

HOUSE No. 2990

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Lawn, Jr.

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 ensuring parity in assessments by the Health Safety Net Trust Fund.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

John J. Lawn, Jr.

10th Middlesex

James B. Eldridge

Middlesex and Worcester

HOUSE No. 2990

By Mr. Lawn of Watertown, a petition (accompanied by bill, House, No. 2990) of John J. Lawn, Jr. and James B. Eldridge relative to surcharges assessed by acute hospitals and ambulatory surgical centers. Health Care Financing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act ensuring parity in assessments by the Health Safety Net Trust Fund.

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 64 of chapter 118E of the General Laws as appearing in the 2014
2 Official Edition, is hereby further amended by adding after the definition of “Health services”
3 the following two definitions:--

4 “Limited services”, diagnosis, treatment, management and monitoring of acute and
5 chronic disease, wellness and preventative services of a nature that may be provided within the
6 scope of practice of a nurse practitioner using available facilities and equipment, including
7 shared toilet facilities for point-of-care testing.

8 “Limited services clinic”, a clinic that provides limited services as defined by section 52
9 of chapter 111.

10 SECTION 2. Said section 64, as so appearing, is hereby further amended by adding the
11 following two definitions:-

12 “Urgent Care”, a model of episodic care delivery that is primarily the immediate
13 diagnosis, treatment, management or monitoring of acute and chronic disease, generally provided
14 on a walk-in basis, and not intended as the patient’s primary care provider.

15 “Urgent care clinic”, a clinic that provides urgent care as defined by this section.

16 SECTION 3. Said section 64, as so appearing, is hereby further amended by striking out
17 the definition of “Payments subject to surcharge” and inserting in place thereof the following
18 definition:--

19 “Payments subject to surcharge”, all amounts paid, directly or indirectly, by surcharge
20 payors to acute hospitals for health services, ambulatory surgical centers for ambulatory surgical
21 center services, urgent care clinics for urgent care services, and limited services clinics for
22 limited services, as defined in this section; provided, however, that “payments subject to
23 surcharge” shall not include: (i) payments, settlements and property or casualty insurance
24 policies; and (ii) payments made on behalf of Medicaid recipients, Medicare beneficiaries or
25 persons enrolled in policies issued under chapter 176K or similar policies issued on a group
26 basis; provided further, that “payments subject to surcharge” shall include payments made by a
27 managed care organization on behalf of Medicaid recipients under age 65 who are not enrolled in
28 an integrated care organization; and provided further that “payments subject to surcharge” may
29 exclude amounts established by regulations promulgated by the executive office for which the
30 costs and efficiency of billing a surcharge payor or enforcing collection of the surcharge from a
31 surcharge payor would not be cost effective.

32 SECTION 4. Said section 64, as so appearing, is hereby further amended by striking out
33 the definition of “Reimbursable health services” and inserting in place thereof the following
34 definition:--

35 "Reimbursable health services", health services provided to uninsured and underinsured
36 patients who are determined to be financially unable to pay for their care, in whole or part, under
37 applicable regulations of the office; provided that the health services are provided by acute
38 hospitals, including but not limited to emergency, urgent, or critical access services, or services
39 provided by community health centers; and provided further, that such services shall not be
40 eligible for reimbursement by any other public or private third-party payer.

41 SECTION 5. Said section 64, as so appearing, is hereby further amended by striking out
42 the definition of “Surcharge payor” and inserting in place thereof the following definition:--

43 “Surcharge payor”, an individual or entity that pays for or arranges for the purchase of
44 health care services provided by acute hospitals, ambulatory surgical center services provided by
45 ambulatory surgical centers, urgent care services provided by urgent care clinics, and limited
46 services provided by limited services clinics, as defined in this section; provided, however, that
47 the term “surcharge payor” shall not include Title XVIII and Title XIX programs and their
48 beneficiaries or recipients, other governmental programs of public assistance and their
49 beneficiaries or recipients and the workers’ compensation program established by chapter 152.

50 SECTION 6. Clause (i) of subsection (b) of section 65 of said Chapter 118E, as so
51 appearing, is hereby amended by striking the word “hospitals” and inserting in place thereof the
52 following words:--

53 hospitals’, ambulatory surgical centers’, urgent care clinics’, and limited services clinics’

54 SECTION 7. Subsection (b) of section 66 of said Chapter 118E, as amended by section 8
55 of chapter 115 of the acts of 2016, as amended by section 139 of chapter 133 of the acts of 2016,
56 is hereby amended by inserting after the phrase “all amounts paid by acute hospitals” the
57 following words:--

58 ambulatory surgical centers, urgent care clinics, and limited services clinics,

59 SECTION 8. Subsection (b) of section 66 of said Chapter 118E, as amended by section
60 8A of chapter 115 of the acts of 2016, is hereby amended by inserting after the phrase “all
61 amounts paid by acute hospitals” the following words:--

62 ambulatory surgical centers, urgent care clinics, and limited services clinics,

63 SECTION 9. Section 67 of said Chapter 118E, is hereby amended by adding the
64 following subsection:--

65 (c) Ambulatory surgical centers not otherwise owned by, a venture with, or affiliated with
66 an existing acute care hospital in said hospital’s primary service area; urgent care clinics not
67 otherwise owned by, a joint venture with, or affiliated with an existing acute care hospital in said
68 hospital’s primary service area; and limited services clinics not otherwise owned by, a joint
69 venture with, or affiliated with an existing acute care hospital in said hospital’s primary service
70 area shall be liable to the health care safety net trust fund in the same manner as acute care
71 hospitals. The office, in consultation with the division, shall establish through regulation the
72 mechanism by which the liability of said providers is to be assessed, paid, monitored and
73 enforced.

74 SECTION 10. Section 68 of said Chapter 118E, as so appearing, is hereby amended by
75 striking out paragraphs (a) through (c), inclusive, and inserting in place thereof the following
76 three paragraphs:--

77 (a) Acute hospitals, ambulatory surgical centers, urgent care clinics, and limited services
78 clinics shall assess a surcharge on all payments subject to surcharge as defined in section 64. The
79 surcharge shall be distinct from any other amount paid by a surcharge payor for the services of
80 an acute hospital, ambulatory surgical center urgent care clinic, or limited services clinic. The
81 surcharge amount shall equal the product of: (i) the surcharge percentage; and (ii) amounts paid
82 for these services by a surcharge payor. The office shall calculate the surcharge percentage by
83 dividing the total surcharge amount by the projected annual aggregate payments subject to the
84 surcharge, excluding projected annual aggregate payments based on payments made by managed
85 care organizations. The office shall determine the surcharge percentage before the start of each
86 fund fiscal year and may re-determine the surcharge percentage before April 1 of each fund
87 fiscal year if the office projects that the initial surcharge percentage established the previous
88 October will produce less than the total surcharge amount minus \$10,000,000 or more than the
89 total surcharge amount plus \$10,000,000 excluding payments made by managed care
90 organizations. Before each succeeding October 1, the office shall re-determine the surcharge
91 percentage incorporating any adjustments from earlier years. In each determination or
92 redetermination of the surcharge percentage, the office shall use the best data available as
93 determined by the office of Medicaid and may consider the effect on projected surcharge
94 payments of any modified or waived enforcement under subsection (e). The office shall
95 incorporate all adjustments, including, but not limited to, updates or corrections or final

96 settlement amounts, by prospective adjustment rather than by retrospective payments or
97 assessments.

98 (b) Each acute hospital, ambulatory surgical center, urgent care clinic, and limited
99 services clinic shall bill a surcharge payor an amount equal to the surcharge described in
100 subsection (a) as a separate and identifiable amount distinct from any amount paid by a
101 surcharge payor for acute hospital, ambulatory surgical center, urgent care clinic, or limited
102 services clinic services. Each surcharge payor shall pay the surcharge amount to the office for
103 deposit in the Health Safety Net Trust Fund on behalf of said acute hospital or ambulatory
104 surgical center. Upon the written request of a surcharge payor, the office may implement another
105 billing or collection method for the surcharge payor; provided, however, that the office has
106 received all information that it requests which is necessary to implement such billing or
107 collection method; and provided further, that the office shall specify by regulation the criteria for
108 reviewing and approving such requests and the elements of such alternative method or methods.

109 (c) The office shall specify by regulation appropriate mechanisms that provide for
110 determination and payment of a surcharge payor's liability, including requirements for data to be
111 submitted by surcharge payors, acute hospitals, ambulatory surgical centers, urgent care clinics,
112 and limited services clinics.