

SENATE No. 541

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 strengthening the DoN Program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	
<i>Geraldo Alicea</i>	<i>6th Worcester</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>James B. Eldridge</i>	

SENATE No. 541

By Mr. Moore, a petition (accompanied by bill, Senate, No. 541) of Richard T. Moore, Geraldo Alicea, Benjamin B. Downing and James B. Eldridge for legislation relative to strengthening the DoN Program. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2414 OF 2009-2010.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act relative to strengthening the DoN Program.

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 25B of chapter 111 of the General Laws, as appearing in
2 the 2008 official edition, is hereby amended by deleting the definition of “Expenditure minimum
3 with respect to capital expenditures” and replacing it with the following new language:

4 “Expenditure minimum with respect to substantial capital expenditures”, with respect to
5 expenditures and acquisitions made by or for: (1) acute care hospitals and comprehensive cancer
6 centers as defined in section 1 of chapter 118G, only, \$7,500,000, except that expenditures for,
7 or the acquisition of, major movable equipment not otherwise defined by the department as new
8 technology or innovative services shall not require a determination of need and shall not be
9 included in the calculation of the expenditure minimum; and (2) health care facilities, other than
10 acute care hospitals, and facilities subject to licensing under chapter 111B, with respect to: (a)

11 expenditures for, or the acquisition of, medical, diagnostic or therapeutic equipment, \$400,000;
12 and (b) all other expenditures and acquisitions, \$800,000; provided, however, that expenditures
13 for, or the acquisition of, any replacement of medical, diagnostic or therapeutic equipment
14 defined as new technology or innovative services for which a determination of need has issued or
15 which was exempt from determination of need, shall not require a determination of need and
16 shall not be included in the calculation of the expenditure minimum; provided further, that
17 expenditures and acquisitions concerned solely with outpatient services other than ambulatory
18 surgery, not otherwise defined as new technology or innovative services by the department, shall
19 not require a determination of need and shall not be included in the calculation of the expenditure
20 minimum, unless the expenditures and acquisitions are at least \$7,500,000, in which case a
21 determination of need shall be required. Notwithstanding the above limitations, acute care
22 hospitals only may elect at their option to apply for determination of need for expenditures and
23 acquisitions less than the expenditure minimum.

24 SECTION 2. Section 25C of Chapter 111 of the General Laws is hereby
25 amended by striking the first paragraph and inserting in place thereof the following:

26 Section 25C. Notwithstanding any contrary provisions of law, except as
27 provided in section twenty-five C1/2, no person or agency of the commonwealth or any political
28 subdivision thereof shall make substantial capital expenditures for construction of a health care
29 facility or substantially change the service of such facility unless there is a determination by the
30 department that there is need therefore, followed by review and approval by the state auditor,
31 pursuant to section 18 of Chapter 11. No such determination of need shall be required for any
32 substantial capital expenditure for construction or any substantial change in service which shall
33 be related solely to the conduct of research in the basic biomedical or applied medical research

34 areas, and shall at no time result in any increase in the clinical bed capacity or outpatient load
35 capacity of a health care facility, and shall at no time be included within or cause an increase in
36 the gross patient service revenue of a facility for health care services, supplies, and
37 accommodations, as such revenue shall be defined from time to time in accordance with section
38 thirty-one of chapter six A. Any person undertaking any such expenditure related solely to such
39 research which shall exceed or may reasonably be regarded as likely to exceed one hundred and
40 fifty thousand dollars or any such change in service solely related to such research, shall give
41 written notice thereof to the department and the division of health care finance and policy at least
42 sixty days before undertaking such expenditure or change in service. Said notice shall state that
43 such expenditure or change shall be related solely to the conduct of research in the basic
44 biomedical or applied medical research areas, and shall at no time be included within or result in
45 any increase in the clinical bed capacity or outpatient load capacity of a facility, and shall at no
46 time cause an increase in the gross patient service revenue, as defined in accordance with said
47 section thirty-one of said chapter six A, of a facility for health care services, supplies and
48 accommodations. Notwithstanding the preceding three sentences, a determination of need shall
49 be required for any such expenditure or change if the notice required by this section is not filed
50 in accordance with the requirements of this section, or if the department finds, within sixty days
51 after receipt of said notice, that such expenditure or change will not be related solely to research
52 in the basic biomedical or applied medical research areas, or will result in an increase in the
53 clinical bed capacity or outpatient load capacity of a facility, or will be included within or cause
54 an increase in the gross patient service revenues of a facility. A research exemption granted
55 under the provisions of this section shall not be deemed to be as evidence of need in any
56 determination of need proceeding.

57 SECTION 3. Chapter 11 of the General Laws is hereby amended by inserting
58 after section 17 the following new section:

59 Section 18: (a) The state auditor shall have jurisdiction to review all
60 applications for determination of need filed pursuant to Section 25C of Chapter 111. Following
61 initial approval by the department of public health, all determination of need applications shall
62 be sent to the department of the state auditor for review and approval.

63 (b) The state auditor shall approve a project only if the state auditor determines
64 that the project will not have an adverse effect on competition in the health care market and shall
65 give due consideration to whether the project is likely to increase rates of payment to providers,
66 whether the project is likely to result in an inappropriate increase in utilization of health care
67 services, and whether the proposed service could be provided by a community based provider.

68 (c) The state auditor shall report to the department of public health the results
69 of said review no later than four months after receiving notice of approval by the department. No
70 project shall be approved by the department of public health without approval of the state
71 auditor.

72 SECTION 4. Chapter 111, as appearing in the 2008 official edition, is hereby
73 further amended by deleting section 53G and replacing it with the following new language:

74 Section 53G. Any entity that is certified or seeking certification as an
75 ambulatory surgical center by the Centers for Medicare and Medicaid Services for participation
76 in the Medicare program shall be a clinic for the purpose of licensure under section 51, and shall
77 be deemed to be in compliance with the conditions for licensure as a clinic under said section 51
78 if it is accredited to provide ambulatory surgery services by the Accreditation Association for

79 Ambulatory Health Care, Inc., the Joint Commission on Accreditation of Healthcare
80 Organizations, the American Association for Accreditation of Ambulatory Surgery Facilities or
81 any other national accrediting body that the department determines provides reasonable
82 assurances that such conditions are met. No original license shall be issued pursuant to said
83 section 51 to establish any such ambulatory surgical clinic unless there is a determination by the
84 department that there is a need for such a facility. For purposes of this section, “clinic” shall
85 include a clinic conducted by a hospital licensed under said section 51 but not by the federal
86 government or the commonwealth. The department shall promulgate regulations to implement
87 this section.

88 SECTION 5. Section 25C of Chapter 111 of the General Laws is amended by
89 inserting after the first paragraph the following new paragraph:

90 “The Department shall conduct a statewide planning initiative for the purposes
91 of studying and coordinating the availability and delivery of health care services within the
92 commonwealth. The initiative shall examine the current supply of inpatient and outpatient
93 services, and technologies and develop a plan for the provision of new services, beds,
94 technologies, and structural expansions throughout the commonwealth, and develop a plan for
95 the continued role of community hospitals and health centers within the commonwealth. The
96 Department shall utilize this plan in its evaluation of all applications for a determination of need,
97 as required by this section, in order to determine whether the proposed expansion construction,
98 or acquisition of health care facilities or services is needed in the Commonwealth, or whether the
99 proposed expansion construction, or acquisition of health care facilities or services will
100 unnecessary duplicate ongoing services and increase health care costs in the Commonwealth.”

101 SECTION 6. Section 25C of Chapter 111 of the General Laws is amended by
102 inserting at the end of the section the following new paragraph:

103 “Any hospital seeking to expand its emergency department shall file a
104 determination of need with the department. In addition to the information required pursuant to
105 this section, the department shall require hospitals seeking emergency department expansions to
106 demonstrate that prior to filing a determination of need application, the hospital has implemented
107 measures to reduce emergency room overcrowding. The department shall promulgate
108 regulations defining the measures hospitals may take to reduce emergency room overcrowding.”

109 Section 25C of Chapter 111 of the General Laws is further amended by
110 inserting at the end of the 2nd paragraph the following language:

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

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

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

123 Section 3 of Chapter 17 of the General Laws is hereby amended by deleting
124 Section 3 in its entirety and replacing it with the following new language:

125 Section 3. (a) There shall be a public health council to advise the commissioner
126 of public health and to perform other duties as required by law. The council shall consist of the
127 commissioner of public health as chairperson and 17 members appointed for terms of 6 years
128 under this section. The commissioner may designate 1 of the members as vice chairperson and
129 may appoint subcommittees or special committees as needed.

130 (b) Four of the members shall be appointed by the governor: 1 shall be
131 appointed from among the chancellor of the University of Massachusetts Medical School and a
132 list of 3 nominated by said chancellor; 1 shall be appointed from among the dean of the
133 University of Massachusetts Amherst School of Public Health or Health Sciences and a list of 3
134 nominated by said dean; 1 shall be appointed from among the heads of the non-public schools of
135 medicine in the commonwealth or their nominees; and 1 shall be appointed from among the
136 heads of the non-public schools or programs in public health in the commonwealth or their
137 nominees.

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

143 (d) Six of the appointed members shall be non-providers: 1 shall be appointed
144 by the secretary of elder affairs; 1 shall be appointed by the secretary of veterans' services; 1

145 shall be appointed by the governor from a list of 3 nominated by Health Care For All, Inc.; 1
146 shall be appointed by the governor from a list of 3 nominated by the Coalition for the Prevention
147 of Medical Errors, Inc.; 1 shall be appointed by the governor from a list of 3 nominated by the
148 Massachusetts Public Health Association; and 1 shall be appointed by the governor from a list of
149 3 nominated by the Massachusetts Community Health Worker Network. Whenever an
150 organization nominates a list of candidates for appointment by the governor under this
151 subsection, the organization may nominate additional candidates if the governor declines to
152 appoint any of those originally nominated.

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

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

163 (g) Upon the expiration of the term of office of an appointive member, his
164 successor shall be appointed in the same manner as the original appointment, for a term of 6
165 years and until the qualification of his successor. The members shall be appointed not later than
166 60 days after a vacancy. The council shall meet at least once a month, and at such other times as

167 it shall determine by its rules, or when requested by the commissioner or any 4 members. The
168 appointive members shall receive \$100 per day that the council meets, and their reasonably
169 necessary traveling expenses while in the performance of their official duties.