

SENATE No. 673

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 protecting Massachusetts hospitals and health systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/22/2019</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>	<i>1/23/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/23/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>1/29/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/29/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/29/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/29/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/30/2019</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>1/30/2019</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/30/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/30/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>

James B. Eldridge

Middlesex and Worcester

2/12/2019

Michael D. Brady

Second Plymouth and Bristol

2/28/2019

SENATE No. 673

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 673) of Julian Cyr, Jack Patrick Lewis, Carlos Gonzalez, Mary S. Keefe and other members of the General Court for legislation to protect Massachusetts hospitals and health systems. Health Care Financing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act protecting Massachusetts hospitals and health systems.

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 8 of chapter 6D of the Massachusetts General Laws, as appearing in
2 the 2016 Official Edition, is hereby amended in subsection (e) by inserting after the words “the
3 impact of price transparency on prices”, the following:-

4 , the impact of new and existing laws and regulations on the provider’s incumbent
5 workforce, wages, labor costs and labor supply, new hiring including the use of part-time,
6 temporary, per diem or subcontracted staff, redeployments, retraining, layoffs or reductions in
7 force, reassignment of former acute hospital workers to clinics and other outpatient settings, and
8 other significant workforce changes implemented during the reporting year.

9 SECTION 2. Subsection (g) of section 8 of chapter 6D of the Massachusetts General
10 Laws, as so appearing, is hereby amended by inserting after the second sentence the following
11 sentence:-

12 The report shall also include an analysis of any available information on ongoing
13 provider efforts and initiatives reported on under subsection (e) of this section that demonstrate
14 planning and investment in worker readiness, including maintaining the engagement of the
15 workforce and information on the workforces' labor representatives in joint implementation

16 SECTION 3. Chapter 29 of the General Laws is hereby amended by striking out section
17 2TTTT, as so appearing, and inserting in place thereof the following section:-

18 Section 2TTTT. (a) For the purposes of this section the following words shall, unless the
19 context clearly requires otherwise, have the following meanings:-

20 “Case mix”, the description and categorization of a hospital's patient population
21 according to criteria determined by the center for health information and analysis including, but
22 not limited to, primary and secondary diagnoses, primary and secondary procedures, illness
23 severity, patient age and source of payment.

24 “Commercial volume”, the proportion of patients that seek care at an acute care hospital
25 that are insured by private carriers.

26 “Major service category”, a set of service categories as specified by the center for health
27 information and analysis, including: (i) acute hospital inpatient services, by major diagnostic
28 category; (ii) outpatient and ambulatory services, by categories as defined by the Centers for
29 Medicare and Medicaid Services, or as specified by the center for health information and
30 analysis, including a residual category for “all other” outpatient and ambulatory services that do
31 not fall within a defined category; (iii) behavioral health services; (iv) professional services, by
32 categories as defined by the Centers for Medicare and Medicaid Services, or as specified by the

33 center for health information and analysis; and (v) sub-acute services, by major service line or
34 clinical offering, as specified by the center for health information and analysis.

35 “Medicaid volume”, the proportion of patients that seek care at an acute care hospital that
36 are insured by a state Medicaid program.

37 “Relative price”, the contractually negotiated amounts paid to providers by each private
38 carrier for health care services, including non-claims related payments and expressed in the
39 aggregate relative to the payer’s network-wide average amount paid to providers for same or
40 similar services, as calculated pursuant to section 10 of chapter 12C.

41 (b) There shall be established and set upon the books of the commonwealth a separate
42 fund to be known as the Community Hospital and Health Center Reinvestment Trust Fund.
43 Funds shall be expended, without further appropriation, by the secretary of health and human
44 services. The fund shall consist of money from public and private sources, such as gifts, grants
45 and donations, interest earned on such revenues, any other money authorized by the general court
46 and specifically designated to be credited to the fund, and any funds provided from other
47 sources. Money in the fund shall be used to provide annual financial support, consistent with the
48 terms of this section, to eligible acute care hospitals and community health centers. The secretary
49 of health and human services, as trustee, shall administer the fund and shall make expenditures
50 from the fund consistent with this section.

51 (c) The secretary of health and human services may incur expenses and the comptroller
52 may certify amounts for payment in anticipation of expected receipts; provided, however, that no
53 expenditure shall be made from the fund which shall cause the fund to be deficient at the close of

54 a fiscal year. Revenues deposited in the fund that are unexpended at the end of a fiscal year shall
55 not revert to the general fund and shall be available for expenditure in the following fiscal year.

56 (d) The secretary of health and human services shall annually direct payments from the
57 fund to eligible hospitals. To be eligible for payment from the fund, the recipient shall be (i) an
58 acute care hospital licensed under section 51 of chapter 111; and (ii) shall be either a “high
59 public payer facility,” as determined the center for health information and analysis or shall be a
60 hospital with an average relative price that is below the statewide average relative price. In
61 directing payments, the secretary of health and human services shall allocate payments to eligible
62 acute care hospitals based on the proportion of each eligible acute care hospital's total gross
63 patient service revenue to the combined gross patient service revenue of all eligible acute care
64 hospitals in the prior hospital rate year; provided, however, that payments shall be adjusted to
65 allocate proportionally greater payments to eligible acute care hospitals with relative prices
66 falling farthest below the statewide average relative price and shall also consider: (i) Medicaid
67 volume; (ii) commercial volume; (iii) major service categories not readily offered by providers
68 within the same primary service areas and dispersed service areas; (iv) case mix; (v) affiliation
69 status; and (vi) geography.

70 (e) Not later than 30 days after payments are allocated to eligible acute care hospitals
71 under this section, the secretary of health and human services shall file a report with the joint
72 committee on health care financing and the house and senate committees on ways and means
73 detailing the allocation and recipient of each payment.

74 (f) The secretary shall expend not less than \$15,000,000 annually from the fund to
75 community health centers, who are eligible to receive a grant under 42 USC section 254b, based

76 on financial need and to enhance the ability of community health centers to serve populations
77 efficiently and effectively through the delivery of community-based primary and preventive care,
78 clinical support, behavioral health care, care coordination, disease management services, and
79 pharmacy management services;

80 (g) Not later than 30 days after payments are allocated to eligible community health
81 centers under this section, the secretary for health and human services shall file a report with the
82 joint committee on health care finance and the house and senate committees on ways and means
83 detailing the allocation and recipient of each payment.

84 (h) No later than 180 days following passage of this act, the secretary of health and
85 human services shall develop and propose state law amendments that establish additional, annual
86 assessments to be deposited in the Community Hospital and Health Center Reinvestment Trust
87 Fund. As determined by the secretary, such assessments shall proportionally and annually assess
88 not less than \$15,000,000 from Pharmaceutical or Medical Device Manufacturing Companies as
89 defined in Section 1 of Chapter 111N of the Massachusetts General Laws or from other
90 appropriate health care entities.

91 (i) The executive office of health and human services shall promulgate regulations
92 necessary to carry out this section, including establishing a formula to allocate payments
93 pursuant to subsections (d) and (g).

94 SECTION 4. Chapter 111 of the Massachusetts General Laws, as so appearing, is hereby
95 amended by adding the following new section:-

96 Section X: (a) For the purposes of this section the following words shall, unless the
97 context clearly requires otherwise, have the following meanings:

98 "Health Care Workforce" shall mean personnel employed by or contracted to work at a
99 facility that have an effect upon the delivery of quality care to patients, including but not limited
100 to registered nurses, licensed practical nurses, unlicensed assistive personnel, service,
101 maintenance, clerical, professional and technical workers, and all other health care workers.

102 "Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching
103 hospital of the University of Massachusetts medical school, any licensed private or state-owned
104 and state-operated general acute care hospital, an acute psychiatric hospital, an acute care
105 specialty hospital, or any acute care unit within a state operated healthcare facility. This
106 definition shall not include rehabilitation facilities or long-term care facilities.

107 (b) Notwithstanding any special or general law to the contrary, each facility shall
108 establish and develop a health care workforce care planning committee within 90 days of the
109 effective date of this section. The membership of the planning committee shall include at least
110 one registered nurse, one unlicensed assistive personnel, one service/maintenance worker, one
111 professional/technical worker, one clerical worker, and one representative for each labor
112 organization representing bargaining units at the facility. The membership of the planning
113 committee shall include no more than the same number of management representatives relative
114 to the number of appointed members of the health care workforce. The committee shall
115 participate in at least one meeting of labor management committee training.

116 (c) Each facility's health care workforce planning committee shall develop, implement,
117 monitor and regularly adjust a comprehensive care team plan that accounts for each unit or other
118 facility division in which direct patient care is provided. The care team plan shall be developed
119 to ensure that the assigned health care workforce members are sufficient to ensure a safe working

120 environment and to provide quality care to the facility's patients. Further, the care team plan
121 shall account for all anticipated variables that can influence a facility's delivery of quality patient
122 care including but not limited to the development of a comprehensive acuity-based classification
123 system. The care team plan shall include account for (i) the numbers and skill mix of needed
124 health care workforce members to be assigned to patients, (ii) anticipated patient volume, (iii) the
125 time needed to complete expected care tasks, (iv) the need for specialized equipment and
126 technology, (v) the physical environment of the facility; (vi) the necessity of ensuring a safe
127 working environment; and (vii) all quality and safety data submitted on a unit-by-unit basis for
128 each facility through PatientCareLink or any similar system.

129 (d) As a condition of licensure, each facility shall submit the care team plan developed
130 under subsection (b) and (c) to the department of public health and the health policy commission
131 on at least an annual basis. Such submission shall include a certification from each member of
132 the health care workforce planning committee that the care team plan submitted accurately
133 represents the consensus decisions of the planning committee. As needed, the care plan

134 (e) The department of public health, in consultation with the health policy commission,
135 shall develop rules and regulations as needed to implement this section.

136 SECTION 5. Chapter 111 of the General Laws of Massachusetts, as so appearing, is
137 hereby amended by inserting after section 25P the following new section:-

138 Section 25Q. Community Hospital & Health Center Reinvestment Trust Fund
139 Assessment

140 (a) Notwithstanding any special or general law to the contrary, the health policy
141 commission shall establish a one-time surcharge assessment on all acute hospitals satisfying the

142 requirements of subsection (b) to be deposited according to the requirements of subsection (e).
143 The surcharge amount to be paid by each acute hospital shall equal the product of: (i) the
144 surcharge percentage; and (ii) \$90,000,000. The commission shall calculate the surcharge
145 percentage by dividing the hospital's operating surplus in the most recent fiscal year for which
146 such data is available by the total operating surplus in that fiscal year of all acute hospitals
147 paying an assessment under this section. The commission shall determine the surcharge
148 percentage for the assessment by September 30, 2019. In the determination of the surcharge
149 percentage, the commission shall use the best data available as determined by the commission.
150 The commission shall incorporate all adjustments, including, but not limited to, updates or
151 corrections or final settlement amounts, by prospective adjustment rather than by retrospective
152 payments or assessments.

153 (b) Only acute hospitals or acute hospital systems with more than \$750,000,000 in total
154 net assets and a public payer mix below 60 per cent in the latest fiscal year for which such data is
155 available shall be subject to the assessment.

156 (c) Carrier surcharge payors shall be assessed a surcharge to be paid to the commission in
157 accordance with the provisions of subsection (e). The surcharge amount shall equal the product
158 of: (i) the surcharge percentage; and (ii) \$90,000,000. The commission shall calculate the
159 surcharge percentage by dividing the surcharge payor's payments for acute hospital services by
160 the total payments for acute hospital services by all surcharge payors. The commission shall
161 determine the surcharge percentage for the assessment by September 30, 2019. In the
162 determination of the surcharge percentage, the commission shall use the best data available as
163 determined by the commission and may consider the effect on projected surcharge payments of
164 any modified or waived enforcement pursuant to subsection. The commission shall incorporate

165 all adjustments, including, but not limited to, updates or corrections or final settlement amounts,
166 by prospective adjustment rather than by retrospective payments or assessments.

167 (d) Acute hospitals and carrier surcharge payors shall pay the full amount of the
168 surcharge amount via a single payment to be made no later than 180 days from enactment of this
169 section. The assessments shall be deposited by the comptroller, as such assessments are
170 collected, in the Community Hospital & Health Center Reinvestment Trust Fund, established in
171 section 2TTTT of chapter 29 of the general laws. The commission shall establish by regulation
172 an appropriate mechanism for enforcing an acute hospital or surcharge payor's liability to the
173 fund if an acute hospital or surcharge payor does not make a scheduled payment to the fund.

174 (e) The commission shall specify by regulation appropriate mechanisms that provide for
175 determination and payment of an acute hospital, or a carrier surcharge payor's liability, including
176 requirements for data to be submitted by acute hospitals and surcharge payors. An acute
177 hospital's liability to the fund shall in the case of a transfer of ownership be assumed by the
178 successor in interest to the hospital. A surcharge payor's liability to the fund shall in the case of a
179 transfer of ownership be assumed by the successor in interest to the surcharge payor.

180 SECTION 6. Chapter 111 of the Massachusetts General Laws, as so appearing, is hereby
181 amended by striking out section 226, as so appearing, and inserting in place thereof the following
182 section:-

183 Section 226. (a) For the purposes of this section the following words shall, unless the
184 context clearly requires otherwise, have the following meanings:

185 "Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching
186 hospital of the University of Massachusetts medical school, any licensed private or state-owned

187 and state-operated general acute care hospital, an acute psychiatric hospital, an acute care
188 specialty hospital, or any acute care unit within a state operated healthcare facility. This
189 definition shall not include rehabilitation facilities or long-term care facilities.

190 "Health Care Workforce" shall mean personnel employed by or contracted to work at a
191 facility who have an effect upon the delivery of quality care to patients, including but not limited
192 to registered nurses, licensed practical nurses, unlicensed assistive personnel, service,
193 maintenance, clerical, professional and technical workers, and all other health care workers.
194 Doctors, interns, residents and management shall not be considered the health care workforce for
195 purposes of this act.

196 "Mandatory Overtime" shall mean any hours worked by a member of the health care
197 workforce in a hospital setting to deliver patient care, beyond the predetermined and regularly
198 scheduled number of hours that the hospital and nurse have agreed that the employee shall work,
199 provided that in no case shall such predetermined and regularly scheduled number of hours
200 exceed 12 hours in any 24 hour period.

201 (b) Notwithstanding any general or special law to the contrary, a facility shall not require
202 a member of the health care workforce to work mandatory overtime except in the case of an
203 emergency situation where the safety of the patient requires its use and when there is no
204 reasonable alternative.

205 (c) Under subsection (b), whenever there is an emergency situation where the safety of a
206 patient requires its use and when there is no reasonable alternative, the facility shall, before
207 requiring overtime, make a good faith effort to have such hours covered on a voluntary basis.

208 Mandatory overtime shall not be used as a practice for providing appropriate staffing for the
209 level of patient care required.

210 (d) Under subsection (c), the health policy commission established under section 2 of
211 chapter 6D, shall develop guidelines and procedures to determine what constitutes an emergency
212 situation for the purposes of allowing mandatory overtime. In developing those guidelines, the
213 commission shall consult with those employees and employers who would be affected by such a
214 policy. The commission shall solicit comment from those same parties through a public hearing.

215 (e) Facilities shall report all instances of mandatory overtime and the circumstances
216 requiring its use to the department of public health. Such reports shall be public documents.

217 (f) A member of the health care workforce shall not be allowed to exceed 16 consecutive
218 hours worked in a 24 hour period. In the event a member of the healthcare workforce works 16
219 consecutive hours, that member of the healthcare workforce must be given at least 8 consecutive
220 hours of off-duty time immediately-after the worked overtime.

221 (g) This section is intended as a remedial measure to protect the public health and the
222 quality and safety of patient care and shall not be construed to diminish or waive any rights of
223 the member of the healthcare workforce under other laws, regulations or collective bargaining
224 agreements. The refusal of a member of the healthcare workforce to accept work in excess of the
225 limitations set forth in this section shall not be grounds for discrimination, dismissal, discharge
226 or any other employment decision.

227 SECTION 7. Chapter 176O of the General Laws of Massachusetts, as appearing in the
228 2016 Official Edition, is hereby amended by inserting after section 27 thereof the following new
229 section:-

230 Section XX. Fair acute care hospital payment rates

231 (a) The commissioner shall presumptively disapprove any contracted rate of payments to
232 an acute care hospital licensed under the provisions of section 51 of Chapter 111 or its
233 contracting agents (i) that is filed by a carrier; (ii) that establishes a rate which falls below 90
234 percent of the carrier's statewide average commercial relative price in the previous calendar year
235 and as calculated by the center for health information and analysis, and; (iii) that, in the
236 determination of the commissioner, includes payment rates that are influenced by unwarranted
237 factors of price variation, including but not necessarily limited to lack of market power or brand
238 name recognition by the hospital provider. The carriers' statewide average commercial prices
239 shall be as determined by the health policy commission annually in consultation with the center
240 for health information and analysis and the division of insurance.

241 (b) The commissioner shall ensure that such contracted rates of payment filed as directed
242 by this section are applicable to all lines of business offered by each respective carrier. The
243 commissioner shall require the carrier to file amended or modified contracts that include annuals
244 rates of payment that are consistent with the standards established in subsection (a).

245 (c) The division of insurance, in consultation with the health policy commission shall
246 promulgate all rules and regulations as necessary to implement this section.