

SENATE NO. 65

AN ACT RELATIVE TO RATES FOR HUMAN AND SOCIAL SERVICE PROGRAMS

*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 274 of Chapter 110 of the Acts of 1993 is hereby amended as follows:--

2 The words "special education" are added before the word "pricing" in the second sentence of
3 the first paragraph.

4 The first sentence of the third paragraph is deleted and the following sentence is inserted in its
5 stead: "The division shall be comprised of such bureaus as may be necessary to carry out the mission
6 of the division, which may include but not be limited to: an audit bureau, a bureau of database
7 management, and a unit for special education pricing."

8 The words "social services" in the first and second sentences of the seventh paragraph shall be
9 deleted and replaced with the words "special education".

10 The following sentence shall be added at the end of the seventh paragraph: "Pricing for social
11 service programs, other than special education programs, shall be set by the executive office of health
12 and human services pursuant to chapter one hundred eighteen G."

13 SECTION 2. Section 1 of Chapter 118G of the General Laws as appearing in the 2006 Official Edition
14 is hereby amended by inserting the following paragraph after the definition of "Medicare Program":--

15 "New governmental mandate" shall mean a state or federal statutory requirement, administrative
16 rule, regulation, assessment, executive order, judicial order or other governmental requirement that
17 was not in effect when a rate of payment under this chapter was established by the division and
18 directly or indirectly imposes an obligation and associated compliance cost upon a provider to take any
19 action or to refrain from taking any action in order to fulfill the provider's contractual duty to a
20 procuring governmental unit, which cost is not specifically funded by any other source."

21 SECTION 3. Section 1 of Chapter 118G of the General Laws as appearing in the 2006 Official Edition
22 is hereby amended by inserting the following paragraph after the definition of "Small business":--

23 "Social service program", a social, mental health, mental retardation, habilitative, rehabilitative,
24 substance abuse, residential care, adult or adolescent day care, vocational, employment and training, or
25 elder service program or accommodations, purchased by any governmental unit or political
26 subdivision of the executive office of health and human services, but excluding any program, service
27 or accommodation that (a) is reimbursable under a Medicaid waiver granted pursuant to section 1115
28 of the Social Security Act or (b) is funded exclusively by a federal grant.

29 SECTION 4. Section 2A Chapter 118G of the General Laws as appearing in the 2006 Official Edition
30 is hereby amended by inserting the following new paragraph at the end of the Section:--

31 "The division shall have the sole responsibility for establishing rates of payment for social service
32 programs which are reasonable and adequate to meet the costs which are incurred by reasonably
33 efficient and economical social service program contractors in providing social service programs in
34 conformity with federal and state law, regulations, and quality and safety standards. In establishing
35 rates of payment for social service programs, the division shall adjust rates to take into account (i) the
36 cost to social service program providers of any new governmental mandate that has been enacted,
37 promulgated or imposed by any governmental unit or federal governmental authority since rates were
38 last established by the division, (ii) inflation in costs of social service programs since rates were last
39 established by the division, in accordance with the rate of inflation for social service programs
40 estimated by the division of purchased services pursuant to section 274 of chapter 110 of the Acts of
41 1993, and (iii) geographic differences in wages, benefits, housing and real estate costs in each
42 metropolitan statistical area of the commonwealth, and in any city or town within such an area where
43 such costs are substantially higher than the average cost within such area as a whole. The division shall
44 not consider any of the resources specified in section 12 of this chapter in establishing, reviewing or
45 approving rates of payment for social service programs.

46 SECTION 5. Section 2 of Chapter 118G of the General Laws as appearing in the 2006 Official Edition
47 shall be amended by adding the following as a new paragraph after the last paragraph of Section 2:--

48 "The secretary shall appoint a social service advisory council. The social service council shall be
49 comprised of the secretary or his designee, a representative of a consumer advocacy organization that
50 advocates for consumers of social service programs, the Mental Health and Substance Abuse
51 Corporations of Massachusetts, the Massachusetts Council of Human Service Providers, and the
52 Association of Developmental Disability Providers, and at least one consumer of social services. The

53 division shall consult with the social service advisory council before proposing, holding any hearing
54 on, or adopting, any regulation, other than an emergency regulation for which prior consultation is not
55 reasonably feasible, relating to social service programs, including any regulation establishing a rate
56 methodology or rate of payment for a social service program. The secretary shall consult with the
57 social service advisory council on matters of policy affecting social service programs and before the
58 executive office proposes, holds a hearing on, or adopts any regulation relating to social service
59 programs, other than an emergency regulation for which prior consultation is not reasonably feasible.
60 If the executive office or division adopts an emergency regulation that was not subject to prior
61 consultation with the social service advisory council, then such consultation shall occur as soon as
62 reasonably feasible after the emergency regulation is adopted."

63 SECTION 6. Section 7 of Chapter 118G of the General Laws as appearing in the 2006 Official Edition
64 shall be amended by adding the following paragraph after paragraph fourteen of Section 7:--

65 "Social service program providers shall be treated as non-institutional providers for purposes of
66 this section. The division shall set initial payment rates for existing social service programs
67 prospectively by July 1, 2007 based on the quantity of services provided by social service program
68 providers in fiscal year 2006, the amount paid to such providers in fiscal year 2006 by governmental
69 units in the executive office, including all salary reserve payments under chapter 139 of the acts of
70 2006 and all year-end budget allocations made by such governmental units to such providers in fiscal
71 year 2006, costs incurred by such providers as shown on uniform financial reports submitted by such
72 providers to the executive office of administration and finance, and other available cost data relating to
73 social service program providers. If a contract between a governmental unit and a social service
74 program provider has a term of more than one year, or has a term of one year or less and is extended or

75 renewed so that the contract is continuously in effect for more than one year, then the procuring
76 governmental unit shall annually adjust the rate of payment under the contract established under this
77 chapter, effective on the contract anniversary date, by a cost inflation factor equal to the most recent
78 inflation change estimated by the division of purchased services pursuant to section 274 of chapter 110
79 of the acts of 1993."

80 SECTION 7. Section 4A of Chapter 7 of the General Laws as appearing in the 2006 Official Edition
81 is hereby amended by deleting the last paragraph of that Section and inserting the following in its
82 stead:--

83 "A social service program contractor may request a contract amendment from a procuring
84 governmental unit at any time in accordance with regulations promulgated by the secretary. In the
85 event that a governmental unit in any contract year utilizes more units of service than the number or
86 percentage of units of service specified in a contract, then the contractor shall be entitled to a contract
87 amendment for that year that proportionately increases the maximum obligation amount or unit price
88 under the contract. If the procuring governmental unit requests a contract amendment that would add
89 a program component, service or obligation to the requirements of such a contract, the governmental
90 unit shall pay for the additional program component, service or obligation at the applicable rate of
91 payment established pursuant to section 7 of chapter one hundred eighteen G. A social service
92 program contractor may also request a contract amendment if the contractor incurs substantial
93 unforeseeable costs beyond the reasonable control of the contractor.

94 Any social service program contractor aggrieved by a decision of a governmental unit denying
95 or failing to negotiate a contract amendment pursuant to this section may appeal such adverse decision
96 to the division of administrative law appeals in accordance with section 4H of this chapter for a

97 hearing and decision de novo on all issues. A contractor's request for contract amendment shall, for
98 purposes of appeal, be deemed to have been denied if a determination is not received within 30 days of
99 the governmental unit's receipt of the request. A contractor or governmental unit may appeal an
100 adverse decision of the division of administrative law appeals to the superior court, Suffolk division,
101 pursuant to chapter 30A.”