

**SENATE . . . . . No. 565**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Moore, Richard (SEN)**

*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:

Moore, Richard (SEN)

DISTRICT/ADDRESS:

Worcester and Norfolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## 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. 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 expenditures and  
4 acquisitions made by or for: (1) acute care hospitals and comprehensive cancer centers as defined in  
5 section 1 of chapter 118G, only, \$7,500,000, except that expenditures for, or the acquisition of, major  
6 movable equipment not otherwise defined by the department as new technology or innovative services  
7 shall not require a determination of need and shall not be included in the calculation of the expenditure  
8 minimum; and (2) health care facilities, other than acute care hospitals, and facilities subject to licensing  
9 under chapter 111B, with respect to: (a) expenditures for, or the acquisition of, medical, diagnostic or  
10 therapeutic equipment, \$400,000; and (b) all other expenditures and acquisitions, \$800,000; provided,  
11 however, that expenditures for, or the acquisition of, any replacement of medical, diagnostic or  
12 therapeutic equipment defined as new technology or innovative services for which a determination of  
13 need has issued or which was exempt from determination of need, shall not require a determination of  
14 need and shall not be included in the calculation of the expenditure minimum; provided further, that  
15 expenditures and acquisitions concerned solely with outpatient services other than ambulatory surgery,  
16 not otherwise defined as new technology or innovative services by the department, shall not require a  
17 determination of need and shall not be included in the calculation of the expenditure minimum, unless the  
18 expenditures and acquisitions are at least \$7,500,000, in which case a determination of need shall be  
19 required. Notwithstanding the above limitations, acute care hospitals only may elect at their option to  
20 apply for determination of need for expenditures and acquisitions less than the expenditure minimum.

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

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

35 SECTION 2. Section 25C of Chapter 111 of the General Laws is amended by inserting after the first  
36 paragraph the following new paragraph:

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

47 SECTION 3. Section 25C of Chapter 111 of the General Laws is amended by inserting at the end of the  
48 section the following new paragraph:

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

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

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

63 Section 25C of Chapter 111 of the General Laws is further amended by deleting the last sentence of the  
64 7th paragraph and replacing it with the following new language:

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

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

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

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

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

85 (d) Six of the appointed members shall be non-providers: 1 shall be appointed by the secretary of elder  
86 affairs; 1 shall be appointed by the secretary of veterans' services; 1 shall be appointed by the governor  
87 from a list of 3 nominated by Health Care For All, Inc.; 1 shall be appointed by the governor from a list of  
88 3 nominated by the Coalition for the Prevention of Medical Errors, Inc.; 1 shall be appointed by the

89 governor from a list of 3 nominated by the Massachusetts Public Health Association; and 1 shall be  
90 appointed by the governor from a list of 3 nominated by the Massachusetts Community Health Worker  
91 Network. Whenever an organization nominates a list of candidates for appointment by the governor under  
92 this subsection, the organization may nominate additional candidates if the governor declines to appoint  
93 any of those originally nominated.

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

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

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