

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 T. Welch	Hampden	1/18/2019
Kate Hogan	3rd Middlesex	1/30/2019

SENATE DOCKET, NO. 1430 FILED ON: 1/17/2019

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:-

(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
of whom shall have experience in health policy and planning and 1 of whom shall have
experience in health care market planning and service line analysis.

The council shall assemble an advisory committee of not more than 13 members who shall reflect a broad distribution of diverse perspectives on the health care system, including health care providers and provider organizations, community health centers, academic institutions, health care workforce development expertise, third-party payers, both public and private, consumer representatives and labor organizations representing health care workers. The advisory committee shall review drafts and provide recommendations to the council for the development and each periodic update of the plan.

The council chair shall establish processes to ensure public access to the most current version of the state health plan, and to allow interested persons to submit testimony toward the development and updating of the plan, which process shall include public hearings in geographically diverse areas, and a website to allow members of the public to submit comments electronically and review comments submitted by others.

The state health plan shall identify needs of the commonwealth in health care services, providers, programs and facilities; the resources available to meet those needs; and the priorities for addressing those needs. To assess and report on such needs, the council shall establish not fewer than fifteen health planning regions to reflect variance in the service needs and resource capacities across the different geographies of the Commonwealth. The assessments, findings and 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:-

(g) The secretary of human services shall work in conjunction with the agencies and organizations having membership on the council, as defined in the first paragraph of subsection (a), to establish agreements and mechanisms for appropriate sharing of data between agencies as required for the council to fulfill its responsibilities, provided that no such agreement or mechanism shall conflict with state and federal laws and rules for medical privacy.

SECTION 6. Section 13 of chapter 6D of the General Laws, as appearing in the 2016
Official Edition, is hereby amended by inserting at the end thereof the following new
subsection:-

61 (1) 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, including any preliminary findings, to the commissioner of public health. The executive director 67 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.

SECTION 7. Section 8 of Chapter 12C of the General Laws, as appearing in the 2016
Official Edition, is hereby amended in subsection (c) by striking the last sentence of the second
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.

6 of 12

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:-

7 of 12

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

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

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

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

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

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

(4) (a) Any hospital shall give notice to the department 90 days prior to the
discontinuance of any essential health service provided therein. The department shall by
regulation define "essential health service" for the purposes of this section, and may establish
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

9 of 12

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.

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

(e) If a hospital closes or discontinues an essential health service without a plan approvedby 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.

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

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

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