SENATE DOCKET, NO. 1820 FILED ON: 1/16/2015

SENATE . . . . . No. 598

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:	DISTRICT/ADDRESS:
John F. Keenan	*Norfolk and Plymouth*
James B. Eldridge	*Middlesex and Worcester*
Thomas M. McGee	*Third Essex*
Brendan P. Crighton	*11th Essex*
Walter F. Timilty	*7th Norfolk*
Bruce E. Tarr	*First Essex and Middlesex*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*

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By Mr. Keenan, a petition (accompanied by bill, Senate, No. 598) of John F. Keenan, James B. Eldridge, Thomas M. McGee, Brendan P. Crighton and other members of the General Court for legislation relative to hospital closures and health planning. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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:

SECTION 1. Section 16T of Chapter 6A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following:-

(a) There shall be a health planning council within the executive office of health and human services whose purpose shall be to develop and periodically update a state health plan as described in this section. The council shall consist of the secretary of health and human services or a designee who shall serve as chair, the commissioner of public health or a designee, the director of the office of Medicaid or a designee, the commissioner of mental health or a designee, the secretary of elder affairs or a designee, the executive director of the center for health information and analysis or a designee, the executive director of the health policy commission or a designee and 3 members appointed by the governor, 1 of whom shall be a health economist; 1

12 of whom shall have experience in health policy and planning and 1 of whom shall have
13 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 process shall include public hearings in
24 geographically diverse areas, and a website to allow members of the public to submit comments
25 electronically 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.

34 SECTION 2. Said section 16T, as so appearing, is hereby further amended in subsection
35 (b), by inserting after the words “primary care resources” in line 50 the following:-

36 “; community-based health care resources”

37 SECTION 3. Said section 16T, as so appearing, is hereby further amended in subsection
38 (b), by striking the first sentence of the fourth paragraph, in lines 58 through 62, and inserting in
39 place thereof the 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 state-wide 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 shortage and excess resources in each region
45 and recommended statutory or regulatory mechanisms to incentivize a rebalancing of said
46 shortage and excess resources.”

47 SECTION 4. Said section 16T, as so appearing, is hereby further amended in subsection
48 (c), by inserting after the word “need” in line 76 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, as so appearing, is hereby further amended by inserting at
52 the end thereof 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, as appearing in the 2012
59 Official Edition, is hereby amended by inserting at the end thereof the following new
60 subsection:-

61 (l) Upon receiving notice from the department of public health of a proposed hospital
62 closure or discontinuation of an essential health service, pursuant to section 51G of chapter 111,
63 the commission shall conduct a review equivalent to that required by this section for a material
64 change, and shall report the findings of such review to the commissioner of public health. The
65 executive director of the commission, and the commissioner of public health, shall enter into a
66 mutual agreement to share documentation provided by the hospital relative to the proposed
67 closure or discontinuation, in order to reduce duplicative reporting requirements by the hospital.

68 SECTION 7. Section 8 of Chapter 12C of the General Laws, as appearing in the 2012
69 official edition, is hereby amended in subsection (c) by striking the last sentence of the second
70 paragraph, in lines 50 through 55, and inserting in place thereof the following:-

71 "The center shall also identify hospitals that the center considers to be in financial
72 distress, including any hospitals at risk of closing or discontinuing essential health services, as
73 defined by the department of public health under section 51G of chapter 111, as a result of
74 financial distress, and shall report a list of such at-risk hospitals, which shall not be subject to
75 disclosure under chapter 66, to the secretary of health and human services, the commissioner of

76 public health, and the executive director of the health policy commission no less frequently than
77 once every 120 days."

78 And is hereby further amended by inserting after the word "subsection." in line 58 the
79 following:-

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

82 SECTION 8. Section 11 of Chapter 12C of the General Laws, as so appearing, is hereby
83 amended by striking the section in its entirety and inserting in place thereof the following:-

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

92 The center or its designated representative may petition the superior court seeking
93 injunctive relief to enforce the provisions of sections 8, 9, and 10. If the superior court upon
94 summary hearing determines that an entity subject to the requirements of this chapter has,
95 without justifiable cause, refused to furnish information required by sections 8, 9, and 10 or any
96 regulation promulgated by the center thereunder, it shall issue an order directing the payer, third-
97 party administrator, provider, or provider organization to furnish the information within 5

98 business days; and any failure to obey any such order may be penalized by the court as contempt
99 thereof.

100 The center may refer delinquent entities to the Executive Office of Health and Human
101 Services, with recommendations that the Executive Office of Health and Human Services impose
102 any penalty authorized under chapters 111 and 118E of the General Laws or other applicable
103 regulations.

104 SECTION 9. Section 51 of Chapter 111, as amended by chapter 402 of the Acts of 2014,
105 is hereby amended by inserting after the second paragraph the following new paragraph:-

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

108 SECTION 10. Section 51G of Chapter 111 of the General Laws, as appearing in the
109 2012 Official Edition, is hereby amended by striking subsection (4) and inserting in place thereof
110 the following subsection:-

111 (4) (a) Any hospital shall give notice to the department 90 days prior to the
112 discontinuance of any essential health service provided therein. The department shall by
113 regulation define "essential health service" for the purposes of this section, and may establish
114 distinct definitions for each health planning region as defined pursuant to section 16T of chapter
115 6A. The hospital proposing the discontinuance shall provide, with their initial notice to the
116 department, evidence of having given public notice and notice to municipal officials and of
117 having allowed reasonable opportunity for official and for public comment from each
118 municipality to which it provides the service as a health care resource, as determined pursuant to
119 section 16T of chapter 6A of the General Laws. Any information given without meeting the

120 requirements of this paragraph shall not constitute notice to the department for the purpose of
121 establishing the earliest date on which the hospital discontinue the essential health service. The
122 department shall forward any notice received under this section to the Secretary of Labor and
123 Workforce Development and to the Health Policy Commission.

124 (b) Any hospital shall give notice to the department 120 days prior the closure of the
125 hospital. The hospital undergoing the closure shall provide, with their initial notice to the
126 department, evidence of having given public notice and notice to municipal officials and of
127 having allowed reasonable opportunity for official and for public comment from each
128 municipality to which it provides the service as a health care resource, as determined pursuant to
129 section 16T of chapter 6A of the General Laws. Any information given without meeting the
130 requirements of this paragraph shall not constitute notice to the department for the purpose of
131 establishing the earliest date on which the hospital may close. The department shall forward any
132 notice received under this section to the Secretary of Labor and Workforce Development and to
133 the Health Policy Commission.

134 (c) The department shall, in the event that a hospital intends to close or proposes to
135 discontinue an essential health service or services, determine whether any closed or discontinued
136 services are necessary for preserving access and health status in the hospital's service area,
137 require hospitals to submit a plan for assuring access to such necessary services following the
138 hospital's closure or discontinuation of the service, and assure continuing access to such services
139 in the event that the department determines that their closure will significantly reduce access to
140 necessary services. If the hospital's plan for assuring continued access to a necessary service
141 relies upon the availability of similar services at another hospital or health facility with which it
142 does not share common ownership, the department shall require the hospital to submit with said

143 plan a statement from each other hospital or health facility listed in the plan, affirming their
144 capacity to provide continued access as described in the plan. The department shall conduct a
145 public hearing prior to a determination on the closure of said essential services or of the hospital.

146 (d) The department, in conducting any assessment and prior to making any determination
147 pursuant to paragraph (c), shall refer to the state health plan and regional considerations
148 established pursuant to section 16T of chapter 6A, and shall also request and consider
149 information presented by the Health Policy Commission pursuant to section 13 of chapter 6D.

150 (e) If a hospital closes or discontinues an essential health service without a plan approved
151 by the department pursuant to paragraphs (a) and (b) of this section, that hospital shall not be
152 eligible to have an application approved pursuant to section 25C for a period of two years from
153 the date the service is discontinued, or until the essential health service is restored, or until such
154 time as the department is satisfied that a plan is in place that, at the time of the discontinuance,
155 would have met the requirements of paragraph (b). If a closed hospital is part of a network of
156 hospitals under common ownership, the same restrictions shall apply against every hospital
157 remaining in operation by the hospital network. The commissioner may waive a restriction
158 established pursuant to this subsection, if the application of such restriction causes an imminent
159 hazard to the public health.

160 (f) If a hospital executes a plan to discontinue an essential health service, said plan not
161 having been approved by the department pursuant to paragraphs (a) and (b) of this section, that
162 hospital shall not be eligible to receive funding under sections 2PPP or 2GGGG of Chapter 29,
163 or under section 2G of Chapter 111, for a period of two years from the date the service is
164 discontinued, or until the essential health service is restored, or until such time as the department

165 is satisfied that a plan is in place that, at the time of the discontinuance, would have met the
166 requirements of paragraph (b). If a closed hospital is part of a network of hospitals under
167 common ownership, the same restrictions shall apply against every hospital remaining in
168 operation by the hospital network. The commissioner may waive a restriction established
169 pursuant to this subsection, if the application of such restriction causes an imminent hazard to the
170 public health.

171 (g) No original license shall be granted to establish or maintain an acute-care hospital, as
172 defined by section 25B, unless the applicant submits a plan, to be approved by the department,
173 for the provision of community benefits, including the identification and provision of essential
174 health services. In approving the plan, the department may take into account the applicant's
175 existing commitment to primary and preventive health care services and community
176 contributions as well as the primary and preventive health care services and community
177 contributions of the predecessor hospital. The department may waive this requirement, in whole
178 or in part, at the request of the applicant which has provided or at the time the application is
179 filed, is providing, substantial primary and preventive health care services and community
180 contributions in its service area.

181 SECTION 11. Section 56 of Chapter 111 of the General Laws, as appearing in the 2012
182 Official Edition, is hereby amended by inserting after the second sentence the following new
183 sentence:-

184 Whoever, being licensed under section 51, discontinues an essential health service or
185 closes a hospital under said license and in violation of section 51G shall, for a first offense, be
186 punished by a fine of not more than $150,000 and for a subsequent offense by a fine of not more

187 than $300,000 or by imprisonment for not more than two years or both. Any licensee under
188 section 51 that closes a hospital under said license and in violation of section 51G shall be
189 punished by a fine of not more than $500,000 or by imprisonment for not more than two years or
190 both, provided that if a closed hospital is part of a network of hospitals under common ownership
191 the penalties herein described shall be levied against the authority, entity or corporation having
192 control of the hospital network.