

SENATE NO. 2258

AN ACT RELATIVE TO PANDEMIC OR DISASTER PLANNING BY HEALTH CARE PROVIDERS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to protect the rights of patients to receive timely and medically necessary health care services, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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 111 of the General Laws, as appearing in the 2004 Official Edition, is
2 hereby amended by inserting after section 25K the following section:

3 Section 25L Disaster Planning and Preparation by Health Care Facilities:

4 Notwithstanding the provisions of any general or special law to the contrary, no health care
5 provider, as defined in section 1 of this Chapter, and no provider, as defined in section 1 of
6 chapter 118G of the general laws, shall be liable in a suit for damages or subject to

7 administrative or licensing sanctions as a result of good-faith acts or omissions while engaged in
8 the performance of duties as a volunteer participating in a state sanctioned preparedness
9 program or as an employee in rendering emergency care, treatment, advice, or assistance during
10 a public health emergency declared by the Governor under section 2A of chapter 17 of the
11 general laws or during a state of emergency declared under chapter 639 of the Acts of 1950.
12 This section does not apply in the case of malfeasance, willful, wanton, or reckless actions by a
13 provider occurring in the performance of their duties during said emergency

14 In the absence of any other benefits provided by law, any health care provider or provider who
15 is killed or who sustains disability or injury while activated by a state agency for volunteer
16 assistance directly related to the provision of health care services shall be construed to be an
17 employee of the Commonwealth and shall be compensated in like manner as state employees
18 are compensated under the provisions of Sections 69 through 75 of the Chapter 152 of the
19 General Laws.

20 If the statewide or regional declared public health emergency requires expertise of volunteers
21 that are not available in Massachusetts, any personnel that are requested from other states that
22 provide emergency care, treatment, advice, or assistance, and in the absence of other protections
23 provided by other state laws, shall receive the same protections provided to Massachusetts
24 health care providers as provided for under this section.

25 SECTION 2: Chapter 175 of the General Laws, as appearing in the 2004 official edition, is
26 hereby amended by inserting after section 24F the following section:

27 24G Utilization review

28 A) A public health emergency or declared state of emergency may only be declared or declared
29 as ended by the governor or acting governor pursuant to section 2A of chapter 17 or under
30 chapter 639 of the Acts of 1950, respectively.

31 B) In the event of a declaration of a public health emergency or state of emergency by the
32 governor or acting governor of the commonwealth, there shall be a suspension of all elective
33 procedures by providers within the zone of the declared emergency, whereby any policy,
34 contract, agreement, plan, or certificate of insurance for coverage of health care services,
35 including any sickness, health, or welfare plan issued within or without the commonwealth,
36 including but not limited to those of a carrier as defined under section 1 of chapter 176O, or
37 other state approved health plans, shall provide for a waiver of the following administrative
38 requirements, including but not limited to, utilization review, prior authorization, advance
39 notification upon admission or delivery of services, and limitation on provider networks for
40 treating or transfer of patients. During a declared public health emergency or state of
41 emergency, all prompt claims payment requirements, including the payment of interest for late
42 processing, are waived for services rendered during the emergency. The commissioner of
43 insurance shall promulgate regulations regarding the waiver of administrative requirements and
44 claims payment requirements during a public health emergency.

45 C) Upon the declared end of the public health emergency or state of emergency, there shall be
46 within 180 days a reconciliation of charges and reimbursements, during which time claims may
47 be adjusted or re-adjudicated based on the provisions of any contract between the provider and
48 health carrier, except that such reimbursement shall not be conditioned on the execution during
49 the public health emergency of pre-notification or pre-authorization requirements. In the event

50 that there is no contract between the provider and health carrier, reconciliation will be based on
51 reimbursement amounts equal to the carrier's usual and customary reimbursement rates in force
52 at the date of service, except that for services provided to MassHealth members, reconciliation
53 will be based on reimbursement amounts equal to the MassHealth reimbursement rates in force
54 on the date of service. Upon completion of the reconciliation, any carrier overpayments will be
55 reimbursed by the provider to the carrier and any underpayments will be paid by the carrier to
56 the provider. Investigations of fraud and resultant recovery actions are not subject to this
57 reconciliation period, but must be initiated within three years from the date of the declared end
58 of the public health emergency.

59 SECTION 3. A health care insurer shall include the provisions of section 2 of this Act in all
60 contracts between the insurer and a health care provider entered into, renewed, or amended on
61 or after the effective date of the Act.