

SENATE No. 899

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 further regulating hospitals.

PETITION OF:

NAME:

Bruce E. Tarr

Patricia D. Jehlen

DISTRICT/ADDRESS:

First Essex and Middlesex

Second Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FURTHER REGULATING HOSPITALS.

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 111 of the General Laws is hereby amended by inserting
2 after section 5R the following section:—

3 Section 5S. The department of public health shall annually, by the first of
4 October, make a determination of which acute hospitals and hospital services in the
5 commonwealth are needed to protect the health of their communities. The department shall
6 consider the following factors, among others, in making its determination:

7 (a) the availability of needed emergency and non-emergency inpatient and
8 ambulatory hospital services to the citizens of each community or catchment area, (b) standards
9 of travel time for those citizens, (c) financial accessibility and openness to serving persons
10 vulnerable to deprivation of needed care, (d) acceptability and ease of use, (e) overall need for
11 hospital care in each community, in light of the demonstrated comparative cost, safety, and
12 efficacy of hospital care and its alternatives.

13 In its determinations, the department shall give particular consideration to the needs
14 of low-income, uninsured, and other residents of the commonwealth who are especially
15 vulnerable to underservice.

16 In annual revisions of the listing of essential acute hospitals and hospital
17 services, the department shall evaluate individual hospitals in the light of any changes in the
18 services or behavior of other nearby hospitals.

19 The department shall also set standards for identifying hospitals in danger of closing,
20 or of changing services in ways that could harm their communities.

21 Then, the department will apply those standards and identify hospitals in danger of
22 closing, or of changing services in ways that could harm their communities, and work pre-
23 emptively to preserve all such hospitals deemed needed by their communities. All acute care
24 hospitals in receivership, considered by informed persons to be at risk of receivership, or
25 otherwise predicted by sound methods of be vulnerable to closing, changing, or reducing
26 services in ways that could harm their communities shall be particularly scrutinized for inclusion
27 on the list of essential acute care hospitals. Such pre-emptive work shall include technical and
28 financial assistance, as described subsequently.

29 SECTION 2. Said chapter 111 is hereby further amended by inserting after section
30 70F the following seven sections:—

31 Section 70G. The department may bring an action in the superior court
32 department of the trial court requesting the appointment of a receiver to operate a hospital.
33 Before the department brings such an action, a hospital administrator designated by the
34 commissioner shall be informed that the department intends to bring such an action and shall be

35 informed of the reasons for the decision to bring such an action. Said administrator may submit
36 his recommendations concerning the hospital proposed for receivership within two business days
37 after receiving the above information. After said two-day period, the department, in its sole
38 discretion may bring an action in the superior court department described in this section. A
39 patient residing in the hospital's primary service area, or the guardian of such a patient, may
40 petition the department of public health to seek a receivership under this section. If the
41 department denies such petition or fails to commence action within five days, the party bringing
42 the petition may bring suit in the superior court department for the appointment of a receiver or
43 other appropriate relief under this section. Upon filing of this suit, a patient or guardian shall
44 serve a copy of the complaint on the department. Prior to any hearing for the appointment of a
45 receiver, the department shall file, and the court shall consider, an affidavit made under oath
46 describing the results of any investigation conducted by the department, including a statement of
47 any findings with respect to the resident's petition and the reasons for not filing an action
48 pursuant to this section, and shall append thereto the two most recent reports of deficiencies in
49 that hospital. Nothing in this chapter shall be construed as abrogating or superseding any
50 common law or statutory right of any person to bring an action requesting appointment of a
51 receiver to operate a hospital.

52 The court shall issue a short order of notice and, where an emergency is alleged, set
53 the matter for hearing within five days after filing of the action. In all other cases, a hearing shall
54 be set within two weeks. A receiver shall be appointed immediately, on an ex parte basis, if it
55 appears by verified complaint or by affidavit that there are grounds for the appointment of a
56 receiver and that immediate appointment is necessary to prevent harm to the patients.

57 The court will name as receiver the commissioner of public health or his/her
58 designee.

59 Appropriate grounds for establishing a receivership under this section shall be any of
60 the following:

61 (a) to assure the temporary continued operation of the hospital when there is a
62 substantial risk of its closing before adequate arrangements have been made for the transfer of its
63 patients;

64 (b) to maintain any needed health care services for residents within the service area
65 of the hospital when such services are not otherwise available or reasonably convenient to the
66 service area;

67 (c) to maintain any health care services needed by residents within a service area of
68 the hospital who are particularly vulnerable to medical underservice or denial of needed medical
69 services;

70 (d) to secure the continued operation of effective or potentially effective, low-cost
71 facilities;

72 (e) to protect the lives and safety of patients when the hospital is operating without
73 a license or a valid, completed application for licensure on file with and awaiting action by the
74 department of public health, or if the department has denied, revoked, or refused to renew a
75 license, or has initiated license denial, revocation, or non-renewal procedures and the lives,
76 health, safety, or welfare of the patients cannot be adequately assured pending the full hearing
77 and decision on the matter;

78 (f) a declaration by the governor of a public health emergency pursuant to section
79 2A of chapter 17, if the declaration, by its terms, is applicable.

80 A receiver appointed hereunder shall not take any actions or assume any
81 responsibilities inconsistent with this purpose.

82 No person shall impede the operation of a receivership created under this section.
83 There shall be an automatic stay for a sixty-day period subsequent to the appointment of a
84 receiver, of any action that would interfere with the functioning of the hospital, including but not
85 limited to cancellation of insurance policies executed by the licensee, termination of utility
86 services, attachments or set-offs of resident trust funds and working capital accounts, and
87 repossession of equipment used in the hospital.

88 Section 70H. When a receiver is appointed, the licensee shall be divested of
89 possession and control of the hospital in favor of the receiver. With the approval of the court, the
90 receiver shall have authority to remedy violations of federal and state law and regulations
91 governing the operation of the hospital; to hire, direct, manage and discharge any consultant or
92 employees, including the administrator of the hospital; to receive and expend in a reasonable and
93 prudent manner the revenues of the hospital; to continue the business of the hospital and the care
94 of the patients; to perform those acts necessary or desirable to accomplish the purpose of the
95 receivership; to perform regular accountings and make periodic reports to the court; and to
96 exercise such additional powers and perform such additional duties, as the court may deem
97 appropriate.

98 The receiver shall apply the current revenues of the hospital to current operating
99 expenses and, subject to the following provisions, to debts incurred by the licenses prior to the

100 appointment of the receiver. The receiver shall ask the court for direction in the treatment of
101 debts incurred prior to this appointment where such debts appear extraordinary, of questionable
102 validity, or unrelated to the normal and expected maintenance and operation of the facility, or
103 where payment of debts will interfere with the purposes of the receivership. Priority shall be
104 given by the receiver to expenditures for current, direct patient care.

105 Revenues held by or owing to the receiver in connection with the operation of the
106 hospital shall be exempt from attachment and trustee process. Any retroactive payment that may
107 be due or owing to the hospital as the result of a retroactive rate adjustment shall be disposed of
108 in accordance with the orders of the court, after it considers competing claims to said payments.

109 The receiver shall not close the hospital without leave of court. In ruling on the issue
110 of closure, the court shall consider the best interest of the residents of the commonwealth and the
111 patients and the possibility of transferring them to suitable, alternative placements; the rights,
112 interests and obligations of the licensee, the owner, the mortgagees, and other secured parties and
113 lienholders; the licensure status of the facility; the condition of the real estate with respect to
114 state and federal construction requirements and any other factor which the court deems relevant.

115 If the court has approved closure of the hospital, the receiver shall make major repairs
116 to the real or personal property of the hospital but only to the extent necessary to prevent or
117 remove jeopardy to the health, safety or welfare of the patient. If the court has not directed
118 closure of the hospital, the receiver may make such repairs but only to the extent necessary to
119 prevent or remove jeopardy to the health, safety or welfare of the residents or to minimally
120 qualify the hospital for continuing participation in the medical care and assistance programs,

121 established under chapter one hundred and eighteen E, or in the program of health insurance for
122 the aged and disabled under Title XVIII of the Social Security Act (P.L.-89-97).

123 In the event that a receiver appointed under section seventy G does not have sufficient
124 capital to advanced for major repairs or improvements, the receiver may petition the court for
125 permission to apply to the department for a loan. Notice shall be given to the owner of the real
126 estate, the licensee, the department, and to any mortgagee and other secured parties and
127 lienholders of record. The court shall after hearing, authorize the receiver to apply for such
128 assistance if it determines that the hospital should not be closed, and the commissioner certifies
129 that the repair or improvement is necessary to prevent or remove jeopardy to patients or to
130 minimally qualify the facility for participation in said medical care and assistance program and
131 said program of health insurance for the aged and disabled; or it determines that the hospital
132 should be closed and the commissioner certifies that the repair or improvement is necessary to
133 prevent jeopardy to patients for the limited period of time that they are awaiting transfer. The
134 purposes of this provision shall be to protect patients and to prevent the closure of facilities
135 which, given proper management, are likely to be viable operations. This section shall not be
136 construed as a method of financing major repairs or capital improvements to hospitals which
137 have been abandoned because the licensee has been unable to secure financing by conventional
138 means.

139 Upon court approval, the receiver may apply to the department of medical security,
140 which shall administer financial assistance from the essential hospital preservation trust fund.

141 The licensee or the owner may apply to the court to determine the reasonableness of
142 any expenditure by the receiver.

143 Section 70I. A receiver shall not be required to honor any lease, mortgage, or
144 secured transaction entered into by the licensee of the hospital if the court finds that the
145 agreement was entered into for a fraudulent purpose or to hinder or delay creditors or that the
146 rental, price or rate of interest required to be paid under the agreement is in excess of a
147 reasonable rental, price or rate of interest at the time the agreement was entered into; or the
148 agreement is unrelated to the operation of the hospital.

149 If the receiver is in possession of real or personal property subject to a lease,
150 mortgage or security interest which the receiver is permitted to avoid, and if the possession of
151 said property is necessary for the continued operation of the hospital the receiver shall apply to
152 the court to set a reasonable rental, price or rate of interest to be paid by the receiver to the
153 person entitled thereto during the duration of the receivership. The court shall hold a hearing on
154 the application within fifteen days. The receiver shall send notice of the application to any
155 owners of record and to mortgagees and other secured parties and lienholders of record of the
156 property involved at least ten days prior to the hearing. In no event shall the amount set by the
157 court exceed what is reasonable for the hospital. Payment by the receiver of the amount
158 determined by the court to be reasonable shall be a defense to any action against the receiver for
159 payment or for the possession of said property subject to the lease, mortgages or security interest
160 involved by any person who received such notice.

161 Notwithstanding the foregoing, there shall be no foreclosure or eviction during the
162 receivership period where such foreclosure or eviction would, in the view of the court, serve to
163 defeat the purpose of the receivership.

164 Section 70J. A receivership shall not be terminated if a license to operate the
165 facility would not be in effect upon termination; or the hospital would revert to the licensee
166 during the pendency of proceedings to revoke, deny, or suspend its license; or the hospital revert
167 to it person not approved for licensure by the department.

168 The receivership may be terminated by the court upon the petition of the receiver, the
169 attorney-general, or any other interested party provided that the court finds that the deficiencies
170 or problems that were the cause of the receivership have been remedied or eliminated. This
171 would take place when the threat to the lives, health, or safety of the residents of the area have
172 been eliminated; when access to care has been secured; or when costs of care have been
173 sufficiently contained through other means.

174 A temporary receivership shall not exceed five years.

175 Section 70K. No person shall bring an action against a receiver appointed
176 under section seventy G without first securing leave of court. The receiver shall be liable in his
177 personal capacity for gross negligence or intentional wrongdoing. In all other cases, the receiver
178 shall be liable in his official capacity only, and any judgment rendered shall be satisfied out of
179 the receivership assets.

180 Section 70L. An order appointing a receiver under section seventy G shall
181 have the effect of a license for the duration of the receivership. The receiver shall be responsible
182 to the court for the conduct of the hospital during the receivership, and any violation of
183 regulations governing the conduct of the hospital, if not promptly corrected, shall be reported by
184 the department to the court.

185 Section 70M. The department is hereby authorized and directed to promulgate
186 rules and regulations necessary for the implementation of sections seventy G to seventy L,
187 inclusive.

188 SECTION 3. Said chapter 111 is hereby further amended by inserting after section
189 72Q the following section:—

190 Section 72Q 1/2. The court shall set a reasonable compensation for the
191 receiver and shall require the receiver to furnish a bond. Such expenses shall be paid from the
192 revenues of the hospital. The licensee shall be liable for any adjustment to the hospital's rate that
193 is necessitated by the provisions of the first paragraph of this section.

194 The commonwealth shall have a lien for any expenditure under section seventy H
195 upon the following property: the building in which the hospital is located; the land on which the
196 hospital is located; any fixtures, equipment or goods used in the operation of the hospital. Such
197 lien shall be prior to any mortgage or lien which the court finds has been executed or obtained
198 for a fraudulent purpose or to hinder or delay creditors. Such lien shall also be prior to a
199 mortgage or lien held by any person with an ownership interest in the hospital; or any person
200 which controls or has the ability to directly or indirectly control to any significant degree the
201 management of policies of the licensee or the hospital; or any person related to the licensee or to
202 the hospital by any significant degree of common ownership or common control. The receiver
203 shall cause notice of any lien created hereunder to be duly filed.

204 As an additional remedy for recouping commonwealth expenditures, the licensee,
205 persons responsible for the affairs of the licensee, or the owner, may be held liable for such
206 expenditures to the extent that any of these persons benefits financially from the expenditure.

207 Recoupment shall also be available against any person who, prior to the appointment of the
208 receiver, breached a legal responsibility to assure appropriate maintenance of the hospital, if such
209 breach necessitated the expenditure by the commonwealth, and against any person who was
210 responsible for an abandonment of the hospital.

211 SECTION 4. Chapter 118F of the General Laws is hereby amended by adding the
212 following two sections:—

213 Section 21. 1. There is hereby established an essential acute hospital
214 stabilization and preservation trust fund which shall be administered and expended by the
215 division of health care, finance and policy (DHCFP).

216 The fund shall consist of all sums collected under an essential hospital preservation
217 assessment levied annually and amounting to 0.25 percent of total annual revenue for each acute
218 hospital operating in the commonwealth.

219 To keep the accumulated trust fund's value from exceeding 1.0 percent of statewide
220 acute hospital revenue, the assessment shall be reduced or eliminated in any year in which the
221 accumulated trust fund is expected to exceed 1.0 percent of state-wide total acute hospital
222 revenue. The assessment shall be reduced as needed in any year in which an assessment smaller
223 than 0.25 percent will bring the trust fund to 1.0 percent of statewide total acute hospital revenue.

224 In the event that a shortfall arises, and the fund is unable to meet all of its
225 obligations, the commissioner of DHCFP will notify the commissioner of public health, and, at
226 the direction of the commissioner of public health, the commissioner of DHCFP will make
227 special binding uniform proportionate assessments on all hospitals to generate funds needed.

228 Such assessments will not exceed 25 percent of total expenses, averaged over the past three
229 years, of the hospitals in receivership.

230 The trust fund shall be used solely for stabilizing and preserving essential hospitals
231 determined to be in danger of closing or reducing needed services. Stabilization and preservation
232 assistance may take either of these two forms:

233 (a) financing for technical and administrative assistance for hospitals needing
234 reorganization, and

235 (b) partial underwriting of capital and operating costs to stabilize needed but
236 financially distressed hospitals.

237 2. The commissioner of DHCFP shall, if necessary, obtain additional funds for the
238 purposes described in the previous subsection through a reallocation, in favor of financially
239 distressed but needed hospitals, of distributions from the hospital free care pool.

240 Section 22. 1. Any hospital which appears on the department of public health's
241 annual listing of essential acute hospitals may petition the DHCFP for funding for technical and
242 administrative assistance, or for grants towards capital or operating costs. The DHCFP will
243 determine whether such assistance or grants are essential or important to the survival of an entire
244 essential hospital or the survival of listed essential services at a particular hospital.

245 At the initiative of the commissioner of DHCFP, of the speaker of the

246 Massachusetts house, of the president of the Massachusetts senate, of the administrator or
247 receiver of the hospital, of the trustees of the hospital, or of a patient residing in a hospital's
248 primary service area or of the guardian of such a patient, the department of public health shall

249 undertake a redetermination of whether a hospital previously excluded from the annual listing of
250 essential acute hospitals deserves to be placed on that list.

251 At the initiative of the commissioner of DHCFP, of the commissioner of public
252 health, or of a patient residing in a hospital's primary service area or of the guardian of such a
253 patient, the DHCFP shall also undertake determination of the need for technical assistance or
254 grants for a particular hospital.

255 3. The DHCFP shall identify accounting firms, law firms, hospital administration
256 consultants and other needed experts with whom it may contract as needed to provide technical
257 and administrative assistance to essential hospitals in danger of closing or to hospitals where
258 essential services are in danger of closing.