

## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, October 13, 1977.

The committee on Health Care, to whom were referred so much of the recommendations of the Department of Public Health (House, No. 125) as relates to revising the laws of the Commonwealth governing the licensing and regulation of hospitals, long-term care facilities and clinics (accompanied by bill, House, No. 126); the petition (accompanied by bill, Senate, No. 379) of Roger L. Bernashe for legislation to amend the determination of need program; the petition (accompanied by bill, Senate, No. 385) of Roger L. Bernashe for legislation to prevent the attrition of nursing home beds; the petition (accompanied by bill, House, No. 335) of H. Thomas Colo for legislation to exempt certain facilities from the certificate of need law; the petition (accompanied by bill, House, No. 1216) of Louis P. Bertonazzi relative to the definition of "health care facility" under the certificate of need law; the petition (accompanied by bill, House, No. 2374) of Andrew J. Rogers, Jr., for legislation relative to amending the determination of need program as relates to the expansion of health care facilities; the petition (accompanied by bill, House, No. 4615) of Richard P. Roche that public hospitals and health care facilities be subject to the same rules and regulations for licensing as private hospitals and other private health care facilities; and the petition (accompanied by bill, House, No. 5302) of Philip Frank Filosa for legislation to reorganize the health regulatory system of the Commonwealth, report recommending that the accompanying bill (House, No. 6674) ought to pass.

For the committee,

LOUIS P. BERTONAZZI.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Seven.

AN ACT AMENDING THE PROVISIONS OF THE DETERMINATION OF NEED LAW.

*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 35 of chapter 6A of the General Laws, as  
2 appearing in section 2 of chapter 1229 of the acts of 1973, is hereby  
3 amended by inserting, in clause (2) after the word "require" in line  
4 10, the following words: — , including such information regarding  
5 the costs, if any, of such provider for research in the basic  
6 biomedical or health care delivery areas or for the training of  
7 health care personnel which are included in its charges to the public  
8 for health care services, supplies, and accommodations.

1 SECTION 2. Section 25B of chapter 111 of the General Laws,  
2 as amended by section 3 of chapter 881 of the acts of 1975, is hereby  
3 further amended by inserting, after the definition of "health care  
4 facility", the following: —  
5 "Health care provider", a physician, a group of physicians, or  
6 other association or entity providing health services which is not a  
7 health care facility.

1 SECTION 3. Said section 25B of said chapter 111, as so  
2 amended, is hereby further amended by striking out the definition  
3 of "Substantial capital expenditure" and inserting, in place  
4 thereof, the following: —  
5 "Substantial capital expenditure", the expenditure of a sum of  
6 money, including an expenditure for the lease of capital equipment  
7 at the purchase value of such equipment, for construction of a  
8 health care facility which exceeds, or may reasonably be regarded  
9 as leading to an expenditure for construction in excess of, one  
10 hundred and fifty thousand dollars for an undertaking sufficiently  
11 specific to constitute the subject matter of an application for  
12 determination of need under section twenty-five C.

1 SECTION 4. Section 25C of the said chapter 111, as most  
2 recently amended by section 20 and section 21 of chapter 1168 of  
3 the acts of 1973, is hereby further amended by inserting, in the first  
4 paragraph after the word "therefor" and before the period in line 6,  
5 the following words:— ; provided, however, that no such  
6 determination shall be required whenever any such expenditure in  
7 excess of one hundred fifty thousand dollars or any change in  
8 service (1) shall be essential to the conduct of research in the basic  
9 biomedical or health care delivery areas or to the training of health  
10 care personnel, (2) shall at no time result in any increase in the  
11 clinical bed capacity of the facility, and (3) the cost of such  
12 expenditure or change shall cause no increase in the total patient  
13 care charges of the facility to the public for health care services,  
14 supplies, and accommodations, as such charges shall be defined  
15 from time to time in accordance with section five of chapter four  
16 hundred and nine of the acts of nineteen hundred and seventy-six.  
17 A facility shall, prior to commencing such expenditure or change  
18 in service for research and training, file with the department and  
19 the rate setting commission a written statement of any such  
20 expenditure for research or training which shall exceed, or may  
21 reasonably be regarded as likely to exceed, one hundred fifty  
22 thousand dollars. Said statement shall assure that such expend-  
23 iture or change (1) shall be essential to the conduct of research in  
24 the basic biomedical or health care delivery areas or to the training  
25 of health care personnel, (2) shall at no time result in any increase  
26 in the clinical bed capacity of the facility, and (3) shall cause no  
27 increase in the total patient care charges, as defined in accordance  
28 with section five of chapter four hundred and nine of the acts of  
29 nineteen hundred and seventy-six, of the facility to the public for  
30 health care services, supplies and accommodations.

1 SECTION 5. The said section 25C is hereby further amended  
2 by inserting after the said first paragraph, as so amended, the  
3 following paragraph:—

4 No health care provider shall expend or agree to expend an  
5 amount exceeding two hundred thousand dollars for the purchase  
6 or lease of a unit of medical, diagnostic or therapeutic equipment  
7 or, in the case of radiation therapy equipment, an amount  
8 exceeding one hundred and fifty thousand dollars, unless there is a  
9 determination by the department that there is need therefor.

1 SECTION 6. The said section 25C, as so amended, is hereby  
2 further amended by striking out the sixth paragraph and inserting  
3 in place thereof the following two paragraphs: —

4 The department shall approve or disapprove, in whole or in part,  
5 in a timely manner, every application for a determination of need.  
6 The department shall so approve or disapprove each such  
7 application within eight months after filing with the department;  
8 provided that the department may, on one occasion only, delay  
9 such action for up to two months after the applicant has provided  
10 information which the department reasonably has requested  
11 during such eight month period. Applications remanded to the  
12 department by the health facilities appeals board pursuant to the  
13 provisions of section twenty-five E shall also be acted upon by the  
14 department within the same said time limits. Any application  
15 which has not been acted upon by the department within such time  
16 limits shall be deemed to have been approved.

17 Such determinations of need shall be based on the written record  
18 compiled by the department during its review of the application  
19 and on such criteria consistent with sections twenty-five B to  
20 twenty-five G inclusive as were in effect on the date of filing of the  
21 application. In compiling such record the department shall confine  
22 its requests for information from the applicant to matters which  
23 shall be within the normal capacity of the applicant to provide. In  
24 each case the action by the department on the application shall be  
25 in writing and shall set forth the reasons therefor; and every such  
26 action and the reasons therefor shall constitute a public record and  
27 be filed in the department.

1 SECTION 7. Sections 25B through 25G of chapter 111 of the  
2 General Laws shall cease to be operative on June 30, 1982.