

SENATE No. 1717

By Mr. Boverini, a petition (accompanied by bill, Senate, No. 1717) of Walter J. Boverini for legislation relative to unfair practices in contracting for clinical laboratory services. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT CONCERNING UNFAIR PRACTICES IN CONTRACTING FOR CLINICAL LABORATORY 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 176D of the General Laws, as most
2 recently amended by chapter 495 of the Acts of 1991, is hereby
3 further amended by inserting the following new section: —

4 Section 3B. (a) An insurer, as defined in subsection (e)
5 below, shall be considered to be engaging in an unfair and
6 deceptive act or practice in the business of insurance for purposes
7 of this chapter if it refuses to contract with an association of
8 independent clinical laboratories, hereinafter in this section referred to as an “association,” for clinical laboratory services for
9 beneficiaries, as defined in subsection (e) below, of an insurance
10 product line that it offers, provided the following conditions are
11 satisfied:
12

13 (1) Any such association, regardless of the legal form it takes,
14 has the following characteristics:

15 (i) It consists of at least twenty independently licensed clinical
16 laboratories referred to for purposes of this section as “members”
17 regardless of the actual legal status each has in relationship to the
18 association;

19 (ii) Each of its members is a clinical laboratory licensed by the
20 department of public health pursuant to chapter one hundred
21 eleven D of the General Laws and is certified for participation
22 in the federal medicare program;

23 (iii) All of its members have agreed that, if the association
24 agrees to contract with an insurer with respect to a particular

25 product line, all members will provide services to beneficiaries
26 under that product line;

27 (iv) With respect to a contract for services with any insurer,
28 the association shall assume responsibility for billing and
29 collecting payment for all services rendered to beneficiaries by
30 members pursuant to such contract, for allocating and
31 distributing any such payments equitably among its members, for
32 coordinating the conduct of any utilization review and quality
33 assurance programs established pursuant to any such contracts,
34 for assuring the timely preparation of reports relating to tests
35 conducted pursuant to any such contracts, and in general acting
36 in all respects on behalf of its members in administering contracts
37 entered into with any such insurers, except with respect to the
38 negotiation of rates to be paid pursuant to any such contracts.

39 (2) Said insurer establishes a uniform fee schedule that is
40 offered to any clinical laboratory that would otherwise be eligible
41 to contract with such insurer for clinical laboratory services to
42 be provided to beneficiaries of a particular product line offered
43 by such insurer; provided, however, that this provision shall not
44 preclude such insurer from accepting a proposal for a lower fee
45 schedule from a clinical laboratory otherwise qualified to partici-
46 pate in such product, or to competitively bid said, contracts in
47 order to obtain a lower fee schedule, as long as such fee schedule
48 is offered to all of the members of an association of the type
49 described in this section and such fee schedule is not set at a level
50 that is lower than thirty percent of the standard patient fee
51 schedule of a clinical laboratory proposing to accept such lower
52 fee schedule.

53 (b) If an insurer contracts with a health care provider or
54 practitioner and, through such contract, gives said provider or
55 practitioner the right to determine which independently licensed
56 clinical laboratory or laboratories to use to provide services to
57 beneficiaries under said contract, said insurer shall be considered
58 to be engaging in an unfair and deceptive act or practice in the
59 business of insurance if the insurer allows such provider or
60 practitioner to refuse to contract with an association if the
61 conditions set out in subsection (a) above are satisfied.

62 (c) Notwithstanding the provisions of subsection (a) above,
63 and except as provided below, it shall not be considered to be an
64 unfair or deceptive act or practice in the business of insurance if

65 an insurer requires, as a condition of contract, that clinical
66 laboratories, including the clinical laboratories that are members
67 of an association, be certified by the American College of
68 Pathologists; provided, however, that, if any of the members of
69 an association are not so certified, then, any such contract shall
70 not require such certification as of the time the contract with the
71 association is executed but may require that the association assure
72 that any of its members that are not so certified shall apply for
73 such certification within ninety days of execution of such contract
74 and thereafter diligently pursue completion of said certification
75 process.

76 (d) The provisions of subsection (a) above shall not apply in
77 situations in which an insurer, with respect to any product line,
78 provides clinical laboratory services to beneficiaries, either
79 directly itself, through a wholly-owned subsidiary or its parent
80 entity, or through an entity with which it is under common
81 control; or in which the insurer contracts exclusively with acute
82 care hospital licensed under chapter one hundred eleven for the
83 provisions of clinical laboratory services, provided, however, that,
84 if any such hospital uses non-hospital clinical laboratories for
85 purposes of providing any services under such contract, then the
86 provisions of subsection (b) above shall apply to such contract
87 with respect to the use of such laboratories.

88 (e) For purposes of this section, "insurer" shall mean any entity
89 organized pursuant to chapters one hundred seventy-six A
90 through one hundred seventy-six C, inclusive, organized pursuant
91 to chapter one hundred seventy-six E or one hundred seventy-
92 six F, licensed under chapter one hundred seventy-six G,
93 approved pursuant to chapter one hundred seventy-six I, or
94 authorized to sell health insurance in the commonwealth in
95 accordance with the provisions of chapter one hundred seventy-
96 five; and "beneficiary" shall mean any person entitled to health
97 benefits under the terms of a particular product line offered by
98 an insurer, regardless of how such beneficiary is designated for
99 purposes of such product line.

1 SECTION 2. This act shall take effect upon its passage.

