3965) was passed to be engrossed, in concurrence, with the amendments.**

**[For text of Senate amendments, printed as amended, see Senate, No. 1747.]**

**Sent to the House for concurrence in the amendments.**

**Papers from the House.**

***Engrossed Bill — Land Taking for Conservation, Etc.***

An engrossed Bill authorizing the town of Winthrop to use certain park and recreation land for school purposes (see Senate, No. 965) which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at nine minutes before three o'clock P.M., as follows, to wit (yeas 36 — nays 0):

**YEAS.**

Antonioni, Robert A.  
Bernstein, Robert A.  
Berry, Frederick E.  
Brewer, Stephen M.  
Clancy, Edward J., Jr.  
Creedon, Robert S., Jr.  
Creem, Cynthia Stone  
Fargo, Susan C.  
Glodis, Guy W.  
Havern, Robert A.  
Jacques, Cheryl A.  
Jajuga, James P.  
Joyce, Brian A.  
Knapik, Michael R.

Montigny, Mark C.  
Moore, Richard T.  
Morrissey, Michael W.  
Murray, Therese  
Norton, Thomas C.  
Nuciforo, Andrea F., Jr.  
Pacheco, Marc R.  
Panagiotakos, Steven C.  
Rosenberg, Stanley C.  
Shannon, Charles E.  
Sprague, Jo Ann  
Tarr, Bruce E.  
Tisei, Richard R.  
Tolman, Steven A.

Lees, Brian P.  
Lynch, Stephen F.  
Magnani, David P.  
Melconian, Linda J.

Travaglini, Robert E.  
Tucker, Susan C.  
Walsh, Marian  
Wilkerson, Dianne — 36.

**NAYS. — 0**

**ABSENT OR NOT VOTING.**

Hedlund, Robert L.

Rauschenbach, Henri S. — 2.

**The yeas and nays having been completed at six minutes before three o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.**

A Bill extending the date for a special election in the town of Longmeadow (printed in House, No. 4131,— being a message from His Excellency the Governor),— was read.

**There being no objection, the rules were suspended, on motion of Mr. Panagiotakos, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

***Bill Recalled from the Governor.***

On motion of Mr. Lees, it was voted that a messenger be appointed to wait upon His Excellency the Governor, requesting the return to the Senate of the engrossed Bill relative to the position of deputy fire chief of the fire department in the city of Springfield (see House, No. 3794).

**Mr. Lees was appointed the messenger. Subsequently, the bill was returned to the Senate.**

***Petition.***

On motion of Ms. Creem, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Ms. Creem (accompanied by bill), of Cynthia S. Creem, A. Stephen Tobin and Martha Coakley, District Attorney for the Northern District, for legislation relative to the crime of assault and battery,— **and the same was referred to the committee on Criminal Justice.**

**Sent to the House for concurrence.**

**Papers from the House.**

A petition (accompanied by bill, House, No. 4211) of William J. McManus II and Robert A. Bernstein for legislation to designate the memorial to be constructed and maintained by the Department of Veterans' Services at Green Hill Park in the city of Worcester as the official memorial to honor Vietnam veterans,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on State Administration.**

***Report of a Committee.***

By Mr. Montigny, for the committee on Ways and Means, that the Senate bill to further the redevelopment of the former Lawrence Mills property in the city of Lowell (Senate, No. 1726), ought to pass.

**There being no objection, the rules were suspended, on motion of Mr. Panagiotakos, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading, to read as follows:— "An Act furthering the redevelopment of the former Lawrence Mills property in the city of Lowell."**

**Sent to the House for concurrence**

***Reports of the Committee on State Administration on***

***Executive Reorganization Plans Nos. 1, 2 and 3 of 1999.***

By Ms. Wilkerson, for the committee on State Administration, on Reorganization Plan Number 1 of 1999 (submitted by the Governor under the provisions of Article LXXXVII of the Amendments to the Constitution) relative to the reorganization,

transfer, and consolidation of the Department of Public Safety (see House, No. 2464) [for majority and minority reports, see Senate, No. 1729],— reported, in accordance with a provision of Joint Rule 23A, recommending that said Reorganization Plan No. 1 "ought NOT to be approved".

By the same Senator, for the same committee, on Reorganization Plan Number 2 of 1999 (submitted by the Governor under the provisions of Article LXXXVII of the Amendments to the Constitution) relative to reorganizing the Executive Office of Environmental Affairs by consolidating the Department of Environmental Management and the Metropolitan District Commission into one department of conservation and recreation (see House, No. 2465) [for majority and minority reports, see Senate, No. 1730],— reported, in accordance with a provision of Joint Rule 23A, recommending that said Reorganization Plan No. 2 "ought NOT to be approved".

By the same Senator, for the same committee, on Reorganization Plan Number 3 of 1999 (submitted by the Governor under the provisions of Article LXXXVII of the Amendments to the Constitution) relative to the Department of Youth Services (see House, No. 2466) [for majority and minority reports, see Senate, No. 1731],— reported, in accordance with a provision of Joint Rule 23A, recommending that said Reorganization Plan No. 3 "ought NOT to be approved".

**There being no objection, the reports were considered forthwith. There being no further objection, the reports were considered as one; and they were laid aside as moot, the House having previously disapproved of the matters.**

### ***Reports of Committees.***

By Ms. Melconian, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Robert L. Hedlund for legislation relative to the helmet law standards.

**Senate Rule 36 was suspended, on motion of Ms. Wilkerson, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Safety.**

By Ms. Melconian, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Robert L. Hedlund for legislation relative to modification of the helmet law.

**Senate Rule 36 was suspended, on motion of Ms. Wilkerson, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Safety.**

**Sent to the House for concurrence.**

### ***Resolutions.***

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—

Resolutions (filed by Mr. Glodis) "congratulating St. John's High School of Shrewsbury hockey team"; and

Resolutions (filed by Mr. Lees) "congratulating District Deputy Albert L. Saulnier of the Order of the Knights of Columbus for 30 years of dedicated service".

### ***Order Adopted.***

On motion of Ms. Walsh,—

*Ordered*, That when the Senate adjourns today, it adjourn to meet again on Monday next at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of Mr. Lees, at one minute past three o'clock P.M., the Senate adjourned to meet on the following Monday at eleven o'clock A.M.

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