
By Ms. Melconian, a petition (accompanied by bill, Senate, No. 757) of Linda J. Melconian for legislation to clarify the medical malpractice reform legislation of 1986. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT TO CLARIFY THE MEDICAL MALPRACTICE REFORM LEGISLATION OF 1986.

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. Section 32 of chapter 6A of the General Laws,
2 as most recently amended by section 2 of chapter 351 of the acts
3 of 1986, is hereby further amended, by striking out the sixth and
4 seventh paragraphs and inserting in place thereof the follow-
5 ing: —

6 Each annual adjustment shall be sufficient in the aggregate to
7 generate, over a twelve month period, additional payments to
8 physicians or dentists equal to the sum, for such twelve month
9 period, of (a) the total dollar increase in medical malpractice
10 premium charges effective as of July first on which the adjustment
11 is to become effective over the charges which were established by
12 the commissioner of insurance under section five A of chapter one
13 hundred and seventy-five A in his decision dated May 18, 1984
14 and (b) the applicable portion of the total deferred premium
15 liability, as defined in section 38 of chapter 351 of the acts of 1986,
16 to be collected as of the same July first, multiplied by the following
17 fraction: (1) The numerator shall be the percent of total revenues
18 for physicians, or dentists, which are paid by governmental units
19 as to which the rates of payment are fixed and established by the
20 rate setting commission pursuant hereto, plus the percent of total
21 revenues for physicians, or dentists, which are paid by insurers
22 under chapter one hundred and fifty-two (except that for
23 adjustments made pursuant to this section prior to July 1, 1988,

24 the numerator shall be the percent of total revenues for physicians
25 or dentists which are paid by governmental units for publicly aided
26 persons as to which the rates of payment are fixed and established
27 by the commission pursuant hereto) ; and (2) The denominator
28 shall be one hundred percent minus the percent of total revenues
29 for physicians, or dentists, paid by medical service corporations
30 under policies providing supplemental coverage to health
31 insurance under Title XVIII of the Social Security Act. The
32 percent amounts specified for the numerators and denominators
33 above, and the amount of the total dollar increase in medical
34 malpractice insurance premium charges shall be the amounts
35 determined by the commissioner of insurance pursuant to
36 section five B of chapter one hundred and seventy-five A. In
37 determining the total adjustment that shall be made to physicians
38 and dentists for the twelve month period beginning July first,
39 nineteen hundred and eighty-seven, the commission shall include
40 in the calculation of total adjustment increases in medical
41 malpractice insurance premium charges made for the twelve
42 month period beginning July first, nineteen hundred and eighty-
43 six over the charges established by the commissioner of insurance
44 under section five A of chapter one hundred and seventy-five A
45 in his decision dated May 18, 1984. In the event that medical
46 malpractice insurance premium charges decrease, negative
47 adjustments shall be made pursuant to the same formula. During
48 the effective period of the two preceding paragraphs, annual
49 adjustments shall take effect on each July first, unless the decision
50 to fix and establish medical malpractice insurance premium
51 charges is delayed beyond March 1, in which case the adjustment
52 for that year shall take effect no later than one hundred and twenty
53 days after the date of such decision. The commission shall allow
54 as a credit against the annual adjustment for the twelve month
55 period beginning July 1, 1987, \$1,165,020 representing previously
56 allowed increases in the rates of reimbursement for surgical
57 procedures on account of increases in medical malpractice
58 insurance premium charges above the premium charges
59 established by the commissioner of insurance under section five
60 A of chapter one hundred and seventy-five A in his decision dated
61 May 18, 1984. This credit shall be applied against the annual
62 adjustment for the twelve month period beginning July 1, 1987,

63 allocated to surgical specialties according to a fair and reasonable
64 methodology to be approved by the commission. The commission
65 shall also establish a fair and reasonable methodology for all
66 locating each annual adjustment among physicians and dentists,
67 which shall be subject to review annually at the request of any
68 interested party during the effective period of the adjustments
69 made pursuant to the fifth paragraph hereof. The allocation
70 methodology may provide for annual adjustment payments to be
71 made to physicians and dentists on the basis of adjustments to
72 billings for procedure, or may provide for quarterly payments or
73 for a lump sum payment determined according to the allocation
74 methodology

75 In the event that payment of the annual adjustment for any year
76 which is based upon individual billings for procedures does not
77 commence on July first as provided, each procedure code
78 adjustment shall be multiplied by a fraction the numerator of
79 which is twelve and the denominator of which is the number of
80 months remaining from the commencement of the procedure code
81 adjustment until the next succeeding July first, and the resulting
82 procedure code adjustments shall be paid in lieu of the
83 adjustments calculated on a twelve month payment schedule.
84 Provided such payments are made, payment of the annual
85 adjustment shall be deemed completed on the next succeeding July
86 first. If payment of an annual adjustment for any year which is
87 based upon individual billings for procedures does not commence
88 on July first as provided, there shall be added to the annual
89 adjustment simple interest, commencing on the applicable July
90 first and ending on the date when procedure code payments
91 reflecting the annual adjustment commence, at an annual rate
92 equal to the average of the published bank prime rate for
93 unsecured loans having a maturity of one year or less in effect
94 on the January 31, February 28 and March 31 preceding the
95 applicable July first, and each procedure code adjustment, when
96 paid, shall reflect the annual adjustment and accrued interest, if
97 any. If an interim medical malpractice insurance rate becomes
98 effective on any July first under the provisions of section five A
99 of chapter one hundred seventy-five A, the total dollar increase
100 in medical malpractice insurance premiums upon which the
101 annual adjustment to be effective on such July first is based shall

102 be such interim rate. When the final rate to be effective on such
103 July first is approved by the commissioner of insurance, any
104 additional upward change in the annual adjustment on account
105 of such year shall be deferred and added to the adjustment to be
106 effective on the next succeeding July first, together with interest
107 calculated as provided from the date premium charges based on
108 such final rate are first billed under section five A of chapter one
109 hundred seventy five A, and any downward change in the annual
110 adjustment shall be similarly deferred to the next succeeding July
111 first, and there shall be deducted from the annual adjustment for
112 such year an amount equal to interest calculated as provided on
113 the downward change which did not become effective, from the
114 date such downward change was first credited to policyholders
115 until the next succeeding July first. If the commission approves
116 a payment system for annual adjustments which is based upon
117 lump sum or quarterly payments to physicians and dentists, and
118 if more than 50% of the annual adjustment remains unpaid as of
119 a date six months following the date upon which the
120 corresponding increase in medical malpractice insurance
121 premiums is first billed to physicians or dentists, then the unpaid
122 balance of the annual adjustment shall bear interest until paid at
123 the rate specified above from the date six months after the
124 corresponding increase in medical malpractice insurance
125 premiums is first billed to physicians or dentists, but in no event
126 shall payment of any portion of an annual adjustment be delayed
127 beyond July 1 of the calendar year following the calendar year
128 in which the payment of the annual adjustment was to commence.

1 SECTION 2. Section 5B of chapter one hundred and seventy-
2 five A of the General Laws, as added by section 1B of chapter 351
3 of the acts of 1986, is hereby amended by striking out the sixth,
4 seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth
5 paragraphs and inserting in place thereof the following: —

6 Payment made by any medical services corporation relating to
7 services subject to the limitations on charges and collections in
8 section seven of chapter one hundred and seven-six B which are
9 rendered by participating physicians or participating dentists
10 covered by policies of medical malpractice insurance shall be
11 adjusted for changes in medical malpractice premium charges

12 fixed and established pursuant to section five A of chapter one
13 hundred and seventy-five A. The medical service corporation's
14 payment shall be the amount of the total medical malpractice
15 adjustment allocated to that procedure code in addition to the
16 amount paid to the physician for that procedure. As used herein,
17 the term "procedure code adjustments" shall refer to the said
18 amounts of the total medical malpractice adjustment that are
19 allocated among procedure codes pursuant to the provisions of
20 this section.

21 The total medical malpractice adjustment shall be an amount
22 sufficient to generate, over a twelve month period beginning each
23 July 1, additional payments to physicians or dentists equal in the
24 aggregate to a fraction of the amounts described below. For
25 physicians such amount is the sum of the total dollar increase in
26 medical malpractice premium charges over the charges established
27 by the commissioner under section five A of this chapter in his
28 decision dated May 18, 1984, plus the portion of the outstanding
29 total deferred premium liability and annual interest thereon as
30 defined in section 38 (3) of chapter three hundred fifty-one of the
31 acts of nineteen hundred and eighty-six, to be collected as of the
32 same July first. For dentists, such amount is the total dollar
33 increase in medical malpractice premium charges over the charges
34 established by the commissioner under section five A of this
35 chapter to be effective July first, nineteen hundred and eighty-six.
36 Such amounts shall be multiplied by the following fraction to
37 compute the respective total medical malpractice adjustment for
38 physicians and for dentists: (a) the numerator shall be the percent
39 of total revenues for physicians, or dentists, which the medical
40 service corporation's payments for services subject to the
41 limitations of section seven of chapter one hundred and seventy-
42 six B constitute, plus one-half of the percent of total revenues for
43 physicians, or dentists, paid by health insurance under Title XVIII
44 of the Social Security Act; and (b) the denominator shall be one
45 hundred percent minus the percent of total revenues for
46 physicians, or dentists, paid by the medical service corporation
47 under policies providing supplemental coverage to health
48 insurance under Title XVIII of the Social Security Act. In the
49 event that medical malpractice insurance premium charges

50 decrease, negative changes to the total medical malpractice
51 adjustment shall be made pursuant to the same formula.

52 Except as otherwise provided by this section, procedure code
53 adjustments shall be determined annually and become effective
54 each July first. Any participating physician and participating
55 dentist, when filing a request for payment based on a procedure
56 code with said corporation, shall be allowed to include the amount
57 of the procedure code adjustment; provided, however, said
58 amount shall not be separately stated. Upon submission of such
59 request by the physician or dentist, the medical service
60 corporation shall include all of the procedure code adjustment
61 requested in the amount paid to the physician or dentist for that
62 procedure code. No change in medical malpractice insurance
63 premium charges shall be approved by the commissioner until he
64 has determined the percentage shares of total revenues for
65 physician or dentists paid by the medical service corporation and
66 others as provided above. Prior to the next regularly scheduled
67 change in payments, the medical service corporation shall make
68 available to participating physicians and participating dentists a
69 list of the procedure code adjustment amounts that will be
70 effective in a new rate year. The medical service corporation shall
71 also provide said list to the division, which shall make available
72 such list upon request.

73 The four requirements set out in this paragraph apply to the
74 derivation of any of the following elements when used to calculate
75 procedure code adjustments for physicians or dentists pursuant
76 to the requirements of this section: (i) the amount of the total
77 dollar increase in medical malpractice premium charges calculated
78 in accordance with paragraph seven of this section to be effective
79 for the new rate year beginning the next July first; (ii) with respect
80 to participating physicians but not participating dentists, the
81 amount of the portion of the outstanding total deferred premium
82 liability and the annual interest thereon as defined in
83 section thirty-eight (three) of chapter three hundred fifty-one of
84 the acts of nineteen hundred eighty-six, to be collected as of the
85 same July first; (iii) the percentage shares of total revenues for
86 physicians or dentists, required by paragraph three of this section;
87 (iv) the method by which the total medical malpractice adjustment
88 is calculated; and (v) the method of allocating the total medical

89 malpractice adjustment among procedure codes. First, the
90 procedure code adjustments which shall be effective on each July
91 first shall be calculated by using the best available value or method
92 for such element which has been established as of the preceding
93 March first, hereinafter called the reference date, said best
94 available value or method to be determined in the following order
95 of precedence:

96 (a) In the event of a final judicial determination or a final
97 decision by the commissioner upon remand from such a judicial
98 determination, the elements in such determination or decision
99 shall be the best available values or methods;

100 (b) Notwithstanding any pending proceedings for review of a
101 decision issued by the commissioner on or before the reference
102 date, the elements determined in such decision shall be the best
103 available values or methods in the absence of circumstance (a);

104 (c) Notwithstanding any appeals to the commissioner pursuant
105 to section seven of chapter twenty-six of the General Laws of a
106 decision issued on or before the reference date, the elements
107 determined in such decision shall be the best available values or
108 methods in the absence of circumstances (a) and (b);

109 (d) In the event the commissioner establishes interim rate
110 classifications and premium charges under section five A of
111 chapter one hundred seventy-five A that affect the said elements,
112 the elements based on said interim rate classifications and
113 premium charges established on the reference date shall be the
114 best available values or methods in the absence of circumstances
115 (a), (b) and (c);

116 (e) If circumstances (a), (b), (c) and (d) do not obtain, then the
117 value or method for such element as established by the
118 commissioner or by judicial determination in the most recent prior
119 proceedings under this section is the best available value or
120 method.

121 Second, if an element selected according to the preceding
122 sentence becomes available at a higher order of precedence after
123 the reference date and that element can be incorporated in the
124 calculation of procedure code adjustments to be effective on July
125 first of the same calendar year, then the medical service
126 corporation may elect to use that changed value in setting the
127 procedure code adjustments to be effective that July first. Third,

128 on or before June twentieth, the medical service corporation shall
129 file with the commissioner a statement stating the source of each
130 element of the procedure code adjustment calculation employed
131 by the medical service corporation in calculating the procedure
132 code adjustments to be effective that July first. Fourth, if as a
133 result of an appeal or review proceeding or other final decision,
134 an aforesaid element used in calculating procedure code
135 adjustments is changed, and such change has not been
136 incorporated in calculating procedure code adjustments as
137 provided in step two above, the change so indicated shall be
138 incorporated in the calculation of procedure code adjustments to
139 be effective on the next July first which occurs not less than one
140 hundred and twenty days after the determination of such change.

141 If any procedure code adjustments required to be increased on
142 July first in accordance with this section are not made effective
143 by a medical service corporation on July first, then the procedure
144 code adjustment level most recently made effective by said
145 corporation shall be continued in effect until the new level is made
146 effective. To the difference in the total amount of the proper
147 procedure code adjustments and the total amount of the increased
148 procedure code adjustments calculated pursuant to this section,
149 shall be added simple interest (at an annual rate equal to the
150 average of the prime rate for unsecured loans having a maturity
151 of one year or less in effect at the Bank of Boston on the last
152 business day of January, February and March preceding the
153 applicable July first) which shall commence on said July first and
154 run to the date when the medical service corporation commences
155 to pay the new procedure code adjustments calculated in
156 accordance with this section.

157 In determining the total of procedure code adjustments that
158 shall be allowed to participating physicians and participating
159 dentists for the twelve month period beginning July first, nineteen
160 hundred and eighty-seven, the commissioner shall include in the
161 calculation of the total medical malpractice adjustment increases
162 in medical malpractice insurance premium charges made for the
163 twelve month period beginning July first nineteen hundred and
164 eighty-six calculated as described in paragraph seven; provided
165 further that in calculating the total medical malpractice
166 adjustment to be made by the medical service corporation for the

167 twelve month period beginning July first, nineteen hundred and
168 eighty-seven, the commissioner shall allow a credit for the
169 aggregate amount of physician reimbursements made pursuant to
170 increases in medical malpractice premiums by the Medical
171 Malpractice Joint Underwriting Association of Massachusetts
172 made by said medical service corporation effective July first,
173 nineteen hundred and eighty-six.

174 Whenever the premiums, rates or subscription charges of a
175 medical service corporation are subject to regulation by the
176 commissioner, the commissioner shall allow such corporation to
177 include within its premiums, rates, or subscription charges such
178 procedure code adjustment payments to participating physicians
179 and participating dentists, effective as of the date that such
180 payments were first effective. Nothing in this paragraph or the
181 preceding paragraph shall be construed to affect the responsibil-
182 ities of the commissioner under chapter one hundred and ninety-
183 nine of the acts of nineteen hundred and eighty-four. This
184 paragraph shall not apply to payments made for charges regulated
185 by chapter three hundred and ten of the acts of nineteen hundred
186 and eighty-four.

187 The commissioner shall determine the methodology pursuant
188 to which each medical service corporation shall allocate the total
189 medical malpractice adjustment among procedure codes in order
190 that payments to physicians and dentists are apportioned among
191 the risk classifications established by the commissioner under
192 section five A. The methodology will provide for application of
193 each such adjustment to usual charge levels for each physician or
194 dentist and to customary charge levels, in each instance separately
195 stated by procedure code. For purposes of this section the
196 commissioner shall make this determination on a biennial basis
197 provided however that upon the motion of any party at any future
198 hearing under this section, the commissioner shall review the
199 methodology previously approved by him and approve such
200 changes as may be necessary in order that the allocation
201 methodology apportion such payments in accordance with this
202 paragraph.

203 The provisions of this section shall terminate upon complete
204 of the rate period ending June thirtieth, nineteen hundred and
205 ninety-two, except that if the commissioner determines that any

206 changed amount of any procedure code adjustment is deferred
207 pursuant to the provisions of paragraph nine of this section, and
208 if such changed amount shall not have been paid by June thirtieth,
209 nineteen hundred and ninety-two, such procedure code
210 adjustment change shall be paid during the twelve month period
211 beginning July first, nineteen hundred and ninety-two, or as soon
212 as possible thereafter.



The first part of the report deals with the general conditions of the country during the year. It is noted that the weather was generally favorable, with a moderate amount of rain. The crops were well advanced, and the stock raising season was successful. The report also mentions the progress of the various departments of the government, and the state of the public treasury.

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