

MA 2012 Payment Reform Legislation (Ch 224) - Key Liability Provisions

Overview

SECTION 220. PRE-JUDGMENT INTEREST

SECTION 221. WAITING PERIOD FOR SUITS - RECORD SHARING

SECTION 222. NONPROFIT CAP FOR MED MAL INCREASED TO \$100,000

SECTION 223. APOLOGY PROTECTION

SECTION 258. BORM

Legislative Language

SECTION 220. Section 60K of chapter 231 of the General Laws, as so appearing, is hereby amended by striking out, in line 14, the figure “4” and inserting in place thereof the following figure “2”.

SECTION 221. Said chapter 231 is hereby further amended by inserting after section 60K the following section:-

Section 60L. (a) Except as otherwise provided in this section, a person shall not commence an action against a provider of health care as defined in the seventh paragraph of section 60B unless the person has given the health care provider 182 days written notice before the action is commenced.

(b) The notice of intent to file a claim required under subsection (a) shall be mailed to the last known professional business address or residential address of the health care provider who is the subject of the claim.

(c) The 182-day notice period in subsection (a) shall be shortened to 90 days if:

(1) the claimant has previously filed the 182-day notice required against another health care provider involved in the claim; or

(2) the claimant has filed a complaint and commenced an action alleging medical malpractice against any health care provider involved in the claim.

(d) The 182 day notice of intent required in subsection (a) shall not be required if the claimant did not identify and could not reasonably have identified a health care provider to which notice shall be sent as a potential party to the action before filing the complaint;

(e) The notice given to a health care provider under this section shall contain, but shall not be limited to, a statement including:

(1) the factual basis for the claim;

(2) the applicable standard of care alleged by the claimant;

(3) the manner in which it is claimed that the applicable standard of care was breached by the health care provider;

(4) the alleged action that should have been taken to achieve compliance with the alleged standard of care;

(5) the manner in which it is alleged the breach of the standard of care was the proximate cause of the injury claimed in the notice; and

(6) the names of all health care providers that the claimant intends to notify under this section in relation to a claim.

(f) Not later than 56 days after giving notice under this section, the claimant shall allow the health care provider receiving the notice access to all of the medical records related to the claim that are in the claimant's control and shall furnish a release for any medical records related to the claim that are not in the claimant's control, but of which the claimant has knowledge. This subsection shall not restrict a patient's right of access to the patient's medical records under any other law.

(g) Within 150 days after receipt of notice under this section, the health care provider or authorized representative against whom the claim is made shall furnish to the claimant or the claimant's authorized representative a written response that contains a statement including the following:

(1) the factual basis for the defense, if any, to the claim;

(2) the standard of care that the health care provider claims to be applicable to the action;

(3) the manner in which it is claimed by the health care provider that there was or was not compliance with the applicable standard of care; and

(4) the manner in which the health care provider contends that the alleged negligence of the health care provider was or was not a proximate cause of the claimant's alleged injury or alleged damage.

(h) If the claimant does not receive the written response required under subsection (g) within the required 150-day time period, the claimant may commence an action alleging medical malpractice upon the expiration of the 150-day time period. If a provider fails to respond within 150 days and that fact is made known to the court in the plaintiffs' complaint or by any other means then interest on any judgment against that provider shall accrue and be calculated from the date that the notice was filed rather than the date that the suit is filed. At any time before the expiration of the 150-day period, the claimant and the provider may agree to an extension of the 150-day period.

(i) If at any time during the applicable notice period under this section a health care provider receiving notice under this section informs the claimant in writing that the health care provider does not intend to settle the claim within the applicable notice period, the claimant may commence an action alleging medical malpractice against the health care provider, so long as the claim is not barred by the statutes of limitations or repose.

(j) A lawsuit against a health care provider filed within 6 months of the statute of limitations expiring as to any claimant, or within 1 year of the statute of repose expiring as to any claimant, shall be exempt from compliance with this section.

(k) Nothing in this section shall prohibit the filing of suit at any time in order to seek court orders to preserve and permit inspection of tangible evidence.

SECTION 222. Section 85K of said chapter 231, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "costs", in line 8, the following words:- ; and provided further, that in

the context of medical malpractice claims against a nonprofit organization providing health care, such cause of action shall not exceed the sum of \$100,000, exclusive of interest and costs.

SECTION 223. Chapter 233 of the General Laws is hereby amended by inserting after section 79K the following section:-

Section 79L. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Facility”, a hospital, clinic, or nursing home licensed under chapter 111, a psychiatric facility licensed under chapter 19 or a home health agency; provided, however, that “facility” shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority or other entity comprised of such facilities.

“Health care provider”, any of the following health care professionals licensed under chapter 112: a physician, podiatrist, physical therapist, occupational therapist, dentist, dental hygienist, optometrist, nurse, nurse practitioner, physician assistant, chiropractor, psychologist,

independent clinical social worker, speech-language pathologist, audiologist, marriage and family therapist or mental health counselor; provided, however, that “health care provider” shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority, or other entity comprised of such health care providers.

“Unanticipated outcome”, the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an intended result of such medical treatment or procedure.

(b) In any claim, complaint or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, all statements, affirmations, gestures, activities or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error or a general sense of concern which are made by a health care provider, facility or an employee or agent of a health care provider or facility, to the patient, a relative of the patient or a representative of the patient and which relate to the unanticipated outcome shall be inadmissible as evidence in any judicial or administrative proceeding, unless the maker of the statement, or a defense expert witness, when questioned under oath during the litigation about facts and opinions regarding any mistakes or errors that occurred, makes a contradictory or inconsistent statement as to material facts or opinions, in which case the statements and opinions made about the mistake or error shall be admissible for all purposes. In situations where a patient suffers an unanticipated outcome with significant medical complication resulting from the provider’s mistake, the health care provider, facility or an employee or agent of a health care provider or facility shall fully inform the patient and, when appropriate, the patient's family, about said unanticipated outcome.

SECTION 258. Notwithstanding any general or special law to the contrary, the board of registration in medicine, established under section 10 of chapter 13 of the General Laws, may promulgate regulations relative to the education and training of physicians in the early disclosure of adverse events including, but not limited to, continuing education requirements. Nothing in this section shall affect the total hours of continuing education required by the board, including the number of hours required relative to risk management.

