

HOUSE No. 2974

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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 limit retroactive denials of health insurance claims for behavioral health and substance abuse services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>

<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Juana Matias</i>	<i>16th Essex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Bud Williams</i>	<i>11th Hampden</i>

HOUSE No. 2974

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 2974) of James J. O'Day and others for legislation to limit retroactive denials of health insurance claims for behavioral health and substance abuse services. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to limit retroactive denials of health insurance claims for behavioral health and substance abuse services.

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

1 SECTION 1. Chapter 32A of the General Laws, as appearing in the 20XX Official
2 Edition, is hereby amended by inserting after section 4A the following new section: -

3 Section 4B. (a) The commission or any entity with which the commission contracts to
4 provide or manage health insurance benefits, including mental health services, shall not impose a
5 retroactive claims denial, as defined in section 1 of chapter 175, for behavioral health services, as
6 defined in section 1 of chapter 175, on a provider unless:

7 (i) Less than six months have elapsed from the time of submission of the claim by
8 the provider to the commission or other entity responsible for payment;

9 (ii) The commission or other entity has furnished the provider with a written
10 explanation of the reason for the retroactive claim denial, and a description of additional
11 documentation or other corrective actions required for payment of the claim.

12 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
13 permitted after six months if:

14 (i) The claim was submitted fraudulently;

15 (ii) The claim payment is subject to adjustment due to expected payment from
16 another payer and not more than 12 months have elapsed since submission of the claim; or

17 (iii) The claims, or services for which the claim has been submitted, is the subject of
18 legal action.

19 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
20 (b), the commission or other entity shall notify a provider at least 15 days before imposing the
21 retroactive claim denial and the provider shall have six months to determine whether the claim is
22 subject to payment by a secondary insurer. Notwithstanding the contractual terms between the
23 provider and insurer, an insurer shall allow for submission of a claim that was previously denied
24 by another insurer due to the insured's transfer or termination of coverage.

25 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
26 substance use disorder program licensed by the department of public health under Chapters 18,
27 111, 111B, or 111E , a behavioral, substance use disorder, or mental health professional who is
28 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
29 consistent with law and who has provided services under an express or implied contract or with
30 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
31 directly or indirectly from the commission or other entity.

32 SECTION 2. Chapter 118E of the General Laws, as so appearing, is amended by
33 inserting after section 38 the following new section: -

34 38A. (a) The division or any entity with which the division contracts to provide or
35 manage health insurance benefits, including mental health services, shall not impose a retroactive
36 claims denial, as defined in section 1 of chapter 175, for behavioral health services, as defined in
37 section 1 of chapter 175, on a provider unless:

38 (i) Less than six months have elapsed from the time of submission of the claim by
39 the provider to the division or other entity responsible for payment;

40 (ii) The division or other entity has furnished the provider with a written explanation
41 of the reason for the retroactive claim denial, and a description of additional documentation or
42 other corrective actions required for payment of the claim.

43 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
44 permitted after six months if:

45 (i) The claim was submitted fraudulently;

46 (ii) The claim payment is subject to adjustment due to expected payment from
47 another payer and not more than 12 months have elapsed since submission of the claim; or

48 (iii) The claims, or services for which the claim has been submitted, is the subject of
49 legal action.

50 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
51 (b), the division or other entity shall notify a provider at least 15 days before imposing the
52 retroactive claim denial and the provider shall have six months to determine whether the claim is

53 subject to payment by a secondary insurer. Notwithstanding the contractual terms between the
54 provider and insurer, an insurer shall allow for submission of a claim that was previously denied
55 by another insurer due to the insured's transfer or termination of coverage.

56 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
57 substance use disorder program licensed by the department of public health under Chapters 18,
58 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is
59 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
60 consistent with law and who has provided services under an express or implied contract or with
61 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
62 directly or indirectly from the division or managed care entity.

63 SECTION 3. Section 1 of Chapter 175 of the General Laws, as so appearing, is amended
64 by inserting before the definition of "Commissioner" the following new definition:

65 "Behavioral Health", mental health and substance use disorder prevention, recovery and
66 treatment services including but not limited to inpatient 24 hour levels of care, 24 hour and non
67 24 hour diversionary levels of care, intermediate levels of care and outpatient services

68 and by inserting after the definition of "Resident" the following new definition:

69 "Retroactive Claim Denial", an action by a) an insurer, b) an entity with which the
70 insurer subcontracts to manage behavioral health services, c) an entity with which the Group
71 Insurance Commission has entered into an administrative services contract or a contract to
72 manage behavioral health services, or d) the executive office of health and human services acting
73 as the single state agency under section 1902(a)(5) of the Social Security Act authorized to
74 administer programs under title XIX, to deny a previously paid claim for services and to require

75 repayment of the claim, impose a reduction in other payments, or otherwise withhold or affect
76 future payments owed a provider in order to recoup payment for the denied claim.

77 SECTION 4. Section 108 of chapter 175 of the General Laws, as so appearing, is hereby
78 amended by adding the following new subsection at the end thereof: -

79 (a) No insurer shall impose a retroactive claims denial, as defined in section 1 of chapter
80 175, for behavioral health services, as defined in section 1 of chapter 175, on a provider unless:

81 (i) Less than six months have elapsed from the time of submission of the claim by
82 the provider to the insurer or other entity responsible for payment;

83 (ii) The insurer or other entity has furnished the provider with a written explanation
84 of the reason for the retroactive claim denial, and a description of additional documentation or
85 other corrective actions required for payment of the claim.

86 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
87 permitted after six months if:

88 (i) The claim was submitted fraudulently;

89 (ii) The claim payment is subject to adjustment due to expected payment from
90 another payer and not more than 12 months have elapsed since submission of the claim; or

91 (iii) The claims, or services for which the claim has been submitted, is the subject of
92 legal action.

93 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
94 (b), the insurer shall notify a provider at least 15 days before imposing the retroactive claim

95 denial and the provider shall have six months to determine whether the claim is subject to
96 payment by a secondary insurer. Notwithstanding the contractual terms between the provider and
97 insurer, an insurer shall allow for submission of a claim that was previously denied by another
98 insurer due to the insured's transfer or termination of coverage.

99 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
100 substance use disorder program licensed by the department of public health under Chapters 18,
101 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is
102 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
103 consistent with law and who has provided services under an express or implied contract or with
104 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
105 directly or indirectly from an insurer.

106 SECTION 5. Chapter 176A of the General Laws, as so appearing, is amended by
107 inserting after section 8 the following new section:-

108 Section 8A (a) The corporation shall not impose a retroactive claims denial, as defined in
109 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on
110 a provider unless:

111 (i) Less than six months have elapsed from the time of submission of the claim by
112 the provider to the corporation;

113 (ii) The corporation has furnished the provider with a written explanation of the
114 reason for the retroactive claim denial, and a description of additional documentation or other
115 corrective actions required for payment of the claim.

116 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
117 permitted after six months if:

118 (i) The claim was submitted fraudulently;

119 (ii) The claim payment is subject to adjustment due to expected payment from
120 another payer and not more than 12 months have elapsed since submission of the claim; or

121 (iii) The claims, or services for which the claim has been submitted, is the subject of
122 legal action.

123 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
124 (b), the corporation shall notify a provider at least 15 days before imposing the retroactive claim
125 denial and the provider shall have six months to determine whether the claim is subject to
126 payment by a secondary payer. Notwithstanding the contractual terms between the provider and
127 secondary payer, the payer shall allow for submission of a claim that was previously denied by
128 the corporation due to the insured's transfer or termination of coverage.

129 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
130 substance use disorder program licensed by the department of public health under Chapters 18,
131 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is
132 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
133 consistent with law and who has provided services under an express or implied contract or with
134 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
135 directly or indirectly from an insurer.

136 SECTION 6. Chapter 176B of the General Laws, as so appearing is hereby amended by
137 inserting after section 7C the following new section:-

138 Section 7D (a) The corporation shall not impose a retroactive claims denial, as defined in
139 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on
140 a provider unless:

141 (i) Less than six months have elapsed from the time of submission of the claim by
142 the provider to the corporation;

143 (ii) The corporation has furnished the provider with a written explanation of the
144 reason for the retroactive claim denial, and a description of additional documentation or other
145 corrective actions required for payment of the claim.

146 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
147 permitted after six months if:

148 (i) The claim was submitted fraudulently;

149 (ii) The claim payment is subject to adjustment due to expected payment from
150 another payer and not more than 12 months have elapsed since submission of the claim; or

151 (iii) The claims, or services for which the claim has been submitted, is the subject of
152 legal action.

153 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
154 (b), the corporation shall notify a provider at least 15 days before imposing the retroactive claim
155 denial and the provider shall have six months to determine whether the claim is subject to
156 payment by a secondary payer. Notwithstanding the contractual terms between the provider and

157 secondary payer, the payer shall allow for submission of a claim that was previously denied by
158 the corporation due to the insured's transfer or termination of coverage.

159 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
160 substance use disorder program licensed by the department of public health under Chapters 18,
161 111, 111B, or 111E , a behavioral, substance use disorder, or mental health professional who is
162 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
163 consistent with law and who has provided services under an express or implied contract or with
164 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
165 directly or indirectly from an insurer.

166 SECTION 7. Chapter 176G of the General Laws, as so appearing, is hereby amended by
167 inserting after section 6A the following new section:-

168 Section 6B. (a) No insurer shall impose a retroactive claims denial, as defined in section
169 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on a
170 provider unless:

171 (i) Less than six months have elapsed from the time of submission of the claim by
172 the provider to the insurer or other entity responsible for payment;

173 (ii) The insurer or other entity has furnished the provider with a written explanation
174 of the reason for the retroactive claim denial, and a description of additional documentation or
175 other corrective actions required for payment of the claim.

176 (b) Notwithstanding clauses (i) of paragraph (d), retroactive claim denials may be
177 permitted after six months if:

- 178 (i) The claim was submitted fraudulently;
- 179 (ii) The claim payment is subject to adjustment due to expected payment from
180 another payer and not more than 12 months have elapsed since submission of the claim; or
- 181 (iii) The claims, or services for which the claim has been submitted, is the subject of
182 legal action.

183 (c) In cases in which a retroactive claim denial is imposed under clause (ii) of paragraph
184 (b), the insurer shall notify a provider at least 15 days before imposing the retroactive claim
185 denial and the provider shall have six months to determine whether the claim is subject to
186 payment by a secondary insurer. Notwithstanding the contractual terms between the provider and
187 insurer, an insurer shall allow for submission of a claim that was previously denied by another
188 insurer due to the insured's transfer or termination of coverage.

189 (d) For the purposes of this subsection, provider shall mean a mental health clinic or
190 substance use disorder program licensed by the department of public health under Chapters 18,
191 111, 111B, or 111E, a behavioral, substance use disorder, or mental health professional who is
192 licensed under Chapter 112 of the General Laws and accredited or certified to provide services
193 consistent with law and who has provided services under an express or implied contract or with
194 the expectation of receiving payment, other than co- payment, deductible or co-insurance,
195 directly or indirectly from an insurer.

196 SECTION 8. The Division of Medical Assistance is hereby authorized and directed to
197 develop an internal process for the reconciliation of claims due to retroactive eligibility changes
198 and/or duplicate enrollments in cases that involve multiple payers for services provided to
199 MassHealth enrollees. This process shall not require provider involvement. The division shall

200 report to the senate and house committees on ways and means on this process no longer than five
201 months after enactment of this legislation.