

SENATE No. 1460

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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 determinations of need.

PETITION OF:

NAME:

Rebecca L. Rausch

DISTRICT/ADDRESS:

Norfolk, Worcester and Middlesex

SENATE No. 1460

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 1460) of Rebecca L. Rausch for legislation relative to health care providers material changes and financial impact. Public Health.

The Commonwealth of Massachusetts

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

An Act relative to determinations of need.

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 13 of chapter 6D, as appearing in the 2020 Official Edition, is
2 hereby amended by striking out subsection (a) and inserting in place thereof the following
3 subsection:-

4 (a) Every provider or provider organization shall, not less than 60 days before making
5 any material change to its operations or governance structure, submit notice to the commission,
6 the center and the attorney general of such proposed change. Material changes shall include, but
7 not be limited to: (i) a substantial change in capacity at a new or existing site; (ii) a corporate
8 merger, acquisition or affiliation of a provider or provider organization and a carrier; (iii)
9 mergers or acquisitions of hospitals or hospital systems; (iv) acquisition of insolvent provider
10 organizations; and (v) mergers or acquisitions of provider organizations which will result in a
11 provider organization having a near-majority of market share in a given service or region.

12 Within 30 days of receipt of a notice filed under this section, the commission shall
13 conduct a preliminary review to determine whether the material change is likely to result in a
14 significant impact on the commonwealth’s ability to meet the health care cost growth
15 benchmark, established pursuant to section 9 of this chapter, or on the competitive market. If the
16 commission finds that the material change is likely to have a significant impact on the
17 commonwealth’s ability to meet the health care cost growth benchmark, or on the competitive
18 market, the commission may conduct a cost and market impact review under this section.

19 SECTION 2. Said section 13 of said chapter 6D, as so appearing, is hereby further
20 amended by striking out subsection (e) and inserting in place thereof the following subsection:-

21 (e) The commission shall make factual findings and issue a preliminary report on the cost
22 and market impact review. In the report, the commission shall identify any provider or provider
23 organization that meets all of the following criteria: (i) the provider or provider organization has,
24 or likely will have as a result of the material change, a dominant market share for the services it
25 provides; (ii) the provider or provider organization charges, or likely will charge as a result of the
26 material change, prices for services that are materially higher than the median prices charged by
27 all other providers for the same services in the same market; and (iii) the provider or provider
28 organization has, or likely will have as a result of the material change, a health status adjusted
29 total medical expense that is materially higher than the median total medical expense for all other
30 providers for the same service in the same market.

31 SECTION 3. Subsection (f) of section 13 of said chapter 6D is hereby amended by
32 adding, after the third sentence, the following sentence:-

33 The commission shall provide a copy of said final report to the department of public
34 health, which shall be included in the written record and considered by the department of public
35 health during its review of any applicable application for determination of need and which shall
36 be considered in connection with licensure or other regulatory actions involving the provider or
37 provider organization.

38 SECTION 4. Section 25C of chapter 111 is hereby amended by striking out subsection (f)
39 and inserting in place thereof the following subsection:-

40 (f) Except as provided in section 25C1/2, a person or agency of the commonwealth or any
41 political subdivision thereof shall not acquire an existing health care facility unless the person or
42 agency files a determination of need application pursuant to this section.

43 SECTION 5. Section 25C of chapter 111 is hereby further amended by striking out
44 subsection (g) and inserting in place thereof the following subsection:-

45 (g) The department, in making any determination of need, shall assess both the applicant
46 and the proposed project, shall be guided by the state health plan, shall encourage appropriate
47 allocation of private and public health care resources and the development of alternative or
48 substitute methods of delivering health care services so that adequate health care services will be
49 made reasonably available to every person within the commonwealth at the lowest reasonable
50 aggregate cost, shall be guided by the commonwealth's cost containment goals, shall assess
51 impacts both on the applicant's patients and on other residents of the commonwealth, shall take
52 into account any comments and relevant data from the center for health information and analysis,
53 the health policy commission including but not limited to a cost and market impact review report
54 by the health policy commission pursuant to subsection (f) of section 13 of chapter 6D, and any

55 other state agency or entity, and may impose reasonable terms and conditions as the department
56 determines are necessary to achieve the purposes and intent of this section. The department may
57 also recognize the special needs and circumstances of projects that: (1) are essential to the
58 conduct of research in basic biomedical or health care delivery areas or to the training of health
59 care personnel; (2) are unlikely to result in any increase in the clinical bed capacity or outpatient
60 load capacity of the facility; and (3) are unlikely to cause an increase in the total patient care
61 charges of the facility to the public for health care services, supplies, and accommodations, as
62 such charges shall be defined from time to time in accordance with section 5 of chapter 409 of
63 the acts of 1976.

64 SECTION 6. Section 25C of chapter 111 is hereby further amended by striking out
65 subsection (h) and inserting in place thereof the following subsection:-

66 (h) Applications for such determination shall be filed with the department, together with
67 other forms and information as shall be prescribed by, or acceptable to, the department. A
68 duplicate copy of any application together with supporting documentation for such application,
69 shall be a public record and kept on file in the department. The department may require a public
70 hearing on any application at its discretion or at the request of the attorney general. The attorney
71 general may intervene in any hearing under this section. A reasonable fee, established by the
72 department, shall be paid upon the filing of such application; provided, however, that in no event
73 shall such fee exceed 0.2 per cent of the capital expenditures, if any, proposed by the applicant.
74 The department may also require an independent cost-analysis be conducted, at the expense of
75 the applicant, by an entity solely selected by the department, including but not limited to another
76 state agency, to demonstrate that the application is consistent with the commonwealth's efforts to
77 meet the health care cost-containment goals established by the commission. Such entity may

78 request, and the applicant may not unreasonably withhold, confidential data and documents
79 necessary to conduct an independent cost-analysis pursuant to such section; provided, that any
80 confidential data and documents so requested shall be provided to the entity conducting the
81 independent cost-analysis, the department, the health policy commission, and the attorney
82 general, but shall not be disclosed to any person without the consent of the applicant, except in
83 summary form, or when the department, health policy commission or attorney general
84 determines that such disclosure should be made in the public interest after taking into account
85 any privacy, trade secret or anticompetitive considerations; and provided further, that any
86 confidential data and documents so provided shall not be public records and shall be exempt
87 from disclosure under clause Twenty sixth of section 7 of chapter 4 or section 10 of chapter 66.

88 SECTION 7. Section 25C of chapter 111 is hereby further amended by striking out
89 subsection (j) and inserting in place thereof the following subsection:-

90 (j) The department shall so approve or disapprove in whole or in part each such
91 application for a determination of need within 4 months after filing with the department;
92 provided, however, that the department may, on 1 occasion only, delay the action for up to 2
93 months after the applicant has provided information which the department reasonably has
94 requested during the 8 month period; provided further, that period for review of an application
95 for which an independent cost-analysis is required shall be stayed until a complete and final
96 independent cost-analysis is received and accepted by the department and the center for health
97 information and analysis, the health policy commission, the attorney general and any other state
98 agency or entity is provided a reasonable opportunity for comment. Notwithstanding the
99 provisions of this section, any determination of need issued to a holder that is subject to a cost
100 and market impact review under section 13 of chapter 6D shall not go into effect until a

101 minimum of 30 days after the issuance of a final report under subsection (f) of section 13 of
102 chapter 6D; provided further, that any determination of need issued to a holder that is subject to a
103 performance improvement plan pursuant to section 10 of said chapter 6D shall not go into effect
104 until 30 days after a determination by the health policy commission that the holder is
105 implementing or has implemented said performance improvement plan in good faith; provided,
106 however, that the health policy commission may rescind its determination that the holder is
107 implementing a performance improvement plan in good faith at any time prior to successful
108 completion of the performance improvement plan. Applications remanded to the department by
109 the health facilities appeals board under section 25E shall be acted upon by the department
110 within the same time limits provided in this section for the department to approve or disapprove
111 applications for a determination of need. If an application has not been acted upon by the
112 department within such time limits, the applicant may, within a reasonable period of time, bring
113 an action in the nature of mandamus in the superior court to require the department to act upon
114 the application.