

SENATE No. 761

The Commonwealth of Massachusetts

PRESENTED BY:

John F. Keenan

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 relative to hospital closures and health planning.

PETITION OF:

NAME:

John F. Keenan

DISTRICT/ADDRESS:

Norfolk and Plymouth

SENATE No. 761

By Mr. Keenan, a petition (accompanied by bill, Senate, No. 761) of John F. Keenan for legislation relative to hospital closures and health planning. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 778 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to hospital closures and health planning.

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 16T of chapter 6A of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the
3 following:-

4 (a) There shall be a health planning council within the executive office of health and
5 human services whose purpose shall be to develop and periodically update a state health plan as
6 described in this section. The council shall consist of the secretary of health and human services,
7 or a designee, who shall serve as chair; the commissioner of public health or a designee; the
8 director of the office of Medicaid or a designee; the commissioner of mental health or a
9 designee; the secretary of elder affairs or a designee; the executive director of the center for
10 health information and analysis or a designee; the executive director of the health policy

11 commission or a designee; 3 members appointed by the governor, 1 of whom shall be a health
12 economist; 1 of whom shall have experience in health policy and planning; and 1 of whom shall
13 have experience in health care market planning and service line analysis.

14 The council shall assemble an advisory committee of not more than 13 members who
15 shall reflect a broad distribution of diverse perspectives on the health care system, including
16 health care providers and provider organizations, community health centers, academic
17 institutions, health care workforce development expertise, third-party payers, both public and
18 private, consumer representatives and labor organizations representing health care workers. The
19 advisory committee shall review drafts and provide recommendations to the council for the
20 development, and each periodic update, of the plan.

21 The council chair shall establish processes to ensure public access to the most current
22 version of the state health plan, and to allow interested persons to submit testimony toward the
23 development and updating of the plan, which shall include public hearings in geographically
24 diverse areas, and a website to allow members of the public to submit comments electronically
25 and review comments submitted by others.

26 The state health plan shall identify needs of the commonwealth in health care services,
27 providers, programs and facilities; the resources available to meet those needs; and the priorities
28 for addressing those needs. To assess and report on such needs, the council shall establish not
29 fewer than fifteen health planning regions to reflect variance in the service needs and resource
30 capacities across the different geographies of the commonwealth. The assessments, findings and
31 recommendations of the council shall be presented according to said planning regions, taking

32 into consideration each region’s chronic disease data, health outcomes data, population
33 characteristics, transportation resources and travel considerations of each region.

34 SECTION 2. Said section 16T is hereby further amended in subsection (b), by inserting
35 after the words “primary care resources” in lines 54-55 the following:-

36 ; community-based health care resources;

37 SECTION 3. Said section 16T is hereby further amended in subsection (b), by striking
38 the first sentence of the third paragraph, in lines 63 through 68, and inserting in place thereof the
39 following:-

40 The plan shall also make recommendations for the appropriate supply and distribution of
41 resources, programs, capacities, technologies and services identified in the second paragraph of
42 this subsection on a statewide and regional basis, based on an assessment of regional needs and
43 resource capacity for the subsequent 5 years and options for implementing such
44 recommendations, to include the identification of shortages and excesses in each region and
45 recommended statutory or regulatory mechanisms to incentivize a rebalancing of said shortage
46 and excess resources.

47 SECTION 4. Said section 16T is hereby further amended in subsection (c), by inserting
48 after the word “need” in line 83 the following:-

49 pursuant to section 25C of chapter 111, and for making assessments and determinations
50 on the impact of service discontinuations and closures pursuant to section 51G of chapter 111

51 SECTION 5. Said section 16T is hereby further amended by inserting at the end thereof
52 the following new subsection:-

53 (g) The secretary of human services shall work in conjunction with the agencies and
54 organizations having membership on the council, as defined in the first paragraph of subsection
55 (a), to establish agreements and mechanisms for appropriate sharing of data between agencies as
56 required for the council to fulfill its responsibilities, provided that no such agreement or
57 mechanism shall conflict with state and federal laws and rules for medical privacy.

58 SECTION 6. Section 13 of chapter 6D of the General Laws is hereby amended by
59 inserting at the end thereof the following new subsection:-

60 (l) Notice from the department of public health of a proposed hospital closure or
61 discontinuation of an essential health service pursuant to section 51G of chapter 111 shall
62 constitute a material change notice by the relevant provider or provider organization, and the
63 commission shall conduct a review of the impact of the material change pursuant to this section;
64 provided, however, that no report shall be referred to the attorney general under subsection (f).
65 The commission shall report the findings of a review conducted pursuant to this subsection,
66 including any preliminary findings, to the commissioner of public health. The executive director
67 of the commission and the commissioner of public health shall enter into a mutual agreement to
68 share documentation provided by the hospital relative to the proposed closure or discontinuation
69 in order to reduce duplicative reporting requirements by the hospital.

70 SECTION 7. Section 8 of chapter 12C of the General Laws is hereby amended in
71 subsection (c) by striking the last sentence of the second paragraph, in lines 55 through 60, and
72 inserting in place thereof the following:-

73 The center shall also identify hospitals that the center considers to be in financial distress,
74 including, but not limited to, any hospitals at risk of closing or discontinuing essential health

75 services, as defined by the department of public health under section 51G of chapter 111, and
76 shall report a list of such at-risk hospitals, which shall not be subject to disclosure under chapter
77 66, to the secretary of health and human services, the commissioner of public health and the
78 executive director of the health policy commission no less frequently than once every 120 days.

79 SECTION 8. Section 8 of chapter 12C of the General Laws, as so appearing, is hereby
80 further amended in subsection (c) by inserting after the word “subsection.” in line 63 the
81 following:-

82 Compliance with said reporting requirements shall also be considered a condition of
83 licensure pursuant to section 51 of chapter 111.

84 SECTION 9. Section 11 of chapter 12C of the General Laws, as so appearing, is hereby
85 amended by striking the section in its entirety and inserting in place thereof the following:-

86 Section 11. The center shall ensure the timely reporting of information required under
87 sections 8, 9 and 10. The center shall notify public and private healthcare payers, including third-
88 party administrators, providers and provider organizations of any applicable reporting deadlines
89 and shall promulgate regulations to establish administrative sanctions against private health care
90 payers, third-party administrators, providers and provider organizations, including, but not
91 limited to, administrative fines, for any violations of sections 8, 9 and 10. Amounts collected
92 under this section shall be deposited in the healthcare payment reform fund, established under
93 section 100 of chapter 194 of the acts of 2011.

94 The center or its designated representative may petition the superior court seeking
95 injunctive relief to enforce the provisions of sections 8, 9 and 10. If the superior court upon
96 summary hearing determines that an entity subject to the requirements of this chapter has,

97 without justifiable cause, refused to furnish information required by sections 8, 9 and 10 or any
98 regulation promulgated by the center thereunder, it shall issue an order directing the payer, third-
99 party administrator, provider or provider organization to furnish the information within 5
100 business days; provided, that any failure to obey any such order may be penalized by the court as
101 contempt thereof.

102 The center may refer delinquent entities to the executive office of health and human
103 services and the department of public health, with recommendations that the executive office of
104 health and human services or the department of public health impose any penalty authorized
105 under chapters 111 and 118E of the General Laws or other applicable regulations.

106 SECTION 10. Section 51 of chapter 111 is hereby amended by inserting after the second
107 paragraph the following new paragraph:-

108 Each hospital licensee shall comply with the uniform reporting requirements to the center
109 for health information and analysis as established pursuant to chapter 12C.

110 SECTION 11. Section 51G of chapter 111 is hereby amended by inserting after the word
111 “laws” in line 9 the following:-

112 and a demonstrated plan for financial sustainability

113 SECTION 12. Section 51G of said chapter 111, as so appearing, is hereby further
114 amended by striking subsection (4) and inserting in place thereof the following subsection:-

115 (4) (a) Any hospital shall give notice to the department 90 days prior to the
116 discontinuance of any essential health service provided therein. The department shall by
117 regulation define “essential health service” for the purposes of this section and may establish

118 distinct definitions for each health planning region as defined pursuant to section 16T of chapter
119 6A. The hospital proposing the discontinuance shall provide, with initial notice to the
120 department, (i) evidence of having given notice to municipal officials from each municipality to
121 which it provides the service as a health care resource as determined pursuant to section 16T of
122 chapter 6A of the General Laws and of having allowed reasonable opportunity for comment by a
123 stated deadline; and (ii) evidence of a plan to give public notice, including a plan allowing for a
124 reasonable opportunity for public comment, within 10 days of submission of initial notice to the
125 department. Any information given without meeting the requirements of this paragraph shall not
126 constitute notice to the department for the purpose of establishing the earliest date on which the
127 hospital discontinued the essential health service. The department shall forward any notice
128 received under this section to the secretary of labor and workforce development and to the health
129 policy commission.

130 (b) Any hospital shall give notice to the department 120 days prior the closure of the
131 hospital. The hospital undergoing the closure shall provide, with initial notice to the department:
132 (i) evidence of having given notice to municipal officials from each municipality to which it
133 provides the service as a health care resource, as determined pursuant to section 16T of chapter
134 6A of the General Laws, and of having allowed reasonable opportunity for comment; (ii) notice
135 to primary service area stakeholders including, but not limited to: (a) the hospital's patient and
136 family council; (b) all staff members of the hospital; (c) any labor organization that is currently
137 representing any members of the hospital's workforce; and (d) any members of the General
138 Court who represent the city or town in the hospital's primary service area; and (iii) evidence of
139 a plan to give public notice, including a plan allowing for a reasonable opportunity for comment
140 from the public and primary service area stakeholders pursuant to (ii) within 10 days of

141 submission of their initial notice to the department. Any information given without meeting the
142 requirements of this paragraph shall not constitute notice to the department for the purpose of
143 establishing the earliest date on which the hospital may close. The department shall forward any
144 notice received under this section to the secretary of labor and workforce development and to the
145 health policy commission.

146 (c) The department shall, in the event that a hospital intends to close or proposes to
147 discontinue an essential health service or services, determine whether any closed or discontinued
148 services are necessary for preserving access and health status in the hospital's service area,
149 require hospitals to submit a plan for ensuring access to such necessary services following the
150 hospital's closure or discontinuation of the service and ensure continuing access to such services
151 in the event that the department determines that closure will significantly reduce access to
152 necessary services. If the hospital's plan for ensuring continued access to a necessary service
153 relies upon the availability of similar services at another hospital or health facility with which it
154 does not share common ownership, the department shall require the hospital to submit with said
155 plan a statement from each other hospital or health facility listed in the plan affirming capacity to
156 provide continued access as described in the plan. The department shall conduct a public hearing
157 prior to a determination on the closure of said essential services or of the hospital.

158 (d) The department, in conducting any assessment and prior to making any determination
159 pursuant to paragraph (c), shall refer to the state health plan and regional considerations
160 established pursuant to section 16T of chapter 6A, and shall also request and consider
161 information presented by the health policy commission pursuant to section 13 of chapter 6D.

162 (e) If a hospital closes or discontinues an essential health service without a plan approved
163 by the department pursuant to paragraphs (a) and (b) of this section, that hospital shall not be
164 eligible to have an application approved pursuant to section 25C of chapter 111 for a period of
165 two years from the date the service is discontinued, until the essential health service is restored
166 or until such time as the department is satisfied that a plan is in place that, at the time of the
167 discontinuance, would have met the requirements of paragraph (b). If the closed hospital or the
168 hospital discontinuing the essential health service is part of a network of hospitals under common
169 ownership, the same restrictions shall apply against each hospital owned, managed or controlled
170 by the hospital network. The commissioner may waive a restriction established pursuant to this
171 subsection if the application of such restriction causes an imminent hazard to the public health.

172 (f) If a hospital executes a plan to close or to discontinue an essential health service, said
173 plan not having been approved by the department pursuant to paragraphs (a) and (b) of this
174 section, that hospital shall not be eligible to receive funding under sections 2PPP or 2GGGG of
175 chapter 29, or under section 2G of Chapter 111, for a period of two years from the date the
176 service is discontinued, until the essential health service is restored or until such time as the
177 department is satisfied that a plan is in place that, at the time of the discontinuance, would have
178 met the requirements of paragraph (b). If the closed hospital or the hospital discontinuing the
179 essential health service is part of a network of hospitals under common ownership, the same
180 restrictions shall apply against each hospital owned, managed or controlled by the hospital
181 network. The commissioner may waive a restriction established pursuant to this subsection if the
182 application of such restriction causes an imminent hazard to the public health.

183 (g) No original license shall be granted to establish or maintain an acute-care hospital, as
184 defined by section 25B of chapter 111, unless the applicant submits a plan, to be approved by the

185 department, for the provision of community benefits, including the identification and provision
186 of essential health services. In approving the plan, the department may take into account the
187 applicant's existing commitment to primary and preventive health care services and community
188 contributions as well as the primary and preventive health care services and community
189 contributions of the predecessor hospital. The department may waive this requirement, in whole
190 or in part, at the request of the applicant.

191 SECTION 13. Section 51G of said chapter 111 is hereby amended by inserting after
192 subsection (6) the following subsection:-

193 (7) A demonstrated plan for financial sustainability shall include:

194 (a) a needs assessment that identifies the current state of contracting, current and
195 projected resources for coordination and delivery of care, areas for additional education and
196 assessments of technology and analytic resources;

197 (b) an implementation plan listing activities aimed at supporting and improving the
198 delivery of health care services delivered by the licensee, including any clinical affiliations as
199 defined in section 1 of chapter 12C of the General Laws, and how well those activities are
200 supported by their current resources;

201 (c) a financial plan that includes an evidence-based budget, contains proof of sources of
202 revenue to cover expenses and is based on a hospital's past financial performance, or in the case
203 of a new hospital, comparable to a hospital of similar size, providing same or similar services, in
204 a similar geographic type, and with a similar anticipated case mix based on epidemiological
205 surveillance data; and

206 (d) any other documentation that the department sees fit to evaluate the sustainability of
207 essential health services at said hospital.

208 SECTION 14. Section 56 of chapter 111 is hereby amended by inserting after the second
209 sentence the following new sentence:-

210 Whoever, being licensed under section 51, discontinues an essential health service or
211 closes a hospital under said license and in violation of section 51G shall, for a first offense, be
212 punished by a fine of not more than \$150,000 and for a subsequent offense by a fine of not more
213 than \$300,000 or by imprisonment for not more than two years or both. Any licensee under
214 section 51 that closes a hospital under said license and in violation of section 51G shall be
215 punished by a fine of not more than \$500,000, by imprisonment for not more than two years or
216 both; provided, that if a closed hospital is part of a network of hospitals under common
217 ownership the penalties herein described shall be levied against the authority, entity or
218 corporation having control of the hospital network.