

Justification and Senate 581 as filed.

Justification for SB 581

An Act Relative to Parity in Calculating Surcharges and Health Safety Net Trust Fund Liability Assessments for Acute Hospitals, Ambulatory Surgical Centers, Specialty Health Care Providers, & Laboratories

The proposed legislation ensures that (i) in calculating the liability of health care providers into the Health Safety Net Trust Fund (the "Fund"), and (ii) in calculating the surcharge assessment for surcharge payors into the Fund, that there is parity among those health care providers that furnish the services typically provided within a hospital setting -- namely acute hospitals, ambulatory surgical centers, specialty health care providers, and laboratories.

Surcharge Parity

At present, non-hospital providers of hospital services have an advantage over hospitals, and particularly community hospitals. This is because under current practice, unlike with respect to hospitals, the services provided in ambulatory surgical centers are subject only to a partial surcharge; they are surcharged only on the facility component, and not the physician or other health services costs. Moreover, the services provided by specialty health care providers and laboratories are not subject to any surcharge.

By ensuring that the surcharge is applied fully and equally across such provider types, the burden of being subject to the assessment is shared more equitably and no one of these provider settings has an artificial advantage over the other. Moreover, this ensures that patients are more likely to receive medical treatment in the most appropriate and most convenient setting for them.

Fund Parity

At present, only acute hospitals and surcharge payors are required to pay into the Fund, bearing the full burden of serving the uninsured and underinsured. Non-hospital providers of hospital services primarily serve patients who are insured, thereby reducing the number of hospital private pay patients.

The proposed legislation lightens the double burden faced by hospitals (i.e. of paying into the Fund, and of having to provide the bulk of free care and other community services) by ensuring that all four categories of providers of hospital services share the burden of paying into the Fund.

In sum, the proposed legislation ensures parity both in calculating surcharges for surcharge payors, and in allocating Fund liability assessments, among hospitals, ambulatory surgical centers, specialty health care providers, and laboratories.

SENATE No. 581

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 relative to parity in calculating surcharges and health safety net trust fund liability assessments for acute hospitals, ambulatory surgical centers, specialty health care providers, & laboratories.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Pam Richardson	6th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO PARITY IN CALCULATING SURCHARGES AND HEALTH SAFETY NET TRUST FUND LIABILITY ASSESSMENTS FOR ACUTE HOSPITALS, AMBULATORY SURGICAL CENTERS, SPECIALTY HEALTH CARE PROVIDERS, & LABORATORIES .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 15 of Chapter 61 of the Acts of 2007 (the "Act"), concerning G.L. 118G, section 34, shall be amended as follows:

A. By replacing the existing definitions for such terms with the following:

"Ambulatory surgical center services", notwithstanding any provision of general or special law or regulation to the contrary, shall be defined as services described for purposes of the Medicare program under 42 U.S.C. 1395k(a)(2)(F)(I). These services include both facility services and surgical

and other related medical procedures.”

“Payments subject to surcharge”, notwithstanding any provision of general or special law or regulation to the contrary, shall be defined as all amounts paid, directly or indirectly, by surcharge payors to acute hospitals for health care services, to ambulatory surgical centers for ambulatory surgical center services, to specialty health care providers for specialty health care services, and to laboratories as defined in this section; and provided, however, that “payments subject to surcharge” shall not include: (i) payments, settlements and property or casualty insurance policies; (ii) payments made on behalf of Medicaid recipients, Medicare beneficiaries or persons enrolled in policies issued under chapter 176K or similar policies issued on a group basis; and provided further, that “payments subject to surcharge” may exclude amounts established by regulations promulgated by the division for which the costs and efficiency of billing a surcharge payor or enforcing collection of the surcharge from a surcharge payor would not be cost effective.”

“Surcharge payor”, notwithstanding any provision of general or special law or regulation to the contrary, shall be defined as an individual or entity that pays for or arranges for the purchase of health care services provided by acute hospitals, ambulatory surgical center services provided by ambulatory surgical centers, specialty health care services provided by specialty health care providers, and laboratory services provided by laboratories, as defined in this section; provided, however, that the term “surcharge payor” shall not include Title XVIII and Title XIX programs and their beneficiaries or recipients, other governmental programs of public assistance and their beneficiaries or recipients and the workers’ compensation program established by chapter 152.

B. By inserting the following new definitions after the existing definition of “Resident”:

“Specialty health care provider”, shall be defined as any entity including a physician practice providing outpatient services typically provided in a hospital setting, including but not limited to: (1) an entity providing anesthesia, conscious sedation and/or diagnostic injection services (including endoscopy services and excluding dental facilities); (ii) an entity employing major

medical, diagnostic and/or therapeutic equipment, including but not limited to equipment defined as new technology or as providing an innovative service, pursuant to chapter 111, section 25B and excluding x-ray equipment; and (iii) which is not a hospital, ambulatory surgical center or community health center. The department shall promulgate regulations with respect to the classification of specialty health care providers.”;

“Laboratory,” shall be defined for these purposes as a laboratory that is licensed by the department of public health and pursuant to M.G.L. c. 111D section 1(1) that is not operated by a community health center.

C. Section 15 of the Act, concerning G.L. 118G, section 35 shall be amended as follows:

In subsection (b)(1), by inserting after the phrase “acute hospitals” the following:

“, ambulatory surgical centers’, specialty health care providers’, laboratories’,”.

D. Section 15 of the Act, concerning G.L. 118G, section 36 shall be amended as follows:

In subsection (b), by inserting after the phrase “all amounts paid by acute hospitals” the following: “, ambulatory surgical centers’, specialty health care providers’, laboratories’,”.

E. Section 150 of the Act, concerning G.L. 118G, section 37 shall be amended as follows:

By adding a new subsection (a), prior to the existing subsection (a), and re-lettering the existing subsections, as follows:

“(a) Ambulatory surgical centers, specialty health care providers, and laboratories, notwithstanding any provision of general or special law or regulation to the contrary, shall be liable to the health care

safety net trust fund in the same manner as acute care hospitals. The division of health care finance and policy, in consultation with the office of Medicaid, shall establish through implementing regulations the mechanism by which the liability of said providers is to be assessed, paid, monitored, and enforced.”

The existing subsection (a) shall be re-lettered as subsection (b); the existing subsection (b) shall be re-lettered as subsection (c); and the existing subsection (c) shall be re-lettered as a new subsection (d).

F. By enacting the following conforming amendments: Inserting in section 15 of the Act, and in any existing law concerning the assessment of hospital liability to the pool, after each instance of the appearance of the term “acute hospital” the phrase “and ambulatory surgical center, specialty health care provider, and laboratory” regarding liability to the pool or the health care safety net trust fund; and by inserting in section 15 of the Act and in any existing law concerning the operation of the surcharge, after each instance of the appearance of the term “ambulatory surgical center” the phrase “, specialty health care provider, and laboratory”.