

SENATE No. 2011

The Commonwealth of Massachusetts

SENATE, May 16, 1983.

The committee on Health Care, to whom was referred the petition (accompanied by bill, Senate, No. 583) of Edward L. Burke for legislation to limit the costs of health care attributable to capital construction by hospitals; the petition (accompanied by bill, Senate, No. 599) of Edward L. Burke for legislation to further amend the determination of need law and to establish a commission to study the cost impact of hospital capital expansion; and So much of the recommendations of the Department of Public Health as relates to the determination of need program (House, No. 157), reports the accompanying bill (Senate, No. 2011).

For the Committee,

EDWARD L. BURKE

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT FURTHER AMENDING THE DETERMINATION OF NEED LAW AND ESTABLISHING A SPECIAL STUDY COMMISSION.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to reduce the rising cost of health care and to ensure the present and prospective availability of health care services to the residents of Massachusetts, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 25B of chapter III of the General Laws,
2 as most recently amended by section 1 to 3 of chapter 541 of
3 the acts of 1980, is hereby further amended by striking the
4 first sentence and inserting in place thereof the following sen-
5 tence: —

6 In this section and sections twenty-five C to twenty-five K,
7 inclusive, the following words shall have have the following
8 meanings: —

1 SECTION 2. Chapter III of the General Laws is hereby
2 amended by adding the following two sections: —

3 *Section 25 I.* In this section and sections twenty-five J to
4 twenty-five K, inclusive, the following words shall have the
5 following meanings: —

6 “Aggregate basis of payment”, the sum of the total reim-
7 bursable costs included in the basis upon which payments by
8 a non-profit hospital service corporation, under chapter one
9 hundred and seventy-six A, are calculated pursuant to any
10 hospital agreement, as defined in section thirty-one of chap-
11 ter six A, for all hospitals with a current hospital agree-
12 ment.

13 “Basis of payment”, the total reimbursable costs included
14 in the basis upon which payments by a non-profit hospital
15 service corporation, under chapter one hundred and seventy-

16 six A, are calculated pursuant to any hospital agreement as
17 defined in section thirty-one of chapter six A.

18 "Total incremental costs", the total increase in reimburs-
19 able costs of a hospital's basis of payment resultant from the
20 first full year of operation of the capital applications for
21 which the department has determined that there is need pur-
22 suant to the provisions of sections twenty-five C to twenty-
23 five H, inclusive.

1 SECTION 3. *Section 25J.* Approval by the department, pur-
2 suant to the provisions of sections twenty-five C to twenty-
3 five H, inclusive, of applications proposing capital projects,
4 per annum, shall be limited such that the total incremental
5 cost per annum resultant from said approvals shall be no
6 more than one and one-half percent of the current aggregate
7 basis of payment.

8 Before the department takes action on any applications
9 where a determination of need is required, the department
10 shall consider comments provided to it by the rate setting
11 commission advising the department on financial matters, in-
12 cluding but not limited to the less costly or more effective al-
13 ternative financing methods of providing such services; the
14 immediate and long-term financial feasibility of the proposal;
15 the probable impact of the proposal on costs of and charges
16 for services; and the availability of funds for capital and oper-
17 ating needs. Before the Department takes action on any ap-
18 plication of an acute hospital, as defined in section thirty-one
19 of chapter six A, for a substantial capital expenditure or sub-
20 stantial change in service, the department shall consider com-
21 ments provided to it by the rate setting commission advising
22 the department on the maximum addition to said hospital's
23 total incremental costs which may result from said substan-
24 tial capital expenditure or substantial change in service.

1 SECTION 4. *Section 25K.* There shall be a regional alloca-
2 tion of the allowable increases in the aggregate bases of pay-
3 ment resultant from approval of capital expenditures and sub-
4 stantial changes in service on a per annum basis. For pur-
5 poses of this section, the department shall utilize the geo-
6 graphical jurisdiction of the appropriate regional comprehen-
7 sive health planning agencies.

8 In allocating allowable capital expenditures, as defined in
9 section twenty-five J of this chapter, the department shall de-
10 termine the aggregate basis of payment of each region, di-
11 vide said basis by the statewide aggregate basis of payment,
12 multiply the resultant by the dollar amount of the statewide
13 allowable increase, and divide the amount by two.

14 The department shall allocate the remained based on the
15 health care needs of the region as determined by the appro-
16 priate regional comprehensive health planning agencies and
17 the department. In determining the health care needs of a
18 region said agencies and the department shall consider cri-
19 teria which include, but are not limited to, demographic vari-
20 ables, maintenance of high quality care, access to care, and
21 availability to care. Prior to distribution of said regional al-
22 lowances, the department shall retain ten percent of the al-
23 lowable per annum capital expenditure amount to be used for
24 special projects, as determined by the department. This
25 amount shall revert back to the regions on a pro-rata basis if
26 said fund is not expended.

1 SECTION 5. Section 32 of chapter 6A, as most recently
2 amended by section 1 of chapter 553 of the acts of 1982, is
3 hereby further amended by striking the last paragraph and
4 inserting in place thereof the following paragraph: —

5 The rate setting commission shall review and comment
6 upon all capital expenditure projects requiring a determina-
7 tion of need pursuant to the provisions of section twenty-five
8 of chapter one hundred and eleven of the General Laws, in-
9 cluding but not limited to the less costly or more effective
10 financing methods of providing such services; the immediate
11 and long-term financial feasibility of the proposal; the prob-
12 able impact of the proposal on costs of and charge for serv-
13 ices; and the availability of funds for capital and operating
14 needs. The rate setting commission shall review and com-
15 ment upon all capital expenditure projects requiring a deter-
16 mination of need pursuant to the provisions of section twenty-
17 five of chapter one hundred and eleven of the General Laws,
18 proposed by an acute hospital, as defined in section thirty-
19 one of chapter six A, including but not limited to the maxi-
20 mum addition to said hospital's total incremental costs which

21 may result from said capital expenditure. The commission
22 shall transmit to the department of public health its written
23 recommendations on each project which shall become part of
24 the written record compiled by said department during its
25 review of such project. The commission shall appear and
26 comment on any application for a determination of need
27 where a public hearing is required pursuant to the provisions
28 of said section twenty-five C of said chapter. To carry out
29 the purposes of this paragraph, the commission shall appoint
30 a senior professional employee to act as a liaison with said
31 department.

1 SECTION 6. This act shall apply to any hospital licensed
2 pursuant to the provisions of section fifty-one of chapter one
3 hundred and eleven and to any hospital affiliated with and
4 established by the University of Massachusetts pursuant to
5 the provisions of section thirty-four of chapter seventy-five.
6 This act shall not apply to hospitals in an emergency situa-
7 tion where the public health has been injured or there is a
8 clear and present danger of such injury, or where the existing
9 health care facility has been destroyed or otherwise substan-
10 tially damaged or there is a clear and present danger of such
11 damage.

1 SECTION 7. There shall be a study commission consisting of
2 twelve members which shall undertake an investigation and
3 study of ways in which to assess the cost impact of prospec-
4 tive hospital capital expansion applications filed under sec-
5 tion twenty-five C of this chapter upon all payers and pur-
6 chasers of hospital services in the commonwealth and shall
7 develop recommendations for modifications to section twenty-
8 five C through twenty-five K, inclusive, and any other gen-
9 eral or special law, which will require consideration of the
10 ability of said payers and purchasers of hospital services to
11 finance further hospital capital expansion and resulting in-
12 creased operating expenses.

13 Said commission shall consist of the secretary of human
14 services or his designee, the commissioner of public health or
15 his designee, the chairman of the rate setting commission or
16 his designee, the senate and house chairmen of the Joint Com-
17 mittee on Health Care; five persons to be appointed by the

18 governor to represent the following: the business community,
19 a non-profit hospital service corporation, the health insurance
20 industry, the nursing profession, and labor; one person to be
21 appointed by the governor from a list of nominees to be sub-
22 mitted by the Massachusetts Hospital Association to represent
23 the hospital industry; and one person to be appointed by the
24 governor to represent consumers as defined in Public Law
25 93-641.

26 The commission may employ an executive director, legal
27 counsel and such other assistance as it may deem necessary,
28 subject to appropriation. The commission may accept and
29 expend any appropriations, grants of money, professional
30 services, consultant services, clerical or other services and
31 supplies from the commonwealth in the course of its study.
32 The commission and its staff may travel within and without
33 the commonwealth.

34 The commission shall report to the general court the results
35 of its study and its recommendations, together with drafts of
36 legislation necessary to carry its recommendations into effect,
37 by filing the same with the clerk of the house of representa-
38 tives on or before the first of December, nineteen hundred and
39 eighty-three.

1 SECTION 8. Chapter III of the General Laws is hereby
2 amended by striking section 25 I, as renumbered by section
3 25 of chapter 261 of the acts of 1980, and inserting in place
4 thereof the following section: —

5 *Section 25L.* The commissioner, by rules and regulations,
6 may provide that either a resident or consultant pharmacist
7 in a health care facility may return to the pharmacy from
8 which it was purchased any unused medication provided that
9 such medication is sealed in unopened, individually packaged
10 units and within the recommended period of shelf life, and
11 provided that such medication is not a controlled substance
12 as defined in chapter ninety-four C. Such rules and regula-
13 tions shall permit the pharmacy to which such medication is
14 returned to restock and redistribute such medication, and
15 shall be required to reimburse or credit the purchaser for any
16 such returned medication.

1 SECTION 9. This act shall take effect January 1, 1982.



