

By Mr. Galvin of Canton, petition of William C. Galvin relative to timely notice of intent to file claims with health care providers. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO TIMELY NOTICE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 231 of the General Laws is hereby amended by adding
2 after section 60K the following new section:

3 Section 60L .

4 Section 1. Except as provided in this section a person shall not
5 commence an action against a provider of health care as defined in
6 paragraph 7 of section 60 B of chapter 231 as appearing in the 2004
7 official edition of the general laws unless the person has given the
8 health care provider written notice under this section of not less than
9 182 days notice before the action is commenced.

10 Section 2. The notice of intent to file a claim required under
11 Section (1) shall be mailed to the last know professional business
12 address or residential address of the health care provider who is the
13 subject of the claim.

14 Section 3. The 182 day notice period in Section 1 is shortened to
15 91 days if all of the following conditions exist:

16 (a) The claimant has previously filed the 182 day notice required
17 in Section 1 against another health care provider involved in the
18 claim.

19 (b) The 182 day notice period has expired as to the health care
20 providers described in Section 1.

21 (c) The claimant has filed a complaint and commenced an action
22 alleging medical malpractice against one or more of the health care
23 providers described in subsection a.

24 (d) The claimant did not identify and could not have reasonably
25 have identified a health care provider to which notice must be sent
26 under Section 1 as a potential party to the action before filing the
27 complaint.

28 Section 4. The notice given to a health care provider under this
29 section shall contain a statement of at least all of the following:

30 (a) The factual basis for the claim.

31 (b) The applicable standard of care alleged by the claimant.

32 (c) The manner in which it is claimed that the applicable standard
33 of care was breached by the health care provider.

34 (d) The alleged action that should have been taken to achieve
35 compliance with the alleged standard of care.

36 (e) The manner in which it is alleged the breach of the standard of
37 care was the proximate cause of the injury claimed in the notice.

38 (f) The names of all health care providers the claimant is noti-
39 fying under this section in relation to the claim.

40 Section 5. 56 days after giving notice under this section, the
41 claimant shall allow the health care provider receiving the notice
42 access to all of the medical records related to the claim that are in the
43 claimants control, and shall furnish release for any medical records
44 related to the claim that are not in the claimants control, but of which
45 the claimant has knowledge. This subsection does not restrict a
46 health care provider receiving notice under this section from com-
47 municating with other health care providers and acquiring medical
48 records as permitted in section 291f. This subsection does not
49 restrict a patient's right of access to his or her medical records under
50 any other provision of law.

51 Within 154 days after receipt of notice under this section, the
52 health care provider against whom the claim is made shall furnish to
53 the claimant or his or her authorized representative a written
54 response that contains a statement of each of the following:

55 (a) The factual basis for the defense to the claim.

56 (b) The standard of care that the health care provider claims to be
57 applicable to the action and that the health care provider complied
58 with that standard.

59 (c) The manner in which it is claimed by the health care provider
60 that there was compliance with the applicable standard of care.

61 (d) The manner in which the health care provider contends that
62 the alleged negligence of the health care provider was not the proxi-
63 mate cause of the claimant's alleged injury or alleged damage.

64 Section 8. If the claimant does not receive the written response
65 required under Section 7 within the required 154 day time period,
66 the claimant may commence an action alleging medical malpractice
67 upon the expiration of the 154 day period.

68 Section 9. If at any time during the applicable notice period under
69 this section a health care provider receiving notice under this section
70 informs the claimant in writing that the health care provider does not
71 intend to settle the claim s within the applicable notice period, the
72 claimant may commence an action alleging medical malpractice
73 against the health care provider, so long as the claim is not barred by
74 the statue of limitations.

