HOUSE DOCKET, NO. 1463 FILED ON: 1/20/2011

HOUSE . . . . . No. 1220

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 strengthening the DON program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	*1st Essex*

HOUSE DOCKET, NO. 1463 FILED ON: 1/20/2011

HOUSE . . . . . No. 1220

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 1220) of Michael A. Costello relative to the medical facility determination of need program. Health Care Financing.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act 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:

SECTION 1

Chapter 305 of the Acts of 2008 is hereby amended by deleting Section 7 and replacing it with the following new language:

"Expenditure minimum with respect to substantial capital expenditures", with respect to expenditures and acquisitions made by or for: (1) acute care hospitals and comprehensive cancer centers as defined in section 1 of chapter 118G, only, $7,500,000, except that expenditures for, or the acquisition of, major movable equipment not otherwise defined by the department as new technology or innovative services shall not require a determination of need and shall not be included in the calculation of the expenditure minimum; and (2) health care facilities, other than acute care hospitals, and facilities subject to licensing under chapter 111B, with respect to: (a) expenditures for, or the acquisition of, medical, diagnostic or therapeutic equipment, $400,000; 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 Chapter 305 of the Acts of 2008 is hereby further amended by in Section 11 deleting the
25 last paragraph and replacing it with the following new language:

26 Section 53G. Any entity that is certified or seeking certification as an ambulatory
27 surgical center by the Centers for Medicare and Medicaid Services for participation in the
28 Medicare program shall be a clinic for the purpose of licensure under section 51, and shall be
29 deemed to be in compliance with the conditions for licensure as a clinic under said section 51 if
30 it is accredited to provide ambulatory surgery services by the Accreditation Association for
31 Ambulatory Health Care, Inc., the Joint Commission on Accreditation of Healthcare
32 Organizations, the American Association for Accreditation of Ambulatory Surgery Facilities or
33 any other national accrediting body that the department determines provides reasonable
34 assurances that such conditions are met. No original license shall be issued pursuant to said
35 section 51 to establish any such ambulatory surgical clinic unless there is a determination by the

36 department that there is a need for such a facility. For purposes of this section, "clinic" shall
37 include a clinic conducted by a hospital licensed under said section 51 or by the federal
38 government or the commonwealth. The department shall promulgate regulations to implement
39 this section.

40 SECTION 2

41 Section 25C of Chapter 111 of the General Laws is amended by inserting after the first
42 paragraph the following new paragraph:

43 "The Department shall conduct a statewide planning initiative for the purposes of
44 studying and coordinating the availability and delivery of health care services within the
45 commonwealth. The initiative shall examine the current supply of inpatient and outpatient
46 services, and technologies and develop a plan for the provision of new services, beds,
47 technologies, and structural expansions throughout the commonwealth, and develop a plan for
48 the continued role of community hospitals and health centers within the commonwealth. The
49 Department shall utilize this plan in its evaluation of all applications for a determination of need,
50 as required by this section, in order to determine whether the proposed expansion construction,
51 or acquisition of health care facilities or services is needed in the Commonwealth, or whether the
52 proposed expansion construction, or acquisition of health care facilities or services will
53 unnecessary duplicate ongoing services and increase health care costs in the Commonwealth."

54 SECTION 3

55 Section 25C of Chapter 111 of the General Laws is amended by inserting at the end of
56 the section the following new paragraph:

57 “Any hospital seeking to expand its emergency department shall file a determination of
58 need with the department. In addition to the information required pursuant to this section, the
59 department shall require hospitals seeking emergency department expansions to demonstrate that
60 prior to filing a determination of need application, the hospital has implemented measures to
61 reduce emergency room overcrowding. The department shall promulgate regulations defining
62 the measures hospitals may take to reduce emergency room overcrowding.”

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

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

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

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

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

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

84

85 (b) Four of the members shall be appointed by the governor: 1 shall be appointed from
86 among the chancellor of the University of Massachusetts Medical School and a list of 3
87 nominated by said chancellor; 1 shall be appointed from among the dean of the University of
88 Massachusetts Amherst School of Public Health or Health Sciences and a list of 3 nominated by
89 said dean; 1 shall be appointed from among the heads of the non-public schools of medicine in
90 the commonwealth or their nominees; and 1 shall be appointed from among the heads of the non-
91 public schools or programs in public health in the commonwealth or their nominees.

92

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

98

99 (d) Six of the appointed members shall be non-providers: 1 shall be appointed by the
100 secretary of elder affairs; 1 shall be appointed by the secretary of veterans' services; 1 shall be
101 appointed by the governor from a list of 3 nominated by Health Care For All, Inc.; 1 shall be
102 appointed by the governor from a list of 3 nominated by the Coalition for the Prevention of
103 Medical Errors, Inc.; 1 shall be appointed by the governor from a list of 3 nominated by the
104 Massachusetts Public Health Association; and 1 shall be appointed by the governor from a list of
105 3 nominated by the Massachusetts Community Health Worker Network. Whenever an
106 organization nominates a list of candidates for appointment by the governor under this
107 subsection, the organization may nominate additional candidates if the governor declines to
108 appoint any of those originally nominated.

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

112

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

120

121 (g) Upon the expiration of the term of office of an appointive member, his successor shall
122 be appointed in the same manner as the original appointment, for a term of 6 years and until the
123 qualification of his successor. The members shall be appointed not later than 60 days after a
124 vacancy. The council shall meet at least once a month, and at such other times as it shall
125 determine by its rules, or when requested by the commissioner or any 4 members. The
126 appointive members shall receive $100 per day that the council meets, and their reasonably
127 necessary traveling expenses while in the performance of their official duties.