

By Mr. Cox of Lowell, petition of John F. Cox for legislation to further regulate the rights of providers of medical assistance. Health Care.

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**The Commonwealth of Massachusetts**

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

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**AN ACT FURTHER REGULATING THE RIGHTS OF MEDICAL ASSISTANCE PROVIDERS.**

*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 20 of chapter 118E of the General Laws, as most  
2 recently amended by chapter 93 of the Acts of 1984, is hereby  
3 amended by adding after the first full paragraph thereof the  
4 following two paragraphs: —

5 “In determining whether a provider has received a payment or  
6 payments to which he is not entitled, the Department may rely  
7 upon a statistical sampling of the claims paid to the provider  
8 during the relevant period, such period not to exceed four years  
9 from the date of the taking of the sample. In such event, the  
10 Department shall have the burden of proving that it has employed  
11 statistically valid techniques; that the sample is a representative,  
12 claim-based sample, randomly drawn from the total number of  
13 claims paid by the Department during the relevant period; that  
14 the provider has been given credit for any underpayments; that  
15 any overpayments resulting from errors committed by the  
16 Department were not included in the results of the statistical  
17 sampling; that the Department also excluded from the results of  
18 the statistical sampling such margin for error equal to the margin  
19 established or allowed by the appropriate federal authorities in  
20 connection with their audits of the Department; and that the  
21 amount of any overpayments based upon such statistical sampling

22 has been determined on the basis of valid statistical methods and  
23 in accord with generally accepted audit and accounting  
24 procedures. Nothing contained herein shall preclude a provider  
25 from challenging the results of the Department's statistical  
26 sampling by means of a second such statistically valid sample, by  
27 otherwise rebutting the results of the Department's statistical  
28 sampling or by demonstrating the provider's entitlement to the  
29 payments by establishing by a preponderance of the evidence that  
30 the provider has substantially complied with the Department's  
31 regulations and has actually delivered the services or goods to  
32 recipients.

33 The Department may not withhold payments otherwise due  
34 to any provider for services or goods delivered to recipients  
35 pursuant to the provisions of this chapter, except in the following  
36 cases;

37 (a) by agreement with the provider;

38 (b) to the extent that the Department has made written  
39 findings, based on articulated facts;

40 i. that there is a reasonable likelihood that the provider has  
41 received overpayments in a specified amount;

42 ii. that there is a clear danger that the provider will shortly cease  
43 to provide services and goods to recipients, otherwise cease to  
44 engage in business, or in some manner dissipate future payments  
45 so as to prevent recovery of such overpayments;

46 (c) where the Department has made written findings based  
47 upon articulated facts that the provider has violated section 21A  
48 of chapter 118E of the General Laws, resulting in specified  
49 overpayments;

50 (d) upon the entry of a decision by the commissioner, after an  
51 adjudicatory hearing, that the provider has in fact received  
52 payments to which he is not entitled, unless stayed pursuant to  
53 a court order."