HOUSE DOCKET, NO. 2323   FILED ON: 1/17/2019

HOUSE . . . . No. 1078

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to limits on insurers' retroactive clawbacks for mental health and substance use disorder services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James J. O'Day	*14th Worcester*
Brian M. Ashe	*2nd Hampden*
Ruth B. Balser	*12th Middlesex*
Christine P. Barber	*34th Middlesex*
Natalie M. Blais	*1st Franklin*
Antonio F. D. Cabral	*13th Bristol*
Mike Connolly	*26th Middlesex*
Daniel R. Cullinane	*12th Suffolk*
Michael S. Day	*31st Middlesex*
Marjorie C. Decker	*25th Middlesex*
Mindy Domb	*3rd Hampshire*
Tricia Farley-Bouvier	*3rd Berkshire*
Dylan A. Fernandes	*Barnstable, Dukes and Nantucket*
Sean Garballey	*23rd Middlesex*
Carmine Lawrence Gentile	*13th Middlesex*
Tami L. Gouveia	*14th Middlesex*
Stephan Hay	*3rd Worcester*

James K. Hawkins	*2nd Bristol*
Jonathan Hecht	*29th Middlesex*
Natalie M. Higgins	*4th Worcester*
Patricia D. Jehlen	*Second Middlesex*
Bradley H. Jones, Jr.	*20th Middlesex*
Louis L. Kafka	*8th Norfolk*
Hannah Kane	*11th Worcester*
John F. Keenan	*Norfolk and Plymouth*
David Henry Argosky LeBoeuf	*17th Worcester*
David Paul Linsky	*5th Middlesex*
Joan B. Lovely	*Second Essex*
Elizabeth A. Malia	*11th Suffolk*
Christina A. Minicucci	*14th Essex*
Brian W. Murray	*10th Worcester*
Patrick M. O'Connor	*Plymouth and Norfolk*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*
Maria Duaime Robinson	*6th Middlesex*
Lindsay N. Sabadosa	*1st Hampshire*
Jon Santiago	*9th Suffolk*
Thomas M. Stanley	*9th Middlesex*
José F. Tosado	*9th Hampden*
Tommy Vitolo	*15th Norfolk*
Jonathan D. Zlotnik	*2nd Worcester*
James Arciero	*2nd Middlesex*
Lori A. Ehrlich	*8th Essex*
Angelo M. Scaccia	*14th Suffolk*
Sal N. DiDomenico	*Middlesex and Suffolk*

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HOUSE . . . . No. 1078

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 1078) of James J. O'Day and others relative to retroactive claims denials by insurers for certain mental health and substance use disorder services. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to limits on insurers' retroactive clawbacks for mental health and substance use disorder 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 32A of the General Laws, as appearing in the 2016 Official
2 Edition, is hereby amended by inserting after section 4A the following section:-

3 Section 4B. (a) For the purposes of this section, provider shall mean a mental health
4 clinic or substance use disorder program licensed by the department of public health under
5 chapters 18, 111, 111B, or 111E, or a behavioral, substance use disorder, or mental health
6 professional who is licensed under chapter 112 and accredited or certified to provide services
7 consistent with law and who has provided services under an express or implied contract or with
8 the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly
9 or indirectly from the commission or other entity.

10 (b) The commission or any entity with which the commission contracts to provide or
11 manage health insurance benefits, including mental health and substance use disorder services,

12 shall not impose a retroactive claims denial, as defined in section 1 of chapter 175, for behavioral
13 health services, as defined in section 1 of chapter 175, on a provider unless:

14 (1) less than 12 months have elapsed from the time of submission of the claim by the
15 provider to the commission or other entity responsible for payment;

16 (2) the commission or other entity has furnished the provider with a written explanation
17 of the reason for the retroactive claim denial, and, where applicable, a description of additional
18 documentation or other corrective actions required for payment of the claim; and

19 (3) where applicable, the commission or other entity responsible for payment allows the
20 provider 30 days to submit additional documentation or take other corrective actions required for
21 payment of the claim.

22 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
23 months if:

24 (1) the claim was submitted fraudulently;

25 (2) the claims, or services for which the claim has been submitted, is the subject of legal
26 action;

27 (3) the claim payment was incorrect because the provider or the insured was already paid
28 for the health care services identified in the claim; or

29 (4) the health care services identified in the claim were not delivered by the provider.

30

31 (d) In cases in which a retroactive claim denial is imposed because the claim payment is
32 subject to adjustment due to expected payment from another payer other than the commission or
33 any entity with which the commission contracts to provide or manage health insurance benefits,
34 including mental health and addiction services, the commission or other entity shall notify a
35 provider at least 15 days before imposing the retroactive claim denial. The provider shall then
36 have 12 months to determine whether the claim is subject to payment by a secondary insurer;
37 provided, that if the claim is denied by the secondary insurer due to the insured's transfer or
38 termination of coverage, the commission shall allow for resubmission of the claim.

39 SECTION 2. Chapter 118E of the General Laws, as appearing in the 2016 Official
40 Edition, is hereby amended by inserting after section 38 the following section:-

41 Section 38A. (a) For the purposes of this section, the following words shall, unless the
42 context clearly requires otherwise, have the following meanings:

43 "Provider", a mental health clinic or substance use disorder program licensed by the
44 department of public health under chapters 18, 111, 111B, or 111E, a behavioral, substance use
45 disorder, or mental health professional who is licensed under chapter 112 and accredited or
46 certified to provide services consistent with law and who has provided services under an express
47 or implied contract or with the expectation of receiving payment, other than co- payment,
48 deductible or co-insurance, directly or indirectly from the division or managed care entity;

49 "Retroactive claim denial" the denial of a previously paid claim for services that results
50 in the requirement to repay the claim, or the imposition of a reduction in other payments, or
51 otherwise causes a withholding or affects future payments owed to a provider in order to recoup
52 payment for the denied claim.

53 (b) The division or any entity with which the division contracts to provide or manage
54 health insurance benefits, including mental health and substance use disorder services, shall not
55 impose a retroactive claims denial, for behavioral health services, as defined in section 1 of
56 chapter 175, on a provider unless:

57 (1) less than 12 months have elapsed from the time of submission of the claim by the
58 provider to the division or other entity responsible for payment;

59 (2) the division or other entity has furnished the provider with a written explanation of
60 the reason for the retroactive claim denial, and, where applicable, a description of additional
61 documentation or other corrective actions required for payment of the claim; and

62 (3) where applicable, the division or other entity responsible for payment allows the
63 provider 30 days to submit additional documentation or take other corrective actions required for
64 payment of the claim.

65 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
66 months if:

67 (1) the claim was submitted fraudulently;

68 (2) the claim payment is subject to adjustment due to expected payment from another
69 payer other than the division or any entity with which the division contracts to provide or
70 manage health insurance benefits, including mental health and addiction services;

71 (3) the claim, or services for which the claim has been submitted, is the subject of legal
72 action;

73 (4) the claim payment was incorrect because the provider or the insured was already paid
74 for the health care services identified in the claim;

75 (5) the health care services identified in the claim were not delivered by the provider; or

76 (6) the services were not delivered in accordance with MassHealth regulations.

77 (d) In cases in which a retroactive claim denial is imposed under clause (2) of subsection
78 (c), the division or other entity shall notify a provider at least 15 days before imposing the
79 retroactive claim denial. The provider shall then have 12 months to determine whether the claim
80 is subject to payment by a secondary insurer; provided, that if the claim is denied by the
81 secondary insurer due to the insured's transfer or termination of coverage, the division shall
82 allow for resubmission of the claim.

83 SECTION 3. Section 1 of chapter 175 of the General Laws, as appearing in the 2016
84 Official Edition, is hereby amended by inserting before the definition of "Commissioner" the
85 following definition:-

86 "Behavioral health services", mental health and substance use disorder prevention,
87 recovery and treatment services including but not limited to inpatient 24 hour levels of care, 24
88 hour and non 24 hour diversionary levels of care, intermediate levels of care and outpatient
89 services.

90 SECTION 4. Said section 1 of said chapter 175, as so appearing, is hereby amended by
91 inserting after the definition of "Resident" the following definition:-

92 "Retroactive claim denial", an action by an insurer, an entity with which the insurer
93 subcontracts to manage behavioral health services, or an entity with which the Group Insurance

94 Commission has entered into an administrative services contract or a contract to manage
95 behavioral health services, to deny a previously paid claim for services and to require repayment
96 of the claim, or to impose a reduction in other payments or otherwise withhold or affect future
97 payments owed to a provider in order to recoup payment for the denied claim.

98 SECTION 5. Section 108 of said chapter 175, as so appearing, is hereby amended by
99 adding the following section:-

100 Section 14. (a) For the purposes of this section, provider shall mean a mental health clinic
101 or substance use disorder program licensed by the department of public health under chapters 18,
102 111, 111B, or 111E, or a behavioral, substance use disorder, or mental health professional who
103 is licensed under chapter 112 and accredited or certified to provide services consistent with law
104 and who has provided services under an express or implied contract or with the expectation of
105 receiving payment, other than co-payment, deductible or co-insurance, directly or indirectly from
106 an insurer or other entity.

107 (b) No insurer or other entity shall impose a retroactive claims denial, as defined in
108 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on
109 a provider unless:

110 (1) less than 12 months have elapsed from the time of submission of the claim by the
111 provider to the insurer or other entity responsible for payment;

112 (2) the insurer or other entity has furnished the provider with a written explanation of the
113 reason for the retroactive claim denial, and, where applicable, a description of additional
114 documentation or other corrective actions required for payment of the claim; and

115 (3) where applicable, the insurer or other entity responsible for payment allows the
116 provider 30 days to submit additional documentation or take other corrective actions required for
117 payment of the claim.

118 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
119 months if:

120 (1) the claim was submitted fraudulently;

121 (2) the claims, or services for which the claim has been submitted, is the subject of legal
122 action;

123 (3) the claim payment was incorrect because the provider or the insured was already paid
124 for the health care services identified in the claim; or

125 (4) the health care services identified in the claim were not delivered by the provider.

126 (d) In cases in which a retroactive claim denial is imposed because the claim payment is
127 subject to adjustment due to expected payment from another payer other than the insurer or any
128 entity with which the insurer contracts to provide or manage health insurance benefits, including
129 mental health and addiction services, the insurer or other entity shall notify a provider at least 15
130 days before imposing the retroactive claim denial. The provider shall then have 12 months to
131 determine whether the claim is subject to payment by a secondary insurer; provided, that if the
132 claim is denied by the secondary insurer due to the insured’s transfer or termination of coverage,
133 the insurer shall allow for resubmission of the claim.

134 SECTION 6. Chapter 176A of the General Laws, as appearing in the 2016 Official
135 Edition, is hereby amended by inserting after section 8A the following section:-

136 Section 8A1/2. (a) For the purposes of this section, provider shall mean a mental health
137 clinic or substance use disorder program licensed by the department of public health under
138 chapters 18, 111, 111B, or 111E, or a behavioral, substance use disorder, or mental health
139 professional who is licensed under chapter 112 and accredited or certified to provide services
140 consistent with law and who has provided services under an express or implied contract or with
141 the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly
142 or indirectly from the corporation.

143 (b) The corporation shall not impose a retroactive claims denial, as defined in section 1 of
144 chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on a provider
145 unless:

146 (1) less than 12 months have elapsed from the time of submission of the claim by the
147 provider to the corporation;

148 (2) the corporation has furnished the provider with a written explanation of the reason for
149 the retroactive claim denial, and, where applicable, a description of additional documentation or
150 other corrective actions required for payment of the claim; and

151 (3) where applicable, the corporation allows the provider 30 days to submit additional
152 documentation or take other corrective actions required for payment of the claim.

153 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
154 months if:

155 (1) the claim was submitted fraudulently;

156 (2) the claims, or services for which the claim has been submitted, is the subject of legal
157 action;

158 (3) the claim payment was incorrect because the provider or the insured has already paid
159 for the health care services identified in the claim; or

160 (4) the health care services identified in the claim were not delivered by the provider.

161 (d) In cases in which a retroactive claim denial is imposed because the claim payment is
162 subject to adjustment due to expected payment from another payer other than the corporation,
163 including mental health and addiction services, the corporation shall notify a provider at least 15
164 days before imposing the retroactive claim denial. The provider shall then have 12 months to
165 determine whether the claim is subject to payment by a secondary insurer; provided, that if the
166 claim is denied by the secondary insurer due to the insured's transfer or termination of coverage,
167 the corporation shall allow for resubmission of the claim.

168 SECTION 7. Chapter 176B of the General Laws, as appearing in the 2016 Official
169 Edition, is hereby amended by inserting after section 7C the following section:-

170 Section 7D. (a) For the purposes of this section, provider shall mean a mental health
171 clinic or substance use disorder program licensed by the department of public health under
172 chapters 18, 111, 111B, or 111E, or a behavioral, substance use disorder, or mental health
173 professional who is licensed under chapter 112 and accredited or certified to provide services
174 consistent with law and who has provided services under an express or implied contract or with
175 the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly
176 or indirectly from the corporation.

177 (b) The corporation shall not impose a retroactive claims denial, as defined in section 1 of
178 chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on a provider
179 unless:

180 (1) less than 12 months have elapsed from the time of submission of the claim by the
181 provider to the corporation;

182 (2) the corporation has furnished the provider with a written explanation of the reason for
183 the retroactive claim denial, and, where applicable, a description of additional documentation or
184 other corrective actions required for payment of the claim; and

185 (3) where applicable, the corporation allows the provider 30 days to submit additional
186 documentation or take other corrective actions required for payment of the claim.

187 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
188 months if:

189 (1) the claim was submitted fraudulently;

190 (2) the claims, or services for which the claim has been submitted, is the subject of legal
191 action;

192 (3) the claim payment was incorrect because the provider or the insured has already paid
193 for the health care services identified in the claim; or

194 (4) the health care services identified in the claim were not delivered by the provider.

195 (d) In cases in which a retroactive claim denial is imposed because the claim
196 payment is subject to adjustment due to expected payment from another payer other than the

197 corporation, including mental health and substance use disorder services, the corporation shall
198 notify a provider at least 15 days before imposing the retroactive claim denial. The provider shall
199 then have 12 months to determine whether the claim is subject to payment by a secondary
200 insurer; provided, that if the claim is denied by the secondary insurer due to the insured's transfer
201 or termination of coverage, the corporation shall allow for resubmission of the claim.

202 SECTION 8. Chapter 176G of the General Laws, as appearing in the 2016 Official
203 Edition, is hereby amended by inserting after section 6A the following section:-

204 Section 6B. (a) For the purposes of this section, provider shall mean a mental health
205 clinic or substance use disorder program licensed by the department of public health under
206 chapters 18, 111, 111B, or 111E, or a behavioral, substance use disorder, or mental health
207 professional who is licensed under chapter 112 and accredited or certified to provide services
208 consistent with law and who has provided services under an express or implied contract or with
209 the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly
210 or indirectly from the insurer or other entity.

211 (b) The insurer or other entity shall not impose a retroactive claims denial, as defined in
212 section 1 of chapter 175, for behavioral health services, as defined in section 1 of chapter 175, on
213 a provider unless:

214 (1) less than 12 months have elapsed from the time of submission of the claim by the
215 provider to the insurer or other entity;

216 (2) the insurer or other entity has furnished the provider with a written explanation of the
217 reason for the retroactive claim denial, and, where applicable, a description of additional
218 documentation or other corrective actions required for payment of the claim; and

219 (3) where applicable, the insurer or other entity allows the provider 30 days to submit
220 additional documentation or take other corrective actions required for payment of the claim.

221 (c) Notwithstanding subsection (b), retroactive claim denials may be permitted after 12
222 months if:

223 (1) the claim was submitted fraudulently;

224 (2) the claims, or services for which the claim has been submitted, is the subject of legal
225 action;

226 (3) the claim payment was incorrect because the provider or the insured has already paid
227 for the health care services identified in the claim; or

228 (4) the health care services identified in the claim were not delivered by the provider.

229 (d) In cases in which a retroactive claim denial is imposed because the claim payment is
230 subject to adjustment due to expected payment from another payer other than the insurer or other
231 entity, including mental health and substance use disorder services, the insurer or other entity
232 shall notify a provider at least 15 days before imposing the retroactive claim denial. The provider
233 shall then have 12 months to determine whether the claim is subject to payment by a secondary
234 insurer; provided, that if the claim is denied by the secondary insurer due to the insured's transfer
235 or termination of coverage, the insurer shall allow for resubmission of the claim.