

**HOUSE . . . . . No. 1089**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Ronald Mariano**

*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 strengthening the determination of need process

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO STRENGTHENING THE DETERMINATION OF NEED PROCESS.

*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 305 of the Acts of 2008 is hereby amended by deleting section 7 and  
2 replacing it with the following new language:

3 “Expenditure minimum with respect to substantial capital expenditures”, with respect to  
4 expenditures and acquisitions made by or for: (1) acute care hospitals and comprehensive cancer  
5 centers as defined in section 1 of chapter 118G, only, \$7,500,000, except that expenditures for,  
6 or the acquisition of, major movable equipment not otherwise defined by the department as new  
7 technology or innovative services shall not require a determination of need and shall not be  
8 included in the calculation of the expenditure minimum; and (2) health care facilities, other than  
9 acute care hospitals, and facilities subject to licensing under chapter 111B, with respect to: (a)  
10 expenditures for, or the acquisition of, medical, diagnostic or therapeutic equipment, \$400,000;  
11 and (b) all other expenditures and acquisitions, \$800,000; provided, however, that expenditures  
12 for, or the acquisition of, any replacement of medical, diagnostic or therapeutic equipment  
13 defined as new technology or innovative services for which a determination of need has issued or  
14 which was exempt from determination of need, shall not require a determination of need and

15 shall not be included in the calculation of the expenditure minimum; provided further, that  
16 expenditures and acquisitions concerned solely with outpatient services other than ambulatory  
17 surgery, not otherwise defined as new technology or innovative services by the department, shall  
18 not require a determination of need and shall not be included in the calculation of the expenditure  
19 minimum, unless the expenditures and acquisitions are at least \$7,500,000, in which case a  
20 determination of need shall be required. Notwithstanding the above limitations, acute care  
21 hospitals only may elect at their option to apply for determination of need for expenditures and  
22 acquisitions less than the expenditure minimum.

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

25 Section 53G. Any entity that is certified or seeking certification as an ambulatory surgical center  
26 by the Centers for Medicare and Medicaid Services for participation in the Medicare program  
27 shall be a clinic for the purpose of licensure under section 51, and shall be deemed to be in  
28 compliance with the conditions for licensure as a clinic under said section 51 if it is accredited to  
29 provide ambulatory surgery services by the Accreditation Association for Ambulatory Health  
30 Care, Inc., the Joint Commission on Accreditation of Healthcare Organizations, the American  
31 Association for Accreditation of Ambulatory Surgery Facilities or any other national accrediting  
32 body that the department determines provides reasonable assurances that such conditions are  
33 met. No original license shall be issued pursuant to said section 51 to establish any such  
34 ambulatory surgical clinic unless there is a determination by the department that there is a need  
35 for such a facility. For purposes of this section, "clinic" shall include a clinic conducted by a  
36 hospital licensed under said section 51 or by the federal government or the commonwealth. The  
37 department shall promulgate regulations to implement this section.

38 SECTION 2. Section 25C of chapter 111 of the General Laws, as appearing in the 2006 Official  
39 Edition, is hereby amended by inserting after the first paragraph the following new paragraph:

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

51 Section 25C of chapter 111 of the General Laws is further amended by inserting at the  
52 end of the section the following new paragraph:

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

59           Section 25C of chapter 111 of the General Laws is further amended by inserting at the  
60 end of the 2<sup>nd</sup> paragraph the following language:

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

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

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

73           SECTION 3. Section 3 of chapter 17 of the General Laws is hereby amended by deleting section  
74 3 in its entirety and replacing it with the following new language:

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

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

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

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

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

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

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