

By Mr. Herren of Fall River, petition of Albert Herren for legislation to regulate the determination of need for health care facilities. Health Care.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO DETERMINATION OF NEED.

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 111 of the General Laws
2 is hereby amended by inserting at line 21 the following new
3 paragraph: — “Hospital Payment System Advisory Commission,
4 (HospPAC)”, the advisory commission composed of seven
5 members appointed by the Governor pursuant to Section 8 of
6 Chapter 495 of the Acts of 1991.

1 SECTION 2. Section 25B of chapter 111 of the General Laws
2 is hereby amended by deleting at line 61 after the word “as”, the
3 following: “dialysis, transplant services, cardiac catheterization,
4 angioplasty and neonatal intensive care,” and inserting in place
5 thereof: — “transplant services, and open heart surgery.”
6 Furthermore in line 64 by replacing the words “the department”
7 with the words “the Hospital Payment System Advisory
8 Commission (HospPAC). HospPAC shall ensure that the list of
9 innovative services is reviewed and updated at least every two
10 years.”

1 SECTION 3. Section 25B is further amended by deleting at
2 line 71 the following: “magnetic resonance imagers, lithotrypters,
3 and linear accelerators”, and inserting in place thereof the
4 following: “positron emission tomography, and extracorporeal
5 membrane oxygenation,”. Furthermore in line 72 by replacing
6 words “the department” in both occurrences with the words “the

7 Hospital Payment System Advisory Commission (HospPAC)",
8 and by inserting in line 81 after the words "services", the
9 following: — "HospPAC shall ensure that list of new technologies
10 is reviewed and updated at least every two years."

1 SECTION 4. Section 25B is further amended in line 98 by
2 deleting after the word "for" the following: "acute-care hospitals
3 and comprehensive cancer centers as defined in section thirty-one
4 of chapter six A, only, seven and one-half million dollars, except
5 that expenditures for or the acquisitions of, major movable
6 equipment not otherwise defined by the department as new
7 technology or innovative services shall not require a determina-
8 tion of need, and shall not be included in the calculation of the
9 expenditure minimum; and (2)".

1 SECTION 5. Section 25B is further amended in line 114 by
2 deleting after the word "minimum." the following: "Notwithstand-
3 ing the above limitations, acute-care hospitals only may elect at
4 their option to apply for determination of need for expenditures
5 and acquisitions less than the expenditure minimum."

1 SECTION 6. Section 25B is further amended in line 157 after
2 the word "costs." by inserting the following paragraph: — "Health
3 status priorities list", shall mean a prioritized listing of public
4 health goals determined by the department. The goals shall be
5 presented in the form of per capita indices.

1 SECTION 7. Section 25C is amended by deleting the first
2 sentence in its entirety and replacing it with the following: —
3 "There shall be a determination of need by the department where
4 any person or agency of the commonwealth or any political
5 subdivision thereof substantially changes a service of a facility or
6 except for acute hospitals, makes a substantial capital expenditure
7 for construction of a health care facility.

1 SECTION 8. Section 25C is further amended by inserting at
2 the end of line 62 the following section: — "111:25C¹/₄. Applicant
3 role in review process. An applicant shall have at least 30 days
4 to respond to the department's staff report on its application in
5 advance of the meeting scheduled upon the application.

6 Furthermore the department shall allow the applicant to make
7 an oral presentation if desired of up to thirty minutes in length
8 to refute and/or rebut the staff comments prior to any final
9 determination vote on the application.”

1 SECTION 9. Section 25C is further amended in line 67 by
2 inserting after the words “C½”, the following: — “or in the case
3 of a corporate merger of 2 or more existing Massachusetts licensed
4 acute care hospitals.”

1 SECTION 10. Section 25C is further amended in line 135 by
2 deleting after the word “the”, the following: “applicant may,
3 within a reasonable period of time, bring an action in the nature
4 of mandamus in the superior court to require the department to
5 act upon the application.”, and inserting “application will
6 automatically be deemed approved as submitted.”

1 SECTION 11. Section 25C is further amended by inserting
2 after the word “facility.”, in line 162 the following paragraph: —
3 “The department shall eliminate all provisions for the requirement
4 of community health initiatives within the determination of need
5 regulations. Initiatives for health status improvement shall be
6 addressed through voluntary positive incentive guidelines
7 developed by the department. The department shall establish a
8 comprehensive health status priorities list prioritizing public
9 health goals for the Commonwealth. This list shall be utilized as
10 a planning guide for local area health initiatives. The health status
11 priorities list shall be developed through the creation of a
12 multidisciplinary subcommittee consisting of but not limited to
13 representation from: the Massachusetts Hospital Association,
14 Massachusetts Medical Society, Massachusetts Public Health
15 Association, and the Massachusetts League of Community Health
16 Centers. The subcommittee shall meet as needed to review and
17 update the health status priorities listing, and submit it to the
18 public health council for final approval. The department shall
19 develop voluntary positive incentive determination of need
20 guidelines for applicants that are meeting a specified level of the
21 health status goals in their area. The positive incentives shall
22 include but not be limited to a waiver of determination of need
23 requirements for local areas that are meeting the department

24 defined level of health status and which meet the appropriate
25 quality standards.”

1 SECTION 12. Section 25C is further amended by inserting the
2 following new paragraph at the end: — “In the case where a
3 determination of need is required for any innovative services or
4 new technologies, said requirement shall apply to any person or
5 persons licensed or otherwise who are providing said services or
6 technology.”

1 SECTION 13. Section 25C $\frac{1}{2}$ is hereby amended by deleting
2 the following subpart beginning at line 9 after the number (1)
3 through lines 38 ending with “. . . in the combination.” This
4 section is further amended by deleting subpart (4)(b) at line 55
5 through subpart (C) at line 99 ending with “. . . pursuant to
6 subsection (a)”.