

By Mr. McDonough of Boston, petition of John E. McDonough, Marc R. Pacheco, Mark C. Montigny, John A. Stefanini and Harriette L. Chandler for legislation to protect the public interest in the conversion of nonprofit hospitals and health maintenance organizations in the Commonwealth. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Six.

AN ACT PROTECTING THE PUBLIC INTEREST IN THE CONVERSION OF NON-PROFIT HOSPITALS AND HEALTH MAINTENANCE ORGANIZATIONS IN THE COMMONWEALTH.

1     *Whereas*, The deferred operation of this act would tend to defeat  
2 its purpose, which is to immediately provide for the protection of the  
3 public interest in the conversion of hospitals and health maintenance  
4 organizations from nonprofit to for-profit status, therefore it is  
5 hereby declared to be an emergency law, necessary for the imme-  
6 diate preservation of the public health.

*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 8A of chapter 180 of the General Laws is  
2 hereby amended by inserting after subsection (c) the following sub-  
3 section:—

4     (d) A nonprofit acute-care hospital, as defined in section twenty-  
5 five B of chapter one hundred and eleven, or a nonprofit health  
6 maintenance organization as defined in chapter one hundred and  
7 seventy-six G shall give written notice of not less than ninety days to  
8 the attorney general before it enters into a sale, lease, exchange, or  
9 other disposition of a substantial amount of its assets or operations  
10 with a person or entity other than a Massachusetts public charity;  
11 provided, however, that no such notice shall be required if a written  
12 waiver of such notice is executed by the attorney general. The  
13 attorney general shall assess the entity proposing to receive said  
14 assets or operations for reasonable costs related to, and shall expend

15 such amounts for, the review of the proposed transaction, as deter-  
16 mined by the attorney general to be necessary. Such reasonable costs  
17 may include expert review of the transaction, and a process for edu-  
18 cating the public about the transaction and obtaining public input.

19 If a charitable fund results from the transaction, and if the non-  
20 profit entity making the disposition does not continue its operation of  
21 a nonprofit hospital or nonprofit health maintenance organization,  
22 the governance of the charitable fund shall be subject to review by  
23 the attorney general and approval by the court. The governance of  
24 said charitable fund shall be broadly based in the community histori-  
25 cally served by the predecessor nonprofit acute care hospital or  
26 health maintenance organization. The attorney general shall conduct  
27 a public hearing in connection with his review of the plan for the  
28 governance of the resulting charitable fund. An appropriate portion  
29 of any resulting proceeds shall, if determined to be necessary by the  
30 attorney general, be used for assistance in the development of a com-  
31 munity-based plan for the use of the resulting charitable fund.

32 The entity receiving said assets or operations shall, if determined  
33 to be necessary by the attorney general in consultation with the  
34 department of public health, provide the funds, in an amount deter-  
35 mined by the commissioner of public health, for the hiring by the  
36 department of public health of an independent health care access  
37 monitor to monitor and report quarterly to the attorney general, the  
38 department of public health and the committee on health care on  
39 community health care access by the entity, including levels of free  
40 care provided by the entity. Said funding shall be provided for three  
41 years after the transaction. The entity receiving said assets or opera-  
42 tions shall provide the monitor with appropriate access to the entity's  
43 records in order to enable the monitor to fulfill this function. To pre-  
44 vent the duplication of any information already reported by the  
45 entity, the monitor shall, to the extent possible, utilize data already  
46 provided by the entity to the department of medical security pursuant  
47 to section fifteen of chapter one hundred and eighteen F, or to any  
48 other agency. No personal identifiers shall be attached to any of the  
49 records obtained by the monitor and all such records shall be subject  
50 to the privacy and confidentiality provisions of section seventy E of  
51 chapter one hundred and eleven.

1 SECTION 2. Chapter 111 of the General Laws is hereby amended  
2 by inserting after section 51F the following section:—

3 Section 51G. No original license shall be granted to establish or  
4 maintain an acute-care hospital, as defined by section twenty-five B,  
5 which is the resulting entity of a disposition of assets under subsec-  
6 tion (d) section eight A of chapter one hundred and eighty, unless  
7 there is a determination by the department of the suitability and  
8 responsibility of the prospective licensee in accordance with regula-  
9 tions of the department. For the purposes of this section, an applicant  
10 comprised of entities all presently holding a hospital license from  
11 the department shall not be considered to be an applicant for an orig-  
12 inal license.

13 For purposes of this section, the department's determination of  
14 suitability and responsibility shall include the following factors:

15 (i) the financial capacity of the prospective licensee to operate the  
16 hospital in accordance with applicable laws;

17 (ii) the history of the prospective licensee in providing acute care,  
18 including in states other than the commonwealth, if any, measured  
19 by compliance with the applicable statutes and regulations gov-  
20 erning the operation of hospitals in such states;

21 (iii) the participation of persons residing in the nonprofit entity's  
22 primary service area in oversight of the resulting hospital; and

23 (iv) whether the transaction will create a significant effect on the  
24 availability or accessibility of health care services to the affected  
25 communities.

26 No original license shall be granted to establish or maintain an  
27 acute-care hospital, as defined by section twenty-five B which is the  
28 resulting entity of a disposition of assets under subsection (d) of sec-  
29 tion eight A of chapter one hundred and eighty, unless the applicant  
30 agrees to maintain or increase the percentage of gross patient service  
31 revenues allocated to free care, as compared to the average of the  
32 annual percentage reported in the previous three years, of the prede-  
33 cessor nonprofit hospital; provided, however, that the department  
34 may permit the applicant to reduce said percentage if the department  
35 determines that demographic or other changes in said hospital's  
36 service area justify a reduction in said percentage. The department  
37 shall promulgate regulations to enforce the provisions of this para-  
38 graph and any agreement made by an applicant concerning free care.

39 Any hospital which is the resulting entity of a disposition of assets  
40 under subsection (d) of section eight A of chapter one hundred and  
41 eighty shall inform the department ninety days prior to the closing of  
42 the hospital or the discontinuance of any essential health service pro-  
43 vided therein. The department shall by regulation define "essential  
44 health service" for the purposes of this section. The department shall,  
45 in the event that a hospital proposes to discontinue an essential  
46 health service or services, determine whether any such discontinued  
47 services are necessary for preserving access and health status in the  
48 hospital's service area, require hospitals to submit a plan for assuring  
49 access to such necessary services following the hospital's closure of  
50 the service, and assure continuing access to such services in the  
51 event that the department determines that their closure will signifi-  
52 cantly reduce access to necessary services. The department shall  
53 conduct a public hearing prior to a determination on the closure of  
54 said essential services or of the hospital.

55 No original license, or renewal thereof, shall be granted to estab-  
56 lish or maintain an acute-care hospital, as defined by section twenty-  
57 five B, which is the resulting entity of a disposition of assets under  
58 subsection (d) of section eight A of chapter one hundred and eighty,  
59 unless said applicant submits a plan, to be approved by the depart-  
60 ment, for the provision of community benefits. In approving said  
61 plan, the department may take into account the applicant's existing  
62 commitment to primary and preventive health care services and  
63 community contributions as well as the primary and preventive  
64 health care services and community contributions of the predecessor  
65 nonprofit hospital. The department may waive this requirement, in  
66 whole or in part, at the request of the applicant which has provided  
67 or at the time the application is filed, is providing, substantial pri-  
68 mary and preventive health care services and community contribu-  
69 tions in its service area.

1 SECTION 3. Nothing in this act shall be construed to limit the  
2 existing authority of the attorney general, the commissioner of public  
3 health, any other government official or entity, or the court to review,  
4 approve, or disapprove conditions upon a transaction or disposition  
5 under existing law.