

**HOUSE . . . . . No. 2013**

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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 adoption of the accompanying bill:

An Act to improve health planning and public health.

PETITION OF:

| NAME:                    | DISTRICT/ADDRESS:   |
|--------------------------|---------------------|
| <i>Ronald Mariano</i>    | <i>3rd Norfolk</i>  |
| <i>Denise C. Garlick</i> | <i>13th Norfolk</i> |
| <i>Benjamin Swan</i>     | <i>11th Hampden</i> |

**HOUSE . . . . . No. 2013**

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 2013) of Ronald Mariano, Denise C. Garlick and Benjamin Swan relative to public health planning, procedures and improvements. Public Health.

**The Commonwealth of Massachusetts**

**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**

An Act to improve health planning and public health.

*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 1 of chapter 6D of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by inserting after the definition of "Employer" the following  
3 definition:-

4 "Essential Health Services" shall include all services deemed to be necessary for the  
5 preservation of public health in a specific region as determined by the State Health Planning  
6 Board based on disease prevalence, drive time, current health needs, and population data.

7 SECTION 2. Chapter 6D of the General Laws is hereby amended by inserting after  
8 Section 3, the following section:-

9 Section 3A. The health policy commission shall, every 3 years, establish a state health  
10 plan that shall include regional health plans and a list of essential health services for each region.  
11 Regions are to be based upon regions developed by the health policy commission, but shall be  
12 subject to review based upon the commission's developed formula and any data the board may

13 require of any other state agency. The commission shall consult with CHIA, DPH, and AGO no  
14 less than 90 days before the establishment, or altering, of any region.

15           The commission shall develop a formula which shall weigh disease prevalence, drive  
16 time, current health needs, and population data in order to provide an accurate and timely  
17 assessment of the health status of each established region.

18           The commission shall consult with the department of public health, the department of  
19 mental health, the department of elder affairs, the office of the attorney general, the center for  
20 health information and analysis, as well as others deemed appropriate, in development of the  
21 state health plan.

22           In developing the state health plan, the commission shall at a minimum gather  
23 information on the provision of essential health services by the commonwealth's 1) hospitals and  
24 2) physician groups of a certain size determined by the commission, using data from the  
25 following sources: CHIA, HPC, DPH, DMH, GIC and Medicaid. In ongoing monitoring of  
26 essential health services, the commission shall have authority to meet in executive sessions, as  
27 defined by section 18 of chapter 30A, and shall be exempt from the following: 1) public record  
28 requirements of section 10 of chapter 66; 2) open meeting requirements of sections 20 and 21 of  
29 chapter 30A under section 21 (7) of said chapter.

30           SECTION 3. Section 13 of said chapter 6D , as so appearing, is hereby amended by  
31 striking subsection (a) and inserting in place thereof the following subsection:-

32           (a) Every provider or provider organization shall, before making any material change to  
33 its operations or governance structure, submit notice to the commission, the center and the  
34 attorney general of such change, not fewer than 60 days before the date of the proposed change.

35 Material changes shall include, but not be limited to: the application for issuance of a new  
36 facility license from the department of public health or department of mental health , a corporate  
37 merger, acquisition or affiliation of a provider or provider organization and a carrier; mergers or  
38 acquisitions of hospitals or hospital systems; acquisition of insolvent provider organizations; and  
39 mergers or acquisitions of provider organizations which will result in a provider organization  
40 having a near-majority of market share in a given service or region .

41                   Within 30 days of receipt of a notice filed under the commission's regulations,  
42 the commission shall conduct a preliminary review to determine whether the material change is  
43 likely to result in a significant impact on the commonwealth's ability to meet the health care cost  
44 growth benchmark, established in section 9, or on the competitive market. If the commission 1  
45 finds that the material change is likely to have a significant impact on the commonwealth's  
46 ability to meet the health care cost growth benchmark, or on the competitive market, the  
47 commission may conduct a cost and market impact review under this section.

48           SECTION 4. Section 1 of chapter 111 of the General Laws, as so appearing, is hereby  
49 amended by inserting after the definition of “Disease dangerous to the public health” the  
50 following definition:-

51           “Essential Health Services” shall include all services deemed to be necessary for the  
52 preservation of public health in a specific region as determined by the state health planning board  
53 based on disease prevalence, drive time, current health needs, and population data.

54           SECTION 5. Section 25C of chapter 111, as so appearing, is hereby amended by striking  
55 out subsection (g) and inserting in place thereof the following subsection:-

56 (g) The department, in making any determination of need, shall be guided by the state  
57 and regional health plans, shall encourage appropriate allocation of private and public health care  
58 resources and the development of alternative or substitute methods of delivering health care  
59 services so that adequate health care services will be made reasonably available to every person  
60 within the commonwealth at the lowest reasonable aggregate cost, shall use data from the center  
61 for health information and analysis and information from the health policy commission, shall  
62 take into account any comments from any other state agency or entity, and may impose  
63 reasonable terms including those that address state and regional needs according to the dynamic  
64 regional plans, as well as conditions as the department determines are necessary to achieve the  
65 purposes and intent of this section. The department may also recognize the special needs and  
66 circumstances of projects that: (1) are essential to the conduct of research in basic biomedical or  
67 health care delivery areas or to the training of health care personnel; (2) are unlikely to result in  
68 any increase in the clinical bed capacity or outpatient load capacity of the facility; and (3) are  
69 unlikely to cause an increase in the total patient care charges of the facility to the public for  
70 health care services, supplies, and accommodations, as such charges shall be defined from time  
71 to time in accordance with section 5 of chapter 409 of the acts of 1976.

72 SECTION 6. Said section 25C of said chapter 111, as so appearing, is hereby further  
73 amended by striking out subsection (i) and inserting in place thereof the following subsection:-

74 (i) Except in the case of an emergency situation determined by the department as  
75 requiring immediate action to prevent further damage to the public health or to a health care  
76 facility, the department shall not act upon an application for such determination unless: (1) the  
77 application has been on file with the department for at least 30 days; (2) the center for health care  
78 information and analysis, the health policy commission, the state and appropriate regional

79 comprehensive health planning agencies and, in the case of long-term care facilities only, the  
80 department of elder affairs, or in the case of any facility providing inpatient services for the  
81 mentally ill or developmentally disabled, the departments of mental health or developmental  
82 services, respectively, have been provided copies of such application and supporting documents  
83 and given reasonable opportunity to supply required information and comment on such  
84 application; and (3) a public hearing has been held on such application when requested by the  
85 applicant, the state or appropriate regional comprehensive health planning agency or any 10  
86 taxpayers of the commonwealth. If, in any filing period, an individual application is filed which  
87 would implicitly decide any other application filed during such period, the department shall not  
88 act only upon an individual.

89 SECTION 7. Section 51G of chapter 111, as so appearing, is hereby amended by striking  
90 out subsection (4) and inserting in place thereof the following subsection:-

91 (4) Any hospital shall inform the department and the health policy commission, herein  
92 the commission, 120 days prior to the closing of the hospital or the discontinuance of any  
93 essential health service provided therein. The department and the commission shall, in the event  
94 that a hospital proposes to discontinue an essential health service or services, conduct a public  
95 hearing on the closure of said essential services or of the hospital no later than 90 days prior to  
96 intended closure or discontinuation date. The department shall publish public hearing notice 9  
97 days before said hearing. Any hospital shall inform all employees of planned closure or  
98 discontinuation of services no later than 10 days before said public hearing.

99 The department and the commission shall determine whether any such discontinued  
100 services are necessary for preserving access and health status in the hospital's service area and

101 shall require hospitals to submit a plan 10 days prior to the public hearing for assuring access to  
102 such necessary services following the hospital's closure of the service, and assure continuing  
103 access to such services in the event that the department determines that their closure will  
104 significantly reduce access to necessary services. The burden shall remain on the hospital to  
105 prove that the discontinuation of services are not necessary for preserving access and health  
106 status in that hospital's region of the state health plan. The department shall conduct a public  
107 hearing prior to a determination on the closure of said essential services or of the hospital. No  
108 original license shall be granted to establish or maintain an acute-care hospital, as defined by  
109 section 25B, unless the applicant submits a plan, to be approved by both the department and the  
110 commission, for the provision of community benefits, including the identification and provision  
111 of essential health services. The department and the commission shall jointly approve, or send  
112 back for improvements, the hospital's plan no later than 10 days following the public hearing. A  
113 finalized published approved plan shall be agreed upon by the department, the commission, and  
114 the hospital seeking closure or discontinuation of essential services no later than 30 days before a  
115 closure or discontinuation shall take place. In approving the plan, the department and the  
116 commission may take into account the applicant's existing commitment to primary and  
117 preventive health care services and community contributions as well as the primary and  
118 preventive health care services and community contributions of the predecessor hospital. The  
119 department and the commission may waive this requirement, in whole or in part, at the request of  
120 the applicant which has provided or at the time the application is filed, is providing, substantial  
121 primary and preventive health care services and community contributions in its service area.

122 SECTION 8. Section 52 of said chapter 111 of the General Laws, as so appearing, is  
123 hereby amended by inserting after the definition of “Certified clinical specialist in psychiatric  
124 and mental health nursing” the following definition:-

125 “Essential Health Services” shall include all services deemed to be necessary for the  
126 preservation of public health in a specific dynamic region as determined by the state health plan  
127 based on disease prevalence, drive time, current health needs, and population data.”

128 SECTION 9. There shall be a task force which shall study the feasibility of and make  
129 recommendations regarding providing flexibility within state licensure requirements to reflect  
130 the actual needs of hospital service areas, whether established or proposed.

131 As part of this evaluation, the task force shall 1) review the feasibility of utilizing a tiered  
132 or flexible licensure structure which shall be explicitly tied to A) the regional and state health  
133 plan, and B) patient safety, and 2) shall review the feasibility of enhancing payments to  
134 community hospitals for a more direct response to the state’s health needs.

135 The task force shall consist of 13 members, 1 of whom shall be the commissioner of the  
136 department of public health or a designee, who shall be the co-chair of the task force; 1 of whom  
137 shall be the executive director of the health policy commission or a designee, who will be co-  
138 chair of the task force; 1 of whom shall be the executive director of the center for health and  
139 information services or a designee; 1 of whom shall be the attorney general or a designee, 1 of  
140 whom shall be the executive director of the Group Insurance Commission or designee, 1 of  
141 whom shall be the executive director of MassHealth or designee, 2 of whom shall be the house  
142 and senate chairs of the joint committee on health care financing; 1 of whom shall be appointed  
143 by the minority leader of the house of representatives; 1 of whom shall be appointed by the

144 minority leader of the senate; and the following members shall be appointed by the chair of the  
145 commission: 1 member of the Massachusetts Council of Community Hospitals, 1 representative  
146 of Massachusetts Hospital Association, and 1 health care economist.

147           The task force shall file a report with its findings, including any legislative and regulatory  
148 recommendations, with the clerks of the senate and house of representatives, and the joint  
149 committee on health care financing not later than 12 months after the effective date of this act.