HOUSE DOCKET, NO. 1278 FILED ON: 2/4/2021

HOUSE . . . . . No. 1066

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato

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 consumers from surprise billing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Paul J. Donato	*35th Middlesex*	*2/3/2021*

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HOUSE . . . . . No. 1066

By Mr. Donato of Medford, a petition (accompanied by bill, House, No. 1066) of Paul J. Donato relative to non-contracted and non-emergency healthcare billing. Financial Services.

The Commonwealth of Massachusetts

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

An Act to protect consumers from surprise billing.

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 6D of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 16 the following section:-

Section 16A. (a) The commission shall, upon consideration of advice or any other pertinent evidence, recommend the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services, as defined in section 1 of chapter 176O. The noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services shall be in effect for a term of 5 years and shall apply to payments under clauses (ii) and (iv) of section 28 of said chapter 176O.

(b) In recommending rates, the commission shall consider: (i) the impact of each rate on the growth of total health care expenditures; (ii) the impact of each rate on premiums under Chapter 176J; (iii) the impact of each rate on in-network participation by health care providers and the risk of reducing network participation by health care providers; and (iv) whether each

rate is easily understandable and administrable by health care providers and carriers. The commission may establish separate rates for subsidized and nonsubsidized health benefit plans. The commission shall not issue its recommendations for the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services without the approval of the board established under subsection (b) of section 2.

(c) Prior to recommending the rates, the commission shall hold a public hearing. The hearing shall examine current rates paid for in- and out-of-network services and the impact of those rates on the operation of the health care delivery system and determine, based on the testimony, information and data, an appropriate noncontracted commercial rate for emergency services and noncontracted commercial rate for nonemergency services consistent with subsection (b). The commission shall provide public notice of the hearing not less than 45 days before the date of the hearing, including notice to the division of insurance. The division may participate in the hearing. The commission shall identify as witnesses for the public hearing a representative sample of providers, provider organizations, payers and other interested parties as the commission may determine. Any interested party may testify at the hearing.

(d) If the board approves the recommended rates pursuant to subsection (b), the commission shall submit the recommendations to the division of insurance. The division may, not later than 30 days after the proposal has been submitted, hold a public hearing on the proposal. The division shall provide public notice of the hearing not less than 7 days before the date of the hearing. The division shall identify as witnesses for the public hearing a representative sample of providers, provider organizations, payers and other interested parties as the division may determine. Any interested party may testify at the hearing. Not later than 7 days after the division's public hearing, the division shall accept and implement the commission's

recommended rates or the division may reject the commission's recommended rates; provided, however, that if the division rejects the commission's recommended rates, the division shall, within 20 days of the division's rejection, report in writing to the commission, the clerks of the senate and house of representatives and the joint committee on health care financing the reasons for the division's rejection. Within 30 days of receipt of the division's rejection of the commission's recommended rates, the commission shall recommend amended rates based on the division's written rejection. If the division takes no action to accept or reject the commission's recommended rates, the recommended rates shall automatically take effect as the noncontracted commercial rate for emergency services and noncontracted commercial rate for nonemergency services 30 days after the commission submitted said rates to the division and shall be in effect for the applicable 5-year term.

(e) The commission shall conduct a review of established rates in the fourth year of the rates' operation. The commission shall further hold a public hearing under subsection (d) in said fourth year and recommend rates consistent with this section to be effective for the next 5-year term.

SECTION 2. Section 1 of chapter 176O of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the definition of "Incentive plan" the following definition:-

"In-network contracted rate", the rate contracted between an insured's carrier and a network health care provider for the reimbursement of health care services delivered by that health care provider to the insured.

SECTION 3. Said section 1 of said chapter 176O, as so appearing, is hereby further amended by inserting after the definition of "Network" the following 3 definitions:-

"Noncontracted commercial rate for emergency services", the amount set pursuant to section 16A of chapter 6D and used to determine the rate of payment to a health care provider for the provision of emergency health care services to an insured when the health care provider is not in the carrier's network.

"Noncontracted commercial rate for nonemergency services", the amount set pursuant to section 16A of chapter 6D and used to determine the rate of payment to a health care provider for the provision of nonemergency health care services to an insured when the health care provider is not in the carrier's network.

"Nonemergency services", health care services rendered to an insured experiencing a condition other than an emergency medical condition.

SECTION 4. Said chapter 176O is hereby further amended by adding the following 3 sections:-

Section 30. (a)(1) A carrier shall reimburse a health care provider as follows: (i) where the health care provider is a member of an insured's carrier's network but not a participating provider in the insured's health benefit plan and the health care provider has delivered health care services to the insured to treat an emergency medical condition, the carrier shall pay that provider the in-network contracted rate for each delivered service; provided, however, that such payment shall constitute payment in full to that health care provider and the provider shall not

bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan; (ii) where the health care provider is not a member of an insured's carrier's network and the health care provider has delivered health care services to the insured to treat an emergency medical condition, the carrier shall pay that provider the noncontracted commercial rate for emergency services for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan; (iii) where the health care provider is a member of an insured's carrier's network but not a participating provider in the insured's health benefit plan and the health care provider has delivered nonemergency health care services to the insured and a participating provider in the insured's health benefit plan is unavailable or the health care provider renders those nonemergency health care services without the insured's knowledge, the carrier shall pay that provider the in-network contracted rate for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service from a participating health care provider under the terms of the insured's health benefit plan; and (iv) where the health care provider is not a member of an insured's carrier's network and the health care provider has delivered nonemergency services to the insured and a participating provider in the insured's health benefit plan is unavailable or the health care provider renders those nonemergency health care services without the insured's knowledge, the

carrier shall pay the provider the noncontracted commercial rate for nonemergency services for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan.

(a)(2) It shall be an unfair and deceptive act or practice, in violation of section 2 of chapter 93A, for any health care provider or carrier to request payment from an enrollee, other than the applicable coinsurance, copayment, deductible or other out-of-pocket expense, for the services described in paragraph (1).

(b) Nothing in this section shall require a carrier to pay for health care services delivered to an insured that are not covered benefits under the terms of the insured's health benefit plan.

(c) Nothing in this section shall require a carrier to pay for nonemergency health care services delivered to an insured if the insured had a reasonable opportunity to choose to have the service performed by a network provider participating in the insured's health benefit plan. Evidence that an insured had a reasonable opportunity to choose to have the service performed by a network provider may include, but not be limited to, a written acknowledgement submitted with any claim for reimbursement from the carrier that: (i) is signed by the insured; and (ii) was

provided by the health care provider to the insured before the delivery of nonemergency health care services and provided the insured a reasonable amount of time to seek health care services from a participating provider in the insured's health benefit plan.

(d) The commissioner shall promulgate regulations that are necessary to implement this section.