

HOUSE No. 1089

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to strengthening the determination of need process.

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
2 and replacing it with the following new language:

3 “Expenditure minimum with respect to substantial capital expenditures”, with respect to
4 expenditures and acquisitions made by or for: (1) acute care hospitals and comprehensive cancer
5 centers as defined in section 1 of chapter 118G, only, \$7,500,000, except that expenditures for,
6 or the acquisition of, major movable equipment not otherwise defined by the department as new
7 technology or innovative services shall not require a determination of need and shall not be
8 included in the calculation of the expenditure minimum; and (2) health care facilities, other than
9 acute care hospitals, and facilities subject to licensing under chapter 111B, with respect to: (a)
10 expenditures for, or the acquisition of, medical, diagnostic or therapeutic equipment, \$400,000;
11 and (b) all other expenditures and acquisitions, \$800,000; provided, however, that expenditures
12 for, or the acquisition of, any replacement of medical, diagnostic or therapeutic equipment
13 defined as new technology or innovative services for which a determination of need has issued or
14 which was exempt from determination of need, shall not require a determination of need and

15 shall not be included in the calculation of the expenditure minimum; provided further, that
16 expenditures and acquisitions concerned solely with outpatient services other than ambulatory
17 surgery, not otherwise defined as new technology or innovative services by the department, shall
18 not require a determination of need and shall not be included in the calculation of the expenditure
19 minimum, unless the expenditures and acquisitions are at least \$7,500,000, in which case a
20 determination of need shall be required. Notwithstanding the above limitations, acute care
21 hospitals only may elect at their option to apply for determination of need for expenditures and
22 acquisitions less than the expenditure minimum.

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

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

37 government or the commonwealth. The department shall promulgate regulations to implement
38 this section.

39 SECTION 2. Section 25C of chapter 111 of the General Laws, as appearing in the 2006
40 Official Edition, is hereby amended by inserting after the first paragraph the following new
41 paragraph:

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

53 Section 25C of chapter 111 of the General Laws is further amended by inserting at the
54 end of the section the following new paragraph:

55 “Any hospital seeking to expand its emergency department shall file a determination of
56 need with the department. In addition to the information required pursuant to this section, the
57 department shall require hospitals seeking emergency department expansions to demonstrate that
58 prior to filing a determination of need application; the hospital has implemented measures to

59 reduce emergency room overcrowding. The department shall promulgate regulations defining
60 the measures hospitals may take to reduce emergency room overcrowding.”

61 Section 25C of chapter 111 of the General Laws is further amended by inserting at the
62 end of the 2nd paragraph the following language:

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

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

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

75 SECTION 3. Section 3 of chapter 17 of the General Laws is hereby amended by deleting
76 section 3 in its entirety and replacing it with the following new language:

77 Section 3. (a) There shall be a public health council to advise the commissioner of public
78 health and to perform other duties as required by law. The council shall consist of the
79 commissioner of public health as chairperson and 17 members appointed for terms of 6 years

80 under this section. The commissioner may designate 1 of the members as vice-chairperson and
81 may appoint sub-committees or special committees as needed.

82 (b) Four of the members shall be appointed by the governor: 1 shall be appointed from
83 among the chancellor of the University of Massachusetts Medical School and a list of 3
84 nominated by said chancellor; 1 shall be appointed from among the dean of the University of
85 Massachusetts Amherst School of Public Health or Health Sciences and a list of 3 nominated by
86 said dean; 1 shall be appointed from among the heads of the non-public schools of medicine in
87 the commonwealth or their nominees; and 1 shall be appointed from among the heads of the non-
88 public schools or programs in public health in the commonwealth or their nominees.

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

94 (d) Six of the appointed members shall be non-providers: 1 shall be appointed by the
95 secretary of elder affairs; 1 shall be appointed by the secretary of veterans' services; 1 shall be
96 appointed by the governor from a list of 3 nominated by Health Care For All, Inc.; 1 shall be
97 appointed by the governor from a list of 3 nominated by the Coalition for the Prevention of
98 Medical Errors, Inc.; 1 shall be appointed by the governor from a list of 3 nominated by the
99 Massachusetts Public Health Association; and 1 shall be appointed by the governor from a list of
100 3 nominated by the Massachusetts Community Health Worker Network. Whenever an
101 organization nominates a list of candidates for appointment by the governor under this

102 subsection, the organization may nominate additional candidates if the governor declines to
103 appoint any of those originally nominated.

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

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

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