

HOUSE No. 01220

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 strengthening the DON program.

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 01220

By Mr. Michael A. Costello of Newburyport, petition (accompanied by bill, House, No. 01220) of Michael A. Costello relative to the medical facility determination of need program. Joint Committee on Health Care Financing.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act strengthening the DON program.

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 305 of the Acts of 2008 is hereby amended by deleting Section 7 and replacing it with
3 the following new language:

4 “Expenditure minimum with respect to substantial capital expenditures”, with respect to
5 expenditures and acquisitions made by or for: (1) acute care hospitals and comprehensive cancer
6 centers as defined in section 1 of chapter 118G, only, \$7,500,000, except that expenditures for,
7 or the acquisition of, major movable equipment not otherwise defined by the department as new
8 technology or innovative services shall not require a determination of need and shall not be
9 included in the calculation of the expenditure minimum; and (2) health care facilities, other than
10 acute care hospitals, and facilities subject to licensing under chapter 111B, with respect to: (a)
11 expenditures for, or the acquisition of, medical, diagnostic or therapeutic equipment, \$400,000;

12 and (b) all other expenditures and acquisitions, \$800,000; provided, however, that expenditures
13 for, or the acquisition of, any replacement of medical, diagnostic or therapeutic equipment
14 defined as new technology or innovative services for which a determination of need has issued or
15 which was exempt from determination of need, shall not require a determination of need and
16 shall not be included in the calculation of the expenditure minimum; provided further, that
17 expenditures and acquisitions concerned solely with outpatient services other than ambulatory
18 surgery, not otherwise defined as new technology or innovative services by the department, shall
19 not require a determination of need and shall not be included in the calculation of the expenditure
20 minimum, unless the expenditures and acquisitions are at least \$7,500,000, in which case a
21 determination of need shall be required. Notwithstanding the above limitations, acute care
22 hospitals only may elect at their option to apply for determination of need for expenditures and
23 acquisitions less than the expenditure minimum.

24 Chapter 305 of the Acts of 2008 is hereby further amended by in Section 11 deleting the last
25 paragraph and replacing it with the following new language:

26 Section 53G. Any entity that is certified or seeking certification as an ambulatory surgical center
27 by the Centers for Medicare and Medicaid Services for participation in the Medicare program
28 shall be a clinic for the purpose of licensure under section 51, and shall be deemed to be in
29 compliance with the conditions for licensure as a clinic under said section 51 if it is accredited to
30 provide ambulatory surgery services by the Accreditation Association for Ambulatory Health
31 Care, Inc., the Joint Commission on Accreditation of Healthcare Organizations, the American
32 Association for Accreditation of Ambulatory Surgery Facilities or any other national accrediting
33 body that the department determines provides reasonable assurances that such conditions are
34 met. No original license shall be issued pursuant to said section 51 to establish any such

35 ambulatory surgical clinic unless there is a determination by the department that there is a need
36 for such a facility. For purposes of this section, “clinic” shall include a clinic conducted by a
37 hospital licensed under said section 51 or by the federal government or the commonwealth. The
38 department shall promulgate regulations to implement this section.

39 SECTION 2

40 Section 25C of Chapter 111 of the General Laws is amended by inserting after the first paragraph
41 the following new paragraph:

42 “The Department shall conduct a statewide planning initiative for the purposes of studying and
43 coordinating the availability and delivery of health care services within the commonwealth. The
44 initiative shall examine the current supply of inpatient and outpatient services, and technologies
45 and develop a plan for the provision of new services, beds, technologies, and structural
46 expansions throughout the commonwealth, and develop a plan for the continued role of
47 community hospitals and health centers within the commonwealth. The Department shall utilize
48 this plan in its evaluation of all applications for a determination of need, as required by this
49 section, in order to determine whether the proposed expansion construction, or acquisition of
50 health care facilities or services is needed in the Commonwealth, or whether the proposed
51 expansion construction, or acquisition of health care facilities or services will unnecessary
52 duplicate ongoing services and increase health care costs in the Commonwealth.”

53 SECTION 3

54 Section 25C of Chapter 111 of the General Laws is amended by inserting at the end of the
55 section the following new paragraph:

56 “Any hospital seeking to expand its emergency department shall file a determination of need
57 with the department. In addition to the information required pursuant to this section, the
58 department shall require hospitals seeking emergency department expansions to demonstrate that
59 prior to filing a determination of need application, the hospital has implemented measures to
60 reduce emergency room overcrowding. The department shall promulgate regulations defining
61 the measures hospitals may take to reduce emergency room overcrowding.”

62 Section 25C of Chapter 111 of the General Laws is further amended by inserting at the end of the
63 2nd paragraph the following language:

64 “Each person or agency of the commonwealth or any political subdivision thereof filing a
65 determination of need to acquire new technology shall, in addition to the information required by
66 this section, file with the department documentation of programs implemented by the health care
67 facility designed to ensure utilization of all new technology in a manner that is consistent with
68 state and national guidelines. The department shall annually publish a list of state and national
69 guidelines governing the utilization of new technology. The department shall promulgate
70 regulations necessary to enforce this section.”

71 Section 25C of Chapter 111 of the General Laws is further amended by deleting the last sentence
72 of the 7th paragraph and replacing it with the following new language:

73 “A reasonable fee, established by the department, shall be paid upon the filing of such
74 application. The department shall be adjusted annually as necessary to accommodate the volume
75 of new applications.”

76 Section 3 of Chapter 17 of the General Laws is hereby amended by deleting Section 3 in its
77 entirety and replacing it with the following new language:

78 Section 3. (a) There shall be a public health council to advise the commissioner of public health
79 and to perform other duties as required by law. The council shall consist of the commissioner of
80 public health as chairperson and 17 members appointed for terms of 6 years under this section.
81 The commissioner may designate 1 of the members as vice chairperson and may appoint
82 subcommittees or special committees as needed.

83

84 (b) Four of the members shall be appointed by the governor: 1 shall be appointed from among
85 the chancellor of the University of Massachusetts Medical School and a list of 3 nominated by
86 said chancellor; 1 shall be appointed from among the dean of the University of Massachusetts
87 Amherst School of Public Health or Health Sciences and a list of 3 nominated by said dean; 1
88 shall be appointed from among the heads of the non-public schools of medicine in the
89 commonwealth or their nominees; and 1 shall be appointed from among the heads of the non-
90 public schools or programs in public health in the commonwealth or their nominees.

91

92 (c) Four of the appointed members shall be providers of health services, appointed by the
93 governor: 1 of whom shall have expertise in acute care hospital management; 1 of whom shall
94 have expertise in long term care management; 1 of whom shall have expertise in home or
95 community-based care management, and 1 of whom shall have expertise in the practice of
96 primary care medicine or public health nursing.

97

98 (d) Six of the appointed members shall be non-providers: 1 shall be appointed by the secretary of
99 elder affairs; 1 shall be appointed by the secretary of veterans' services; 1 shall be appointed by
100 the governor from a list of 3 nominated by Health Care For All, Inc.; 1 shall be appointed by the
101 governor from a list of 3 nominated by the Coalition for the Prevention of Medical Errors, Inc.; 1
102 shall be appointed by the governor from a list of 3 nominated by the Massachusetts Public Health
103 Association; and 1 shall be appointed by the governor from a list of 3 nominated by the
104 Massachusetts Community Health Worker Network. Whenever an organization nominates a list
105 of candidates for appointment by the governor under this subsection, the organization may
106 nominate additional candidates if the governor declines to appoint any of those originally
107 nominated.

108 (e) Three of the appointed members shall be payers of health care, appointed by the governor: 1
109 shall represent a health plan licensed in the Commonwealth; 1 shall represent small businesses;
110 and one shall represent large businesses.

111

112 (f) For purposes of this section, "non-provider" shall mean a person whose background and
113 experience indicate that he is qualified to act on the council in the public interest; who, and
114 whose spouse, parents, siblings or children, have no financial interest in a health care facility;
115 who, and whose spouse has no employment relationship to a health care facility, to a nonprofit
116 service corporation established under chapters 176A to 176E, inclusive, or to a corporation
117 authorized to insure the health of individuals; and who, and whose spouse, is not licensed to
118 practice medicine.

119

120 (g) Upon the expiration of the term of office of an appointive member, his successor shall be
121 appointed in the same manner as the original appointment, for a term of 6 years and until the
122 qualification of his successor. The members shall be appointed not later than 60 days after a
123 vacancy. The council shall meet at least once a month, and at such other times as it shall
124 determine by its rules, or when requested by the commissioner or any 4 members. The
125 appointive members shall receive \$100 per day that the council meets, and their reasonably
126 necessary traveling expenses while in the performance of their official duties.