

# SENATE NO. 986

## AN ACT RELATIVE TO TIMELY NOTICE

*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 231 of the General Laws is hereby amended by adding after section 60K the  
2 following new section:-

3 Section 60L

4 Section 1. Except as provided in this section a person shall not commence an action against a provider  
5 of health care as defined in paragraph 7 of section 60 B of chapter 231 as appearing in the 2004  
6 official edition of the general laws unless the person has given the health care provider written notice  
7 under this section of not less than 182 days notice before the action is commenced.

8 Section 2. The notice of intent to file a claim required under Section (1) shall be mailed to the last  
9 know professional business address or residential address of the health care provider who is the subject  
10 of the claim.

11 Section 3. The 182 day notice period in Section 1 is shortened to 91 days if all of the following  
12 conditions exist:

13 (a) The claimant has previously filed the 182 day notice required in Section 1 against another  
14 health care provider involved in the claim.

15 (b) The 182 day notice period has expired as to the health care providers described in Section  
16 1.

17 (c) The claimant has filed a complaint and commenced an action alleging medical malpractice  
18 against one or more of the health care providers described in subsection a.

19 (d) The claimant did not identify and could not have reasonably have identified a health care  
20 provider to which notice must be sent under Section 1 as a potential party to the action  
21 before filing the complaint.

22 Section 4. The notice given to a health care provider under this section shall contain a statement of at  
23 least all of the following:

24 (a) The factual basis for the claim.

25 (b) The applicable standard of care alleged by the claimant.

26 (c) The manner in which it is claimed that the applicable standard of care was breached by the  
27 health care provider.

28 (d) The alleged action that should have been taken to achieve compliance with the alleged  
29 standard of care.

30 (e) The manner in which it is alleged the breach of the standard of care was the proximate  
31 cause\_of the injury claimed in the notice.

32 (f) The names of all health care providers the claimant is notifying under this section in  
33 relation to the claim.

34 Section 5. 56 days after giving notice under this section, the claimant shall allow the health care  
35 provider receiving the notice access to all of the medical records related to the claim that are in the  
36 claimants control, and shall furnish release for any medical records related to the claim that are not in  
37 the claimants control, but of which the claimant has knowledge. This subsection does not restrict a

38 health care provider receiving notice under this section from communicating with other health care  
39 providers and acquiring medical records as permitted in section 291f. This subsection does not restrict  
40 a patient's right of access to his or her medical records under any other provision of law.

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42 Within 154 days after receipt of notice under this section, the health care provider against whom the  
43 claim is made shall furnish to the claimant or his or her authorized representative a written response  
44 that contains a statement of each of the following:

45 (a) The factual basis for the defense to the claim.

46 (b) The standard of care that the health care provider claims to be applicable to the action and  
47 that the health care provider complied with that standard.

48 (c) The manner in which it is claimed by the health care provider that there was compliance  
49 with the applicable standard of care.

50 (d) The manner in which the health care provider contends that the alleged negligence of the  
51 health care provider was not the proximate cause of the claimant's alleged injury or alleged  
52 damage.

53 Section 8. If the claimant does not receive the written response required under Section 7 within the  
54 required 154 day time period, the claimant may commence an action alleging medical malpractice  
55 upon the expiration of the 154 day period.

56 Section 9. If at any time during the applicable notice period under this section a health care provider  
57 receiving notice under this section informs the claimant in writing that the health care provider does  
58 not intend to settle the claim s within the applicable notice period, the claimant may commence an  
59 action alleging medical malpractice against the health care provider, so long as the claim is not barred  
60 by the statue of limitations.

