

SENATE No. 693

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:	
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	
<i>James T. Welch</i>	<i>Hampden</i>	<i>1/18/2019</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>1/30/2019</i>

SENATE No. 693

By Mr. Keenan, a petition (accompanied by bill, Senate, No. 693) of John F. Keenan, James T. Welch and Kate Hogan for legislation relative to hospital closures and health planning. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 632 OF 2017-2018.]

The Commonwealth of Massachusetts

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

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:

1 SECTION 1. Section 16T of Chapter 6A of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the
3 following:-

4 (a) There shall be a health planning council within the executive office of health and
5 human services whose purpose shall be to develop and periodically update a state health plan as
6 described in this section. The council shall consist of the secretary of health and human services
7 or a designee who shall serve as chair, the commissioner of public health or a designee, the
8 director of the office of Medicaid or a designee, the commissioner of mental health or a designee,
9 the secretary of elder affairs or a designee, the executive director of the center for health
10 information and analysis or a designee, the executive director of the health policy commission or

11 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 of each region.

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 55 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 third paragraph, in lines 63 through 68, 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 shortages and excesses in each region and
45 recommended statutory or regulatory mechanisms to incentivize a rebalancing of said shortage
46 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 83 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 2016
59 Official Edition, is hereby amended by inserting at the end thereof the following new
60 subsection:-

61 (l) Notice from the department of public health of a proposed hospital closure or
62 discontinuation of an essential health service pursuant to section 51G of chapter 111, shall
63 constitute a material change notice by the relevant provider or provider organization, and the
64 commission shall conduct a review of the impact of the material change pursuant to this section,
65 provided, however, that no report shall be referred to the attorney general under subsection (f).
66 The commission shall report the findings of a review conducted pursuant to this subsection,
67 including any preliminary findings, to the commissioner of public health. The executive director
68 of the commission and the commissioner of public health shall enter into a mutual agreement to
69 share documentation provided by the hospital relative to the proposed closure or discontinuation,
70 in order to reduce duplicative reporting requirements by the hospital.

71 SECTION 7. Section 8 of Chapter 12C of the General Laws, as appearing in the 2016
72 Official Edition, is hereby amended in subsection (c) by striking the last sentence of the second
73 paragraph, in lines 55 through 60, and inserting in place thereof the following:-

74 The center shall also identify hospitals that the center considers to be in financial distress,
75 including but not limited to, any hospitals at risk of closing or discontinuing essential health
76 services, as defined by the department of public health under section 51G of chapter 111, and
77 shall report a list of such at-risk hospitals, which shall not be subject to disclosure under chapter
78 66, to the secretary of health and human services, the commissioner of public health, and the
79 executive director of the health policy commission no less frequently than once every 120 days.

80 SECTION 8. Section 8 of Chapter 12C of the General Laws, as so appearing, is hereby
81 further amended in subsection (c) by inserting after the word “subsection.” in line 63 the
82 following:-

83 “Compliance with said reporting requirements shall also be considered a condition of
84 licensure pursuant to section 51 of chapter 111.”

85 SECTION 9. Section 11 of Chapter 12C of the General Laws, as so appearing, is hereby
86 amended by striking the section in its entirety and inserting in place thereof the following:-

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

95 The center or its designated representative may petition the superior court seeking
96 injunctive relief to enforce the provisions of sections 8, 9, and 10. If the superior court upon
97 summary hearing determines that an entity subject to the requirements of this chapter has,
98 without justifiable cause, refused to furnish information required by sections 8, 9, and 10 or any
99 regulation promulgated by the center thereunder, it shall issue an order directing the payer, third-
100 party administrator, provider, or provider organization to furnish the information within 5
101 business days; and any failure to obey any such order may be penalized by the court as contempt
102 thereof.

103 The center may refer delinquent entities to the executive office of health and human
104 services and the department of public health, with recommendations that the executive office of
105 health and human services or the department of public health impose any penalty authorized
106 under chapters 111 and 118E of the General Laws or other applicable regulations.

107 SECTION 10. Section 51 of Chapter 111, as appearing in the 2016 Official Edition, is
108 hereby amended by inserting after the second paragraph the following new paragraph:-

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

111 SECTION 11. Section 51G of Chapter 111 of the General Laws, as appearing in the 2016
112 Official Edition, is hereby amended by inserting after the word “laws” in line 9 the following:-

113 “and a demonstrated plan for financial sustainability”

114 SECTION 12. Section 51G of said Chapter 111 of the General Laws, as so appearing, is
115 hereby amended by inserting after subsection (1) the following subsection:-

116 (2) A demonstrated plan for financial sustainability shall include:

117 (a) a needs assessment that identifies the current state of contracting, current and
118 projected resources for coordination and delivery of care, areas for additional education, and
119 assessments of technology and analytic resources;

120 (b) an implementation plan listing activities aimed at supporting and improving the
121 delivery of health care services delivered by the licensee, including any clinical affiliations as
122 defined in section 1 of chapter 12C of the General Laws, and how well those activities are
123 supported by their current resources;

124 (c) a financial plan that includes an evidence-based budget, that contains proof of sources
125 of revenue to cover expenses and is based on a hospital's past financial performance, or in the
126 case of a new hospital, comparable to a hospital of similar size, providing same or similar
127 services, in a similar geographic type, and with a similar anticipated case mix based on
128 epidemiological surveillance data; and

129 (d) any other documentation that the department sees fit to evaluate the sustainability of
130 essential health services at said hospital.

131 SECTION 13. Section 51G of said chapter 111, as so appearing, is hereby further
132 amended by striking subsection (4) and inserting in place thereof the following subsection:-

133 (4) (a) Any hospital shall give notice to the department 90 days prior to the
134 discontinuance of any essential health service provided therein. The department shall by
135 regulation define "essential health service" for the purposes of this section, and may establish
136 distinct definitions for each health planning region as defined pursuant to section 16T of chapter

137 6A. The hospital proposing the discontinuance shall provide, with their initial notice to the
138 department, (i) evidence of having given notice to municipal officials from each municipality to
139 which it provides the service as a health care resource as determined pursuant to section 16T of
140 chapter 6A of the General Laws and of having allowed reasonable opportunity for comment by a
141 stated deadline; and (ii) evidence of a plan to give public notice, including a plan allowing for a
142 reasonable opportunity for public comment, within 10 days of submission of their initial notice
143 to the department. Any information given without meeting the requirements of this paragraph
144 shall not constitute notice to the department for the purpose of establishing the earliest date on
145 which the hospital discontinue the essential health service. The department shall forward any
146 notice received under this section to the secretary of labor and workforce development and to the
147 health policy commission.

148 (b) Any hospital shall give notice to the department 120 days prior the closure of the
149 hospital. The hospital undergoing the closure shall provide, with their initial notice to the
150 department: (i) evidence of having given notice to municipal officials from each municipality to
151 which it provides the service as a health care resource, as determined pursuant to section 16T of
152 chapter 6A of the General Laws, and of having allowed reasonable opportunity for comment; (ii)
153 notice to primary service area stakeholders including, but not limited to: (a) the hospital's patient
154 and family council; (b) all staff members of the hospital; (c) any labor organization that is
155 currently representing any members of the hospital's workforce; and (d) any members of the
156 General Court who represent the city or town in the hospital's primary service area; and (iii)
157 evidence of a plan to give public notice, including a plan allowing for a reasonable opportunity
158 for comment from the public and primary service area stakeholders pursuant to (ii) within 10
159 days of submission of their initial notice to the department. Any information given without

160 meeting the requirements of this paragraph shall not constitute notice to the department for the
161 purpose of establishing the earliest date on which the hospital may close. The department shall
162 forward any notice received under this section to the secretary of labor and workforce
163 development and to the health policy commission.

164 (c) The department shall, in the event that a hospital intends to close or proposes to
165 discontinue an essential health service or services, determine whether any closed or discontinued
166 services are necessary for preserving access and health status in the hospital's service area,
167 require hospitals to submit a plan for assuring access to such necessary services following the
168 hospital's closure or discontinuation of the service, and assure continuing access to such services
169 in the event that the department determines that their closure will significantly reduce access to
170 necessary services. If the hospital's plan for assuring continued access to a necessary service
171 relies upon the availability of similar services at another hospital or health facility with which it
172 does not share common ownership, the department shall require the hospital to submit with said
173 plan a statement from each other hospital or health facility listed in the plan, affirming their
174 capacity to provide continued access as described in the plan. The department shall conduct a
175 public hearing prior to a determination on the closure of said essential services or of the hospital.

176 (d) The department, in conducting any assessment and prior to making any determination
177 pursuant to paragraph (c), shall refer to the state health plan and regional considerations
178 established pursuant to section 16T of chapter 6A, and shall also request and consider
179 information presented by the health policy commission pursuant to section 13 of chapter 6D.

180 (e) If a hospital closes or discontinues an essential health service without a plan approved
181 by the department pursuant to paragraphs (a) and (b) of this section, that hospital shall not be

182 eligible to have an application approved pursuant to section 25C for a period of two years from
183 the date the service is discontinued, or until the essential health service is restored, or until such
184 time as the department is satisfied that a plan is in place that, at the time of the discontinuance,
185 would have met the requirements of paragraph (b). If the closed hospital or the hospital
186 discontinuing the essential health service is part of a network of hospitals under common
187 ownership, the same restrictions shall apply against each hospital owned, managed, or controlled
188 by the hospital network. The commissioner may waive a restriction established pursuant to this
189 subsection, if the application of such restriction causes an imminent hazard to the public health.

190 (f) If a hospital executes a plan to close or to discontinue an essential health service, said
191 plan not having been approved by the department pursuant to paragraphs (a) and (b) of this
192 section, that hospital shall not be eligible to receive funding under sections 2PPP or 2GGGG of
193 Chapter 29, or under section 2G of Chapter 111, for a period of two years from the date the
194 service is discontinued, or until the essential health service is restored, or until such time as the
195 department is satisfied that a plan is in place that, at the time of the discontinuance, would have
196 met the requirements of paragraph (b). If the closed hospital or the hospital discontinuing the
197 essential health service is part of a network of hospitals under common ownership, the same
198 restrictions shall apply against each hospital owned, managed, or controlled by the hospital
199 network. The commissioner may waive a restriction established pursuant to this subsection, if
200 the application of such restriction causes an imminent hazard to the public health.

201 (g) No original license shall be granted to establish or maintain an acute-care hospital, as
202 defined by section 25B, unless the applicant submits a plan, to be approved by the department,
203 for the provision of community benefits, including the identification and provision of essential
204 health services. In approving the plan, the department may take into account the applicant's

205 existing commitment to primary and preventive health care services and community
206 contributions as well as the primary and preventive health care services and community
207 contributions of the predecessor hospital. The department may waive this requirement, in whole
208 or in part, at the request of the applicant which has provided or at the time the application is
209 filed, is providing, substantial primary and preventive health care services and community
210 contributions in its service area.

211 SECTION 14. Section 56 of Chapter 111 of the General Laws, as appearing in the 2016
212 Official Edition, is hereby amended by inserting after the second sentence the following new
213 sentence:-

214 Whoever, being licensed under section 51, discontinues an essential health service or
215 closes a hospital under said license and in violation of section 51G shall, for a first offense, be
216 punished by a fine of not more than \$150,000 and for a subsequent offense by a fine of not more
217 than \$300,000 or by imprisonment for not more than two years or both. Any licensee under
218 section 51 that closes a hospital under said license and in violation of section 51G shall be
219 punished by a fine of not more than \$500,000 or by imprisonment for not more than two years or
220 both, provided that if a closed hospital is part of a network of hospitals under common ownership
221 the penalties herein described shall be levied against the authority, entity or corporation having
222 control of the hospital network.