SENATE DOCKET, NO. 2131 FILED ON: 1/18/2019

SENATE . . . . . No. 673

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 protecting Massachusetts hospitals and health systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Julian Cyr	*Cape and Islands*	
Jack Patrick Lewis	*7th Middlesex*	*1/22/2019*
Carlos González	*10th Hampden*	*1/23/2019*
Mary S. Keefe	*15th Worcester*	*1/23/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/29/2019*
James T. Welch	*Hampden*	*1/29/2019*
Mike Connolly	*26th Middlesex*	*1/29/2019*
John J. Lawn, Jr.	*10th Middlesex*	*1/29/2019*
Brian M. Ashe	*2nd Hampden*	*1/29/2019*
Michael O. Moore	*Second Worcester*	*1/30/2019*
Marcos A. Devers	*16th Essex*	*1/30/2019*
Michael J. Finn	*6th Hampden*	*1/30/2019*
Paul R. Feeney	*Bristol and Norfolk*	*1/30/2019*
Mathew J. Muratore	*1st Plymouth*	*1/31/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/31/2019*
José F. Tosado	*9th Hampden*	*1/31/2019*
Thomas M. Stanley	*9th Middlesex*	*2/1/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/1/2019*

James B. Eldridge	*Middlesex and Worcester*	*2/12/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/28/2019*
Tram T. Nguyen	*18th Essex*	*11/7/2019*

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SENATE . . . . . No. 673

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 673) of Julian Cyr, Jack Patrick Lewis, Carlos Gonzalez, Mary S. Keefe and other members of the General Court for legislation to protect Massachusetts hospitals and health systems. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act protecting Massachusetts hospitals and health systems.

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 8 of chapter 6D of the Massachusetts General Laws, as appearing in the 2016 Official Edition, is hereby amended in subsection (e) by inserting after the words "the impact of price transparency on prices", the following:-

, the impact of new and existing laws and regulations on the provider's incumbent workforce, wages, labor costs and labor supply, new hiring including the use of part-time, temporary, per diem or subcontracted staff, redeployments, retraining, layoffs or reductions in force, reassignment of former acute hospital workers to clinics and other outpatient settings, and other significant workforce changes implemented during the reporting year.

SECTION 2. Subsection (g) of section 8 of chapter 6D of the Massachusetts General Laws, as so appearing, is hereby amended by inserting after the second sentence the following sentence:-

The report shall also include an analysis of any available information on ongoing provider efforts and initiatives reported on under subsection (e) of this section that demonstrate planning and investment in worker readiness, including maintaining the engagement of the workforce and information on the workforces' labor representatives in joint implementation

SECTION 3. Chapter 29 of the General Laws is hereby amended by striking out section 2TTTT, as so appearing, and inserting in place thereof the following section:-

Section 2TTTT. (a) For the purposes of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Case mix", the description and categorization of a hospital's patient population according to criteria determined by the center for health information and analysis including, but not limited to, primary and secondary diagnoses, primary and secondary procedures, illness severity, patient age and source of payment.

"Commercial volume", the proportion of patients that seek care at an acute care hospital that are insured by private carriers.

"Major service category", a set of service categories as specified by the center for health information and analysis, including: (i) acute hospital inpatient services, by major diagnostic category; (ii) outpatient and ambulatory services, by categories as defined by the Centers for Medicare and Medicaid Services, or as specified by the center for health information and analysis, including a residual category for "all other" outpatient and ambulatory services that do not fall within a defined category; (iii) behavioral health services; (iv) professional services, by categories as defined by the Centers for Medicare and Medicaid Services, or as specified by the

center for health information and analysis; and (v) sub-acute services, by major service line or clinical offering, as specified by the center for health information and analysis.

"Medicaid volume", the proportion of patients that seek care at an acute care hospital that are insured by a state Medicaid program.

"Relative price", the contractually negotiated amounts paid to providers by each private carrier for health care services, including non-claims related payments and expressed in the aggregate relative to the payer's network-wide average amount paid to providers for same or similar services, as calculated pursuant to section 10 of chapter 12C.

(b) There shall be established and set upon the books of the commonwealth a separate fund to be known as the Community Hospital and Health Center Reinvestment Trust Fund. Funds shall be expended, without further appropriation, by the secretary of health and human services. The fund shall consist of money from public and private sources, such as gifts, grants and donations, interest earned on such revenues, any other money authorized by the general court and specifically designated to be credited to the fund, and any funds provided from other sources. Money in the fund shall be used to provide annual financial support, consistent with the terms of this section, to eligible acute care hospitals and community health centers. The secretary of health and human services, as trustee, shall administer the fund and shall make expenditures from the fund consistent with this section.

(c) The secretary of health and human services may incur expenses and the comptroller may certify amounts for payment in anticipation of expected receipts; provided, however, that no expenditure shall be made from the fund which shall cause the fund to be deficient at the close of

a fiscal year. Revenues deposited in the fund that are unexpended at the end of a fiscal year shall not revert to the general fund and shall be available for expenditure in the following fiscal year.

(d) The secretary of health and human services shall annually direct payments from the fund to eligible hospitals. To be eligible for payment from the fund, the recipient shall be (i) an acute care hospital licensed under section 51 of chapter 111; and (ii) shall be either a "high public payer facility," as determined the center for health information and analysis or shall be a hospital with an average relative price that is below the statewide average relative price. In directing payments, the secretary of health and human services shall allocate payments to eligible acute care hospitals based on the proportion of each eligible acute care hospital's total gross patient service revenue to the combined gross patient service revenue of all eligible acute care hospitals in the prior hospital rate year; provided, however, that payments shall be adjusted to allocate proportionally greater payments to eligible acute care hospitals with relative prices falling farthest below the statewide average relative price and shall also consider: (i) Medicaid volume; (ii) commercial volume; (iii) major service categories not readily offered by providers within the same primary service areas and dispersed service areas; (iv) case mix; (v) affiliation status; and (vi) geography.

(e) Not later than 30 days after payments are allocated to eligible acute care hospitals under this section, the secretary of health and human services shall file a report with the joint committee on health care financing and the house and senate committees on ways and means detailing the allocation and recipient of each payment.

(f) The secretary shall expend not less than $15,000,000 annually from the fund to community health centers, who are eligible to receive a grant under 42 USC section 254b, based

on financial need and to enhance the ability of community health centers to serve populations efficiently and effectively through the delivery of community-based primary and preventive care, clinical support, behavioral health care, care coordination, disease management services, and pharmacy management services;

(g) Not later than 30 days after payments are allocated to eligible community health centers under this section, the secretary for health and human services shall file a report with the joint committee on health care finance and the house and senate committees on ways and means detailing the allocation and recipient of each payment.

(h) No later than 180 days following passage of this act, the secretary of health and human services shall develop and propose state law amendments that establish additional, annual assessments to be deposited in the Community Hospital and Health Center Reinvestment Trust Fund. As determined by the secretary, such assessments shall proportionally and annually assess not less than $15,000,000 from Pharmaceutical or Medical Device Manufacturing Companies as defined in Section 1 of Chapter 111N of the Massachusetts General Laws or from other appropriate health care entities.

(i) The executive office of health and human services shall promulgate regulations necessary to carry out this section, including establishing a formula to allocate payments pursuant to subsections (d) and (g).

SECTION 4. Chapter 111 of the Massachusetts General Laws, as so appearing, is hereby amended by adding the following new section:-

Section X: (a) For the purposes of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Health Care Workforce" shall mean personnel employed by or contracted to work at a facility that have an effect upon the delivery of quality care to patients, including but not limited to registered nurses, licensed practical nurses, unlicensed assistive personnel, service, maintenance, clerical, professional and technical workers, and all other health care workers.

"Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching hospital of the University of Massachusetts medical school, any licensed private or state-owned and state-operated general acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a state operated healthcare facility. This definition shall not include rehabilitation facilities or long-term care facilities.

(b) Notwithstanding any special or general law to the contrary, each facility shall establish and develop a health care workforce care planning committee within 90 days of the effective date of this section. The membership of the planning committee shall include at least one registered nurse, one unlicensed assistive personnel, one service/maintenance worker, one professional/technical worker, one clerical worker, and one representative for each labor organization representing bargaining units at the facility. The membership of the planning committee shall include no more than the same number of management representatives relative to the number of appointed members of the health care workforce. The committee shall participate in at least one meeting of labor management committee training.

(c) Each facility’s health care workforce planning committee shall develop, implement, monitor and regularly adjust a comprehensive care team plan that accounts for each unit or other facility division in which direct patient care is provided. The care team plan shall be developed to ensure that the assigned health care workforce members are sufficient to ensure a safe working

environment and to provide quality care to the facility's patients. Further, the care team plan shall account for all anticipated variables that can influence a facility's delivery of quality patient care including but not limited to the development of a comprehensive acuity-based classification system. The care team plan shall include account for (i) the numbers and skill mix of needed health care workforce members to be assigned to patients, (ii) anticipated patient volume, (iii) the time needed to complete expected care tasks, (iv) the need for specialized equipment and technology, (v) the physical environment of the facility; (vi) the necessity of ensuring a safe working environment; and (vii) all quality and safety data submitted on a unit-by-unit basis for each facility through PatientCareLink or any similar system.

(d) As a condition of licensure, each facility shall submit the care team plan developed under subsection (b) and (c) to the department of public health and the health policy commission on at least an annual basis. Such submission shall include a certification from each member of the health care workforce planning committee that the care team plan submitted accurately represents the consensus decisions of the planning committee. As needed, the care plan

(e) The department of public health, in consultation with the health policy commission, shall develop rules and regulations as needed to implement this section.

SECTION 5. Chapter 111 of the General Laws of Massachusetts, as so appearing, is hereby amended by inserting after section 25P the following new section:-

Section 25Q. Community Hospital & Health Center Reinvestment Trust Fund Assessment

(a) Notwithstanding any special or general law to the contrary, the health policy commission shall establish a one-time surcharge assessment on all acute hospitals satisfying the

requirements of subsection (b) to be deposited according to the requirements of subsection (e). The surcharge amount to be paid by each acute hospital shall equal the product of: (i) the surcharge percentage; and (ii) $90,000,000. The commission shall calculate the surcharge percentage by dividing the hospital's operating surplus in the most recent fiscal year for which such data is available by the total operating surplus in that fiscal year of all acute hospitals paying an assessment under this section. The commission shall determine the surcharge percentage for the assessment by September 30, 2019. In the determination of the surcharge percentage, the commission shall use the best data available as determined by the commission. The commission shall incorporate all adjustments, including, but not limited to, updates or corrections or final settlement amounts, by prospective adjustment rather than by retrospective payments or assessments.

(b) Only acute hospitals or acute hospital systems with more than $750,000,000 in total net assets and a public payer mix below 60 per cent in the latest fiscal year for which such data is available shall be subject to the assessment.

(c) Carrier surcharge payors shall be assessed a surcharge to be paid to the commission in accordance with the provisions of subsection (e). The surcharge amount shall equal the product of: (i) the surcharge percentage; and (ii) $90,000,000. The commission shall calculate the surcharge percentage by dividing the surcharge payor's payments for acute hospital services by the total payments for acute hospital services by all surcharge payors. The commission shall determine the surcharge percentage for the assessment by September 30, 2019. In the determination of the surcharge percentage, the commission shall use the best data available as determined by the commission and may consider the effect on projected surcharge payments of any modified or waived enforcement pursuant to subsection. The commission shall incorporate

all adjustments, including, but not limited to, updates or corrections or final settlement amounts, by prospective adjustment rather than by retrospective payments or assessments.

(d) Acute hospitals and carrier surcharge payors shall pay the full amount of the surcharge amount via a single payment to be made no later than 180 days from enactment of this section. The assessments shall be deposited by the comptroller, as such assessments are collected, in the Community Hospital & Health Center Reinvestment Trust Fund, established in section 2TTTT of chapter 29 of the general laws. The commission shall establish by regulation an appropriate mechanism for enforcing an acute hospital or surcharge payor's liability to the fund if an acute hospital or surcharge payor does not make a scheduled payment to the fund.

(e) The commission shall specify by regulation appropriate mechanisms that provide for determination and payment of an acute hospital, or a carrier surcharge payor's liability, including requirements for data to be submitted by acute hospitals and surcharge payors. An acute hospital's liability to the fund shall in the case of a transfer of ownership be assumed by the successor in interest to the hospital. A surcharge payor's liability to the fund shall in the case of a transfer of ownership be assumed by the successor in interest to the surcharge payor.

SECTION 6. Chapter 111 of the Massachusetts General Laws, as so appearing, is hereby amended by striking out section 226, as so appearing, and inserting in place thereof the following section:-

Section 226. (a) For the purposes of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching hospital of the University of Massachusetts medical school, any licensed private or state-owned

and state-operated general acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a state operated healthcare facility. This definition shall not include rehabilitation facilities or long-term care facilities.

"Health Care Workforce" shall mean personnel employed by or contracted to work at a facility who have an effect upon the delivery of quality care to patients, including but not limited to registered nurses, licensed practical nurses, unlicensed assistive personnel, service, maintenance, clerical, professional and technical workers, and all other health care workers. Doctors, interns, residents and management shall not be considered the health care workforce for purposes of this act.

“Mandatory Overtime" shall mean any hours worked by a member of the health care workforce in a hospital setting to deliver patient care, beyond the predetermined and regularly scheduled number of hours that the hospital and nurse have agreed that the employee shall work, provided that in no case shall such predetermined and regularly scheduled number of hours exceed 12 hours in any 24 hour period.

(b) Notwithstanding any general or special law to the contrary, a facility shall not require a member of the health care workforce to work mandatory overtime except in the case of an emergency situation where the safety of the patient requires its use and when there is no reasonable alternative.

(c) Under subsection (b), whenever there is an emergency situation where the safety of a patient requires its use and when there is no reasonable alternative, the facility shall, before requiring overtime, make a good faith effort to have such hours covered on a voluntary basis.

Mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required.

(d) Under subsection (c), the health policy commission established under section 2 of chapter 6D, shall develop guidelines and procedures to determine what constitutes an emergency situation for the purposes of allowing mandatory overtime. In developing those guidelines, the commission shall consult with those employees and employers who would be affected by such a policy. The commission shall solicit comment from those same parties through a public hearing.

(e) Facilities shall report all instances of mandatory overtime and the circumstances requiring its use to the department of public health. Such reports shall be public documents.

(f) A member of the health care workforce shall not be allowed to exceed 16 consecutive hours worked in a 24 hour period. In the event a member of the healthcare workforce works 16 consecutive hours, that member of the healthcare workforce must be given at least 8 consecutive hours of off-duty time immediately-after the worked overtime.

(g) This section is intended as a remedial measure to protect the public health and the quality and safety of patient care and shall not be construed to diminish or waive any rights of the member of the healthcare workforce under other laws, regulations or collective bargaining agreements. The refusal of a member of the healthcare workforce to accept work in excess of the limitations set forth in this section shall not be grounds for discrimination, dismissal, discharge or any other employment decision.

SECTION 7. Chapter 176O of the General Laws of Massachusetts, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 27 thereof the following new section:-

Section XX. Fair acute care hospital payment rates

(a) The commissioner shall presumptively disapprove any contracted rate of payments to an acute care hospital licensed under the provisions of section 51 of Chapter 111 or its contracting agents (i) that is filed by a carrier; (ii) that establishes a rate which falls below 90 percent of the carrier's statewide average commercial relative price in the previous calendar year and as calculated by the center for health information and analysis, and; (iii) that, in the determination of the commissioner, includes payment rates that are influenced by unwarranted factors of price variation, including but not necessarily limited to lack of market power or brand name recognition by the hospital provider. The carriers' statewide average commercial prices shall be as determined by the health policy commission annually in consultation with the center for health information and analysis and the division of insurance.

(b) The commissioner shall ensure that such contracted rates of payment filed as directed by this section are applicable to all lines of business offered by each respective carrier. The commissioner shall require the carrier to file amended or modified contracts that include annuals rates of payment that are consistent with the standards established in subsection (a).

(c) The division of insurance, in consultation with the health policy commission shall promulgate all rules and regulations as necessary to implement this section.