

HOUSE No. 1578

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin

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 patient care access.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>1/31/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/19/2021</i>

HOUSE No. 1578

By Mr. Galvin of Canton, a petition (accompanied by bill, House, No. 1578) of William C. Galvin and Brian W. Murray relative to patient safety, medical error reporting and medical malpractice. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1412 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to patient care access.

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 1 of chapter 111 is hereby amended by striking out the definition
2 of “Medical peer review committee” or “committee”, and inserting in place thereof the following
3 definition:-

4 “Medical peer review committee” or “committee”, a committee of health care providers,
5 which functions to: (i) evaluate or improve the quality of health care rendered by providers of
6 health care services; (ii) determine whether health care services were performed in compliance
7 with the applicable standards of care; (iii) determine whether the costs of health care services
8 were performed in compliance with the applicable standards of care; (iv) determine whether the
9 cost of the health care services rendered were considered reasonable by the providers of health
10 services in the area; (v) determine whether a health care provider’s actions call into question

11 such health care provider’s fitness to provide health care services; or (vi) evaluate and assist
12 health care providers impaired or allegedly impaired by reason of alcohol, drugs, physical
13 disability, mental instability or otherwise; provided further, that “medical peer review
14 committee” shall also include: (i) a committee of a pharmacy society or association that is
15 authorized to evaluate the quality of pharmacy services or the competence of pharmacists and
16 suggest improvements in pharmacy systems to enhance patient care; or (ii) a pharmacy peer
17 review committee established by a person or entity that owns a licensed pharmacy or employs
18 pharmacists that is authorized to evaluate the quality of pharmacy services or the competence of
19 pharmacists and suggest improvements in pharmacy systems to enhance patient care.

20 SECTION 2. Said chapter 111 of the General Laws is hereby further amended by
21 inserting at the end of section 204 the following :

22 (f) The provisions of this section shall apply to any committee formed by an individual
23 health care provider, physician group practice, licensed health care facility or any combination
24 thereof to perform the duties or functions of medical peer review as set forth in section one of
25 this chapter, notwithstanding the fact that the formation of the committee is not required by law
26 or regulation or that the individual, group or facility is not solely affiliated with a public hospital
27 or licensed hospital or nursing home or health maintenance organization.

28

29 SECTION 3. Section 5(c) of Chapter 112 is hereby amended on line 140 after the word
30 “occasions” by inserting the following: For purposes of this subsection, the offering of expert
31 testimony in any action for malpractice, negligence, error, omission, mistake, or unauthorized

32 rendering of professional services against a physician licensed pursuant to section 2 of Chapter
33 112 of the general laws, shall constitute the practice of medicine.

34 SECTION 4. Chapter 175 of the Massachusetts General Laws is hereby amended by the
35 addition of the following new section:

36 Section 193 V: Every insurer or risk management organization which provides
37 insurance to a physician licensed under Chapter 112 of the Massachusetts General Laws shall
38 make an annual report to the Betsy Lehman Center for Patient Safety and Medical Error
39 Reduction established by Chapter 177 of the Acts of 2001. Said report shall list the top ten
40 categories of losses, claims or actions for damage for personal injuries alleged to have been
41 caused by error, omission or negligence in the performance by physicians of medical services the
42 company incurred during the previous calendar year. Said report shall also identify the top ten
43 defendant specialties as to cost and frequency of cases in the prior year. Where applicable,
44 organizations shall include reports outlining losses and claims for non-physician health care
45 providers as well. Reports shall include completed cases and settlements only and shall include
46 no information identifying providers or patients. Reports shall be provided to the center at its
47 request under annual timelines and reporting requirements established by the center with the
48 input of the advisory committee established in Chapter 6A Section 16 E (C). The Center shall
49 use this information in the development of evidence-based best practices to reduce medical
50 errors and enhance patient safety as required by Chapter 6A Section 16 E (e) 1 to increase
51 awareness of error prevention strategies through public and professional education as required by
52 Chapter 6A Section 16 E (e) 4.

53 SECTION 5. Section 60G(a) of Chapter 231 of the General is amended by striking in
54 lines 10 and 11 the following: “prior to the judgment” and adding in lines 12 and 27 after the
55 word “compensated” the following: , replaceable, compensable or indemnifiable,.

56 SECTION 6. Section 60K of Chapter 231 of the General Laws is hereby amended by
57 adding the following at the end thereof: In any action for malpractice, error or mistake against a
58 provider of health licensed pursuant to section 2 of Chapter 112, including actions pursuant to
59 section 60B of this Chapter, an expert witness shall be board certified in the same specialty as the
60 defendant licensed pursuant to section 2 of Chapter 112.

61 SECTION 7. Chapter 231 of the General Laws is hereby amended by adding after
62 section 60L, the following new section:

63 Section 60M. In every action for malpractice, negligence, error, omission, mistake or
64 the unauthorized rendering of professional services against a provider of health care where the
65 court shall, at the request of either party, (a) Enter a judgment ordering that money damages or
66 its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic
67 payments rather than by a lump-sum payment if the award equals or exceeds fifty thousand
68 dollars (\$50,000) in future damages. In entering a judgment ordering of the payment of future
69 damages by periodic payments, the court shall make a specific finding as to the dollar amount of
70 periodic payments which will compensate the judgment creditor for such future damages, the
71 court shall require the defendant who is not adequately insured to post security adequate to
72 assure full payment of such damages awarded by the judgment. Upon termination of periodic
73 payments of future damages, the court shall order the return of this security, or so much as
74 remains, to the defendant.

75 (b)(1) The judgment ordering the payment of future damages by periodic
76 payments shall specify the recipient or recipients of the payments, the dollar amount of the
77 payments, the interval between payments, and the number of payments or the period of time over
78 which payments shall be made. Such payments shall only be subject to modification in the event
79 of the death of the judgment creditor.

80 (2) In the event that the court finds that the defendant has exhibited a continuing
81 pattern of failing to make the payments, as specified in paragraph (1), the court shall find the
82 defendant in contempt of court and, in addition to the required periodic payments, shall order the
83 defendant to pay the plaintiff all damages caused by the failure to make such periodic payments,
84 including court costs and attorney's fees.

85 (c) However, money damages awarded for loss of future earnings shall not be
86 reduced or payments terminated by reason of the death of the plaintiff, but shall be paid to
87 persons to whom the plaintiff owed a duty of support, as provided by law, immediately prior to
88 his death. In such cases the court which rendered the original judgment, may, upon petition of
89 any party in interest, modify the judgment to award and apportion the unpaid future damages in
90 accordance with this subdivision.

91 (d) Following the occurrence or expiration of all obligations specified in the
92 periodic payment judgment, any obligation of the defendant to make future payments shall cease
93 and any security given, pursuant to section (a) shall revert to the defendant.

94 SECTION 8. Said chapter 231 is hereby amended by inserting after section 60M the
95 following section:—

96 Section 60N. In any action for malpractice, negligence, error, omission, mistake or
97 unauthorized rendering of professional services against a provider of health care, in which a
98 verdict is rendered or a finding made or an order for judgment made for pecuniary damages for
99 personal injuries to the plaintiff or for consequential damages, there shall be added by the clerk
100 of the court to the amount of damages interest thereon, at a rate to be determined as set forth
101 below rather than the rate specified in section 6B of chapter 231, from the date of the
102 commencement of the action even though such interest brings the amount of the verdict or
103 finding beyond the maximum liability imposed by law. For all judgments entered after the
104 effective date of this act, the rate of interest to be applied by the clerk shall be at a rate equal to
105 the weekly average 1-year constant maturity Treasury yield, as published by the Board of
106 Governors of the Federal Reserve System for the calendar week preceding the date of judgment.
107 At no point shall the rate of interest established by this section exceed the rate of interest set forth
108 in said section 6B of chapter 231.

109 SECTION 9. Chapter 231 of the General Laws is hereby amended by adding the
110 following section:

111 Section 60O. In any action for malpractice, error, omission, mistake or the unauthorized
112 rendering of professional services against a provider of health care, the liability of each
113 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
114 only for the amount of damages allocated to that defendant in direct proportion to that
115 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
116 for that amount.