

**HOUSE . . . . . No. 00418**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Michael A. Costello*

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*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 passage of the accompanying bill:

An Act improving patients' access to timely compensation..

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

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*Michael A. Costello*

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*1st Essex*

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*Carl M. Sciortino, Jr.*

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*34th Middlesex*

# HOUSE . . . . . No. 00418

By Mr. Costello of Newburyport, petition (accompanied by Bill, House, No. 00418) of Michael A. Costello for legislation to regulate the period of time for the commencement of actions against providers of health care. Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1332 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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An Act improving patients' access to timely compensation..

*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.

2 Chapter 231 of the General Laws is hereby amended by adding after section 60K appearing in  
3 the 2010 official edition the following new section:

4 Section 60L.

5 (a). Except as provided in this section a person shall not commence an action against a provider  
6 of health care as defined in 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 health care provider written  
8 notice under this section of not less than 182 days notice before the action is commenced.

9 (b). The notice of intent to file a claim required under (a) shall be mailed to the last known  
10 professional business address or residential address of the health care provider who is the subject  
11 of the claim.

12 (c). The 182 day notice period in Section 1 is shortened to 91 days if all of the following  
13 conditions exist:

14 (1) The claimant has previously filed the 182 day notice required in (a) against another health  
15 care provider involved in the claim.

16 (2) The 182 day notice period has expired as to the health care providers described in (1).

17 (3) The claimant has filed a complaint and commenced an action alleging medical malpractice  
18 against one or more of the health care providers described in subsection (1).

19 (4) The claimant did not identify and could not have reasonably have identified a health care  
20 provider to which notice must be sent under (a) as a potential party to the action before filing the  
21 complaint.

22 (d) The notice given to a health care provider under this section shall contain a statement of at  
23 least all of the following:

24 (1) The factual basis for the claim.

25 (2) The applicable standard of care alleged by the claimant.

26 (3) The manner in which it is claimed that the applicable standard of care was breached by the  
27 health care provider.

28 (4) The alleged action that should have been taken to achieve compliance with the alleged  
29 standard of care.

30 (5) The manner in which it is alleged the breach of the standard of care was the proximate cause  
31 of the injury claimed in the notice.

32 (6) The names of all health care providers the claimant is notifying under this section in relation  
33 to the claim.

34 (e). 56 days after giving notice under this section, the claimant shall allow the health care  
35 provider receiving the notice access to all of the medical records related to the claim that are in  
36 the claimant's control, and shall furnish release for any medical records related to the claim that  
37 are not in the claimant's control, but of which the claimant has knowledge. This subsection does  
38 not restrict a health care provider receiving notice under this section from communicating with  
39 other health care providers and acquiring medical records as permitted under any other provision  
40 of law. This subsection does not restrict a patient's right of access to his or her medical records  
41 under any other provision of law.

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

45 (1) The factual basis for the defense to the claim.

46 (2) The standard of care that the health care provider claims to be applicable to the action and  
47 that the health care provider complied with that standard.

48 (3) The manner in which it is claimed by the health care provider that there was compliance with  
49 the applicable standard of care.

50 (4) The manner in which the health care provider contends that the alleged negligence of the  
51 health care provider was not the proximate cause of the claimant's alleged injury or alleged  
52 damage.

53 (f). If the claimant does not receive the written response required under Section 7 within the  
54 required 154 day time period, the claimant may commence an action alleging medical  
55 malpractice upon the expiration of the 154 day period.

56 (g) If at any time during the applicable notice period under this section a health care provider  
57 receiving notice under this section informs the claimant in writing that the health care provider  
58 does not intend to settle the claim s within the applicable notice period, the claimant may  
59 commence an action alleging medical malpractice against the health care provider, so long as the  
60 claim is not barred by the statue of limitations.

61 SECTION 2.

62 The General Laws are hereby amended by inserting after section 79K of chapter 233 as appearing  
63 in the 2010 official edition, the following new section:

64 Section 79L

65 As used in this section the following terms shall have the following meaning:

66 (1) "Health Care Provider", means any of the following health care professionals licensed  
67 pursuant to chapter 112: a physician, podiatrist, physical therapist, occupational therapist, dentist,  
68 optometrist, nurse, nurse practitioner, chiropractor, psychologist, independent clinical social

69 worker, speech-language pathologist, audiologist, marriage and family therapist and a mental  
70 health counselor. The term shall also include any corporation, professional corporation,  
71 partnership, limited liability company, limited liability partnership, authority, or other entity  
72 comprised of such health care providers.

73 “Facility”, a hospital, clinic or nursing home licensed pursuant to chapter 111 or a home health  
74 agency. The term shall also include any corporation, professional corporation, partnership,  
75 limited liability company, limited liability partnership, authority, or other entity comprised of  
76 such facilities.

77 “Unanticipated outcome” means the outcome of a medical treatment or procedure, whether or  
78 not resulting from an intentional act, that differs from an intended result of such medical  
79 treatment or procedure.

80 (2) In any claim, complaint or civil action brought by or on behalf of a patient allegedly  
81 experiencing an unanticipated outcome of medical care, any and all statements, affirmations,  
82 gestures, activities or conduct expressing benevolence, regret, apology, sympathy,  
83 commiseration, condolence, compassion, mistake, error, or a general sense of concern which are  
84 made by a health care provider, facility or an employee or agent of a health care provider or  
85 facility, to the patient, a relative of the patient, or a representative of the patient and which relate  
86 to the unanticipated outcome shall be inadmissible as evidence in any judicial or administrative  
87 proceeding and shall not constitute an admission of liability or an admission against interest.