

**SENATE . . . . . No. 1270**

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**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 adoption of the accompanying bill:

An Act further regulating hospitals.

PETITION OF:

NAME:

*Bruce E. Tarr*

DISTRICT/ADDRESS:

*First Essex and Middlesex*

**SENATE . . . . . No. 1270**

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By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1270) of Bruce E. Tarr for legislation to further regulate hospitals. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 644 OF 2015-2016.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

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, as appearing in the 2014 Official Edition,  
2 is hereby amended by inserting after section 5S the following section:—

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

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

11 each community, in light of the demonstrated comparative cost, safety, and efficacy of hospital  
12 care and its alternatives.

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

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

19 The department shall also set standards for identifying hospitals in danger of closing, or  
20 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 70H  
30 the following seven sections:—

31           Section 70I. The department may bring an action in the superior court department of the  
32 trial court requesting the appointment of a receiver to operate a hospital. Before the department  
33 brings such an action, a hospital administrator designated by the commissioner shall be informed  
34 that the department intends to bring such an action and shall be informed of the reasons for the  
35 decision to bring such an action. Said administrator may submit his recommendations concerning  
36 the hospital proposed for receivership within two business days after receiving the above  
37 information. After said two-day period, the department, in its sole discretion may bring an action  
38 in the superior court department described in this section. A patient residing in the hospital's  
39 primary service area, or the guardian of such a patient, may petition the department of public  
40 health to seek a receivership under this section. If the department denies such petition or fails to  
41 commence action within five days, the party bringing the petition may bring suit in the superior  
42 court department for the appointment of a receiver or other appropriate relief under this section.  
43 Upon filing of this suit, a patient or guardian shall serve a copy of the complaint on the  
44 department. Prior to any hearing for the appointment of a receiver, the department shall file, and  
45 the court shall consider, an affidavit made under oath describing the results of any investigation  
46 conducted by the department, including a statement of any findings with respect to the resident's  
47 petition and the reasons for not filing an action pursuant to this section, and shall append thereto  
48 the two most recent reports of deficiencies in that hospital. Nothing in this chapter shall be  
49 construed as abrogating or superseding any common law or statutory right of any person to bring  
50 an action requesting appointment of a receiver to operate a hospital.

51           The court shall issue a short order of notice and, where an emergency is alleged, set the  
52 matter for hearing within five days after filing of the action. In all other cases, a hearing shall be  
53 set within two weeks. A receiver shall be appointed immediately, on an ex parte basis, if it

54 appears by verified complaint or by affidavit that there are grounds for the appointment of a  
55 receiver and that immediate appointment is necessary to prevent harm to the patients.

56 The court will name as receiver the commissioner of public health or his/her designee.  
57 Appropriate grounds for establishing a receivership under this section shall be any of the  
58 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 A temporary receivership shall not exceed five years.

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

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

182           Section 70O. The department is hereby authorized and directed to promulgate rules and  
183 regulations necessary for the implementation of sections seventy G to seventy L, inclusive.

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

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

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

200           As an additional remedy for recouping commonwealth expenditures, the licensee, persons  
201 responsible for the affairs of the licensee, or the owner, may be held liable for such expenditures  
202 to the extent that any of these persons benefits financially from the expenditure. Recoupment  
203 shall also be available against any person who, prior to the appointment of the receiver, breached

204 a legal responsibility to assure appropriate maintenance of the hospital, if such breach  
205 necessitated the expenditure by the commonwealth, and against any person who was responsible  
206 for an abandonment of the hospital.