

SENATE No. 655

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 anti-corrupt insurance medical examinations.

PETITION OF:

NAME:

Sal N. DiDomenico

DISTRICT/ADDRESS:

Middlesex and Suffolk

SENATE No. 655

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 655) of Sal N. DiDomenico for legislation relative to unfair and deceptive insurance practices. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 571 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act relative to anti-corrupt insurance medical examinations.

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 93A of the General Laws as appearing in the 2018 Official
2 Edition, shall be amended by inserting after Section 11 the following section:-

3 Section 12. (a) An act or practice of an insurance carrier that has violated or violates any
4 of the following prohibitions concerning an insured or healthcare provider in the Commonwealth
5 of Massachusetts shall be deemed an unfair and deceptive practice in the business of insurance
6 under Chapter 93A and Chapter 176D as appearing in the 2018 Official Edition:

7 (1) Insurance carriers shall not enter into any agreement with one or more healthcare
8 providers or their employer that limit the right or obligation of any healthcare provider to
9 voluntarily assist a patient in good faith with claims for insurance coverage, including but not

10 limited to any limitation on the certification and delivery of medical records or the availability
11 for giving testimony;

12 (2) Insurance carriers shall not threaten a healthcare provider, insured, or lawyer for an
13 insured with criminal charges;

14 (3) Insurance carriers shall not purport to give criminal releases to any healthcare
15 provider, insured, or lawyer for an insured; and

16 (4) Insurance carriers shall not enter into confidential settlement agreements with any
17 healthcare provider for an insurance claimant or with a lawyer for an insurance claimant for
18 matters arising in such capacities.

19 (b) The above-listed prohibitions in paragraphs (a)-(c) are not deemed to implement new
20 rules, but rather to clarify existing prohibitions and expectations concerning the business of
21 insurance in the Commonwealth, and therefore shall be deemed to apply retroactively.

22 (c) A medical examination or medical record review by a healthcare provider selected by
23 an insurance company shall be invalid and not independent of the insurance carrier if:

24 (1) performed by a healthcare provider who has been selected by an insurance company
25 to conduct such an examination or a review in the prior 12 months; or

26 (2) an insurance company has already selected or engaged a different healthcare provider
27 who completed a medical examination or medical record review of the insured related to the
28 same event underlying the insurance claim; or

29 (3) the insurance company provides the healthcare provider with its position concerning
30 any fact related to the underlying insurance claim.

31 (d) Nothing herein limits the ability of or creates the right for an insurance carrier to
32 report any particular matter to a court, law enforcement or a government agency of competent
33 jurisdiction.

34 (e) When acting in the scope of their employment, SIU investigators for insurance
35 carriers shall be deemed to constitute state actors subject to constitutional limitations and to act
36 under color of state law. The insurance carrier that employs an SIU investigator shall be
37 vicariously liable for the actions of such SIU investigator. Insurance carriers that employ an SIU
38 investigator shall not be immune from liability for the acts of its SIU investigators. Nothing
39 herein is intended to grant additional powers or rights to SIU investigators or their employers,
40 but rather to clarify the scope of their obligations and the limitations on their powers and rights.

41 SECTION 2. Chapter 176D of the General Laws as appearing in the 2018 Official
42 Edition, shall be amended by inserting after Section 14 the following section:-

43 Section 15. (a) An act or practice of an insurance carrier that has violated or violates any
44 of the following prohibitions concerning an insured or healthcare provider in the Commonwealth
45 of Massachusetts shall be deemed an unfair and deceptive practice in the business of insurance
46 under Chapter 93A and Chapter 176D as appearing in the 2018 Official Edition:-

47 (1) Insurance carriers shall not enter into any agreement with one or more healthcare
48 providers or their employer that limit the right or obligation of any healthcare provider to
49 voluntarily assist a patient in good faith with claims for insurance coverage, including but not
50 limited to any limitation on the certification and delivery of medical records or the availability
51 for giving testimony;

52 (2) Insurance carriers shall not threaten a healthcare provider, insured, or lawyer for an
53 insured with criminal charges;

54 (3) Insurance carriers shall not purport to give criminal releases to any healthcare
55 provider, insured, or lawyer for an insured; and

56 (4) Insurance carriers shall not enter into confidential settlement agreements with any
57 healthcare provider for an insurance claimant or with a lawyer for an insurance claimant for
58 matters arising in such capacities.

59 (b) The above-listed prohibitions in paragraphs (a)-(c) are not deemed to implement new
60 rules, but rather to clarify existing prohibitions and expectations concerning the business of
61 insurance in the Commonwealth, and therefore shall be deemed to apply retroactively.

62 (c) A medical examination or medical record review by a healthcare provider selected by
63 an insurance company shall be invalid and not independent of the insurance carrier if:

64 (1) performed by a healthcare provider who has been selected by an insurance company
65 to conduct such an examination or a review in the prior 12 months; or

66 (2) an insurance company has already selected or engaged a different healthcare provider
67 who completed a medical examination or medical record review of the insured related to the
68 same event underlying the insurance claim; or

69 (3) the insurance company provides the healthcare provider with its position concerning
70 any fact related to the underlying insurance claim.

71 (d) Nothing herein limits the ability of or creates the right for an insurance carrier to
72 report any particular matter to a court, law enforcement or a government agency of competent
73 jurisdiction.

74 (e) When acting in the scope of their employment, SIU investigators for insurance
75 carriers shall be deemed to constitute state actors subject to constitutional limitations and to act
76 under color of state law. The insurance carrier that employs an SIU investigator shall be
77 vicariously liable for the actions of such SIU investigator. Insurance carriers that employ an SIU
78 investigator shall not be immune from liability for the acts of its SIU investigators. Nothing
79 herein is intended to grant additional powers or rights to SIU investigators or their employers,
80 but rather to clarify the scope of their obligations and the limitations on their powers and rights.