

SENATE No. 00541

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 DoN Program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, and Franklin</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

SENATE No. 00541

By Mr. Moore, petition (accompanied by bill, Senate, No. 541) of Eldridge, Downing, Alicea and other members of the General Court for legislation relative to strengthening the DoN Program [Joint Committee on Health Care Financing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 2414 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to 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. Section 25B of chapter 111 of the General Laws, as appearing in the
2 2008 official edition, is hereby amended by deleting the definition of “Expenditure minimum
3 with respect to capital expenditures” and replacing it with 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 SECTION 2. Section 25C of Chapter 111 of the General Laws is hereby amended by
25 striking the first paragraph and inserting in place thereof the following:

26 Section 25C. Notwithstanding any contrary provisions of law, except as provided in
27 section twenty-five C1/2, no person or agency of the commonwealth or any political subdivision
28 thereof shall make substantial capital expenditures for construction of a health care facility or
29 substantially change the service of such facility unless there is a determination by the department
30 that there is need therefore, followed by review and approval by the state auditor, pursuant to
31 section 18 of Chapter 11. No such determination of need shall be required for any substantial
32 capital expenditure for construction or any substantial change in service which shall be related

33 solely to the conduct of research in the basic biomedical or applied medical research areas, and
34 shall at no time result in any increase in the clinical bed capacity or outpatient load capacity of a
35 health care facility, and shall at no time be included within or cause an increase in the gross
36 patient service revenue of a facility for health care services, supplies, and accommodations, as
37 such revenue shall be defined from time to time in accordance with section thirty-one of chapter
38 six A. Any person undertaking any such expenditure related solely to such research which shall
39 exceed or may reasonably be regarded as likely to exceed one hundred and fifty thousand dollars
40 or any such change in service solely related to such research, shall give written notice thereof to
41 the department and the division of health care finance and policy at least sixty days before
42 undertaking such expenditure or change in service. Said notice shall state that such expenditure
43 or change shall be related solely to the conduct of research in the basic biomedical or applied
44 medical research areas, and shall at no time be included within or result in any increase in the
45 clinical bed capacity or outpatient load capacity of a facility, and shall at no time cause an
46 increase in the gross patient service revenue, as defined in accordance with said section thirty-
47 one of said chapter six A, of a facility for health care services, supplies and accommodations.
48 Notwithstanding the preceding three sentences, a determination of need shall be required for any
49 such expenditure or change if the notice required by this section is not filed in accordance with
50 the requirements of this section, or if the department finds, within sixty days after receipt of said
51 notice, that such expenditure or change will not be related solely to research in the basic
52 biomedical or applied medical research areas, or will result in an increase in the clinical bed
53 capacity or outpatient load capacity of a facility, or will be included within or cause an increase
54 in the gross patient service revenues of a facility. A research exemption granted under the

55 provisions of this section shall not be deemed to be as evidence of need in any determination of
56 need proceeding.

57 SECTION 3. Chapter 11 of the General Laws is hereby amended by inserting after
58 section 17 the following new section:

59 Section 18: (a) The state auditor shall have jurisdiction to review all applications for
60 determination of need filed pursuant to Section 25C of Chapter 111. Following initial approval
61 by the department of public health, all determination of need applications shall be sent to the
62 department of the state auditor for review and approval.

63 (b) The state auditor shall approve a project only if the state auditor determines that the
64 project will not have an adverse effect on competition in the health care market and shall give
65 due consideration to whether the project is likely to increase rates of payment to providers,
66 whether the project is likely to result in an inappropriate increase in utilization of health care
67 services, and whether the proposed service could be provided by a community based provider.

68 (c) The state auditor shall report to the department of public health the results of said
69 review no later than four months after receiving notice of approval by the department. No project
70 shall be approved by the department of public health without approval of the state auditor.

71 SECTION 4. Chapter 111, as appearing in the 2008 official edition, is hereby further
72 amended by deleting section 53G and replacing it with the following new language:

73 Section 53G. Any entity that is certified or seeking certification as an ambulatory
74 surgical center by the Centers for Medicare and Medicaid Services for participation in the
75 Medicare program shall be a clinic for the purpose of licensure under section 51, and shall be

76 deemed to be in compliance with the conditions for licensure as a clinic under said section 51 if
77 it is accredited to provide ambulatory surgery services by the Accreditation Association for
78 Ambulatory Health Care, Inc., the Joint Commission on Accreditation of Healthcare
79 Organizations, the American Association for Accreditation of Ambulatory Surgery Facilities or
80 any other national accrediting body that the department determines provides reasonable
81 assurances that such conditions are met. No original license shall be issued pursuant to said
82 section 51 to establish any such ambulatory surgical clinic unless there is a determination by the
83 department that there is a need for such a facility. For purposes of this section, “clinic” shall
84 include a clinic conducted by a hospital licensed under said section 51 but not by the federal
85 government or the commonwealth. The department shall promulgate regulations to implement
86 this section.

87 SECTION 5. Section 25C of Chapter 111 of the General Laws is amended by
88 inserting after the first paragraph the following new paragraph:

89 “The Department shall conduct a statewide planning initiative for the purposes of
90 studying and coordinating the availability and delivery of health care services within the
91 commonwealth. The initiative shall examine the current supply of inpatient and outpatient
92 services, and technologies and develop a plan for the provision of new services, beds,
93 technologies, and structural expansions throughout the commonwealth, and develop a plan for
94 the continued role of community hospitals and health centers within the commonwealth. The
95 Department shall utilize this plan in its evaluation of all applications for a determination of need,
96 as required by this section, in order to determine whether the proposed expansion construction,
97 or acquisition of health care facilities or services is needed in the Commonwealth, or whether the

98 proposed expansion construction, or acquisition of health care facilities or services will
99 unnecessary duplicate ongoing services and increase health care costs in the Commonwealth.”

100 SECTION 6. Section 25C of Chapter 111 of the General Laws is amended by
101 inserting at the end of the section the following new paragraph:

102 “Any hospital seeking to expand its emergency department shall file a determination of
103 need with the department. In addition to the information required pursuant to this section, the
104 department shall require hospitals seeking emergency department expansions to demonstrate that
105 prior to filing a determination of need application, the hospital has implemented measures to
106 reduce emergency room overcrowding. The department shall promulgate regulations defining
107 the measures hospitals may take to reduce emergency room overcrowding.”

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

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

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

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

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

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

129 (b) Four of the members shall be appointed by the governor: 1 shall be appointed from
130 among the chancellor of the University of Massachusetts Medical School and a list of 3
131 nominated by said chancellor; 1 shall be appointed from among the dean of the University of
132 Massachusetts Amherst School of Public Health or Health Sciences and a list of 3 nominated by
133 said dean; 1 shall be appointed from among the heads of the non-public schools of medicine in
134 the commonwealth or their nominees; and 1 shall be appointed from among the heads of the non-
135 public schools or programs in public health in the commonwealth or their nominees.

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

141 (d) Six of the appointed members shall be non-providers: 1 shall be appointed by the
142 secretary of elder affairs; 1 shall be appointed by the secretary of veterans' services; 1 shall be
143 appointed by the governor from a list of 3 nominated by Health Care For All, Inc.; 1 shall be
144 appointed by the governor from a list of 3 nominated by the Coalition for the Prevention of
145 Medical Errors, Inc.; 1 shall be appointed by the governor from a list of 3 nominated by the
146 Massachusetts Public Health Association; and 1 shall be appointed by the governor from a list of
147 3 nominated by the Massachusetts Community Health Worker Network. Whenever an
148 organization nominates a list of candidates for appointment by the governor under this
149 subsection, the organization may nominate additional candidates if the governor declines to
150 appoint any of those originally nominated.

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

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

161 (g) Upon the expiration of the term of office of an appointive member, his successor
162 shall be appointed in the same manner as the original appointment, for a term of 6 years and until

163 the qualification of his successor. The members shall be appointed not later than 60 days after a
164 vacancy. The council shall meet at least once a month, and at such other times as it shall
165 determine by its rules, or when requested by the commissioner or any 4 members. The
166 appointive members shall receive \$100 per day that the council meets, and their reasonably
167 necessary traveling expenses while in the performance of their official duties.