

By Mr. LaFontaine of Gardner, petition of Raymond M. LaFontaine for legislation to further regulate health care delivery systems in the Commonwealth. Health Care.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty.

AN ACT FURTHER REGULATING HEALTH CARE DELIVERY SYSTEMS IN THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to defeat  
2 its purpose, which is, in part, to improve the health care delivery  
3 system of Massachusetts in an equitable and feasible manner for all  
4 the citizens of the Commonwealth, therefore, it is hereby declared  
5 to be an emergency law, necessary for the immediate preservation  
6 of the public convenience and 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. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out Section 31, as appearing in Section I of Chapter  
3 409 of the acts of 1976, and inserting in place thereof the following  
4 section:

5 *Section 31.* As used in sections thirty-two to forty-seven, inclu-  
6 sively, unless the context clearly requires otherwise, the following  
7 words shall have the following meanings:

8 "Budget year", the fiscal year for which a hospital makes appli-  
9 cation to the Commission for budget approval.

10 "Charge", the amount to be billed or charged by a hospital for  
11 each specific service within a revenue center.

12 "Commission", the rate setting commission established under  
13 section thirty-two.

14 "Department", the department of human services of the Com-  
15 monwealth.

16 “Eligible person”, a person who qualifies for financial assistance  
17 from a governmental unit in meeting all or part of the cost of  
18 general health supplies, care, social, rehabilitative or education  
19 services and accommodations.

20 “Financial requirements”, the total dollars needed to meet  
21 health care-related current operating and capital costs of a prudent  
22 and efficient hospital operation, giving consideration to direct and  
23 indirect costs of providing health care services such as: salaries and  
24 wages, employee benefits, consulting and management fees, legal  
25 and auditing services, general supplies, purchased services, rentals  
26 and leases, utilities, insurance licenses and taxes, telephones, dues  
27 and subscriptions, and travel; interest necessary on both current  
28 and capital indebtedness; educational costs; research costs; credit  
29 losses on patients who fail to meet fully their incurred liability after  
30 adequate collection effort; charity losses on patients who, because  
31 of inability to pay, are relieved wholly or in part of financial  
32 responsibility for services; capital cost based on depreciation and  
33 debt retirement schedule of principal payments; and appropriate  
34 levels of reserve and net income to provide working capital, capital  
35 expansion and replacement for growth and development as ap-  
36 proved under section 25C of Chapter 111, General Laws, and  
37 adequate return on equity capital to owners of proprietary hospi-  
38 tals.

39 “General health supplies, care, social, rehabilitative or educa-  
40 tional services and accommodations”, all supplies, care and serv-  
41 ices of medical, optometric, dental, surgical, podiatric, psychiatric,  
42 therapeutic, diagnostic, rehabilitative, education, supportive or  
43 geriatric nature, including in-patient and out-patient hospital care  
44 and services, and accommodations in hospitals, sanatoria, infir-  
45 maries, convalescent and nursing homes, rest homes, facilities  
46 established, licensed, or approved pursuant to the provisions of  
47 chapter one hundred and eleven B, and similar institutions includ-  
48 ing those providing treatment, training, instruction and care of  
49 children and adults.

50 “Governmental unit”, the commonwealth, any department,  
51 agency, board or commission of the commonwealth, and any  
52 political subdivision of the commonwealth.

53 “Health care services”, all services and items, and use thereof,

54 regularly provided by a hospital as part of its in-patient services  
55 and health-related community service programs and includes sal-  
56 aries paid to physicians, but does not include physician's fees for  
57 services.

58 "Hospital", any hospital licensed under section fifty-one of  
59 chapter one hundred and eleven, the teaching hospital of the  
60 University of Massachusetts Medical School, and any psychiatric  
61 facility licensed under section twenty-nine of chapter nineteen.

62 "Patient", any natural person receiving health care services from  
63 a hospital.

64 "Prior fiscal year", the year for which a hospital last received  
65 approval for its budget from the commission.

66 "Provider of health care services", any person, corporation,  
67 partnership, governmental unit, state institution and other entity  
68 which furnishes general supplies, care, services and accommoda-  
69 tions to an eligible person.

70 "Purchaser", a natural person responsible for payment for  
71 health care services rendered by a hospital.

72 "Quality assurance program", any program in a hospital which  
73 continuously monitors and evaluates the health care services ren-  
74 dered to all patients of the hospital, to assure that the care is  
75 consistent with professional standards of quality, to identify and  
76 correct practices which result in care that does not meet such  
77 standards, to identify and eliminate wasteful and unreasonable  
78 practices and to correct deficiencies in services which unnecessarily  
79 inflate costs.

80 "Revenue center", a functioning unit of a hospital which pro-  
81 vides distinctive services to a patient for a charge.

82 "State institution", any hospital, sanatorium, infirmary, clinic  
83 and other such facility owned, operated or administered by the  
84 Commonwealth, which furnishes general health supplies, care,  
85 social, rehabilitative or educational services and accommodations.

86 "Third-party payor", any person, including insurance compa-  
87 nies, but not including a purchaser, responsible for payment,  
88 either to the purchaser or the hospital, for health care services  
89 rendered by a hospital.

90 "Unit of service", a measure of activity for a revenue center  
91 which is uniform for the same revenue center in each hospital.

1 SECTION 2. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out the second paragraph of Section 34A, as it  
3 appears in Section 3 of Chapter 409 of the Acts of 1976, and  
4 inserting in place thereof the following paragraph: —

5 “The board shall have the right to at least sixty days prior review  
6 and comment on any proposed rule or regulation of the commis-  
7 sion, except for rules or regulations promulgated on any emergen-  
8 cy basis, issued pursuant to sections 37 to 46, inclusive. The com-  
9 mission shall issue an explanatory statement which shall accom-  
10 pany its proposed regulations. The board shall consider any item  
11 within the purview of sections 37 to 46, inclusive, recommended by  
12 the commission, the chairman of the board or any two board  
13 members. The board shall, within thirty days of receipt of a pro-  
14 posed rule or regulation, submit written comments to the commis-  
15 sion recommending approval, disapproval or partial approval. In  
16 the event the commission determines not to accept any such recom-  
17 mendation, it shall prepare a written statement of its reasons for  
18 disagreement, which statement shall be submitted to the board  
19 within twenty days of receipt of the board’s recommendations, and  
20 shall, together with the board’s recommendations be included in  
21 the record of any public hearing held on such proposed rule or  
22 regulation. Any member of the board may participate in any such  
23 public hearing by presenting reports, studies, witnesses and testi-  
24 mony. The commission shall not promulgate any rule or regulation  
25 or part thereof which is the subject of a board recommendation of  
26 disapproval for at least twenty-one days after submission of such a  
27 statement in order to provide the board an opportunity, upon the  
28 call of a majority of those members present, to hold a public  
29 hearing on its recommendations. The board shall, upon call of at  
30 least four of its members, hold a public hearing on matters relating  
31 to the commission’s policies and activities carried out pursuant to  
32 sections thirty-seven to forty-six, inclusive.

33 The board shall report periodically, but at least as often as  
34 annually, to the governor and the general court, with copies to the  
35 joint legislative committee on health care, on its findings, opinions  
36 and recommendations for legislation.

37 The commission shall, subject to appropriation, afford office  
38 and meeting space, staff, clerical assistance and funds for necessary  
39 expenses for the board.”

1 SECTION 3. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out Section 37, appearing in Section 4 of Chapter 409  
3 of the General Laws of 1976, and inserting in place thereof the  
4 following section:

5 *Section 37. Hospital budgets, including actual and projected*  
6 *costs and charges; filing; approval.* For each fiscal year, every  
7 hospital shall, at least sixty days prior to the start of its fiscal year,  
8 file with the commission, for the commission's approval, a copy of  
9 its budget, including projected and actual cost, volume and rev-  
10 enue data, the charge schedule supporting the revenue projec-  
11 tions, and any such other information as the commission may  
12 require, including all pertinent information regarding anticipated  
13 changes in intensity of service and medical practice or either of  
14 them. Such budget shall include cost, revenue and volume data for  
15 the entire hospital and for each of its revenue centers. Such budget  
16 shall be available for public inspection on request pursuant to a  
17 rule of the commission.

18 Such budget shall include:

19 (a) Estimates of all income and expenses related to current  
20 operating needs;

21 (b) Estimates of the expenses related to the provision of health  
22 care services to indigents with respect to whom payments by or for  
23 the patient is waived in whole or in part by the hospital and  
24 estimates of credit losses;

25 (c) Estimates of needs for working capital and of a reserve for  
26 contingencies;

27 (d) Estimates of the amount of depreciation;

28 (e) Forecast of units of service by each revenue center including  
29 an explanation of the method used in making the forecast and  
30 actual comparative data for the prior two fiscal years;

31 (f) Forecast of full-time equivalents;

32 (g) Forecast of salaries and employee benefits;

33 (h) Analysis of direct and indirect operating costs and cost  
34 finding by each revenue center and related schedule of charges;

35 (i) Estimates of the amounts of payments to be made into and  
36 from the hospital's funded depreciation established for the purchase  
37 of major moveable equipment;

38 (j) Estimates of the amounts of payments to be made into and

39 from the hospital's funded depreciation established for the mod-  
40 ernization, expansion, and replacement of the hospital physical  
41 plant; and

42 (k) Such other information as the commission may require.

1 SECTION 4. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out Section 38, inserted by Section 4 of Chapter 409  
3 of the acts of 1976, and inserting in place thereof the following:

4 *Section 38. Prospective hospital budget review.*

5 The commission shall review and approve each hospital's pros-  
6 pective budget and units of services in order to determine, in the  
7 aggregate, the resources needed to meet each hospital's financial  
8 requirements, as specified by the commission. The commission  
9 shall require that charges for health care services rendered in each  
10 hospital be uniform for all patients receiving comparable service,  
11 except as provided in this section. Differentials in charges may be  
12 established by the commission in its regulations. Such differentials  
13 shall be based on identifiable payment characteristics of the pur-  
14 chaser or third-party payor which facilitate quantifiable cost sav-  
15 ings in the hospital's financial requirements. The hospital shall  
16 implement only such differentials in charges which are approved  
17 by the commission.

18 For purposes of determining the financial requirements of the  
19 hospital, the commission shall include as an offset against said  
20 regulations or otherwise take into account the amount of the  
21 difference between actual net revenue earned by the hospital in the  
22 prior fiscal year and the total financial requirements approved by  
23 the commission for such fiscal year.

24 In approving the budget, approval of the financial requirements  
25 of the hospital shall be based on factors including, but not limited  
26 to:

27 (a) The hospital's budget for operating revenues, operating ex-  
28 penses and capital costs;

29 (b) The reports required by Section 45 of this chapter;

30 (c) Comparisons of the anticipated financial requirements in the  
31 budget year with the hospital's actual revenue and cost experience  
32 in the prior fiscal year;

33 (d) A forecast of the expected return to the hospital's investors if

34 the hospital is a proprietary hospital. For the purpose of rate  
35 review and determination for a proprietary hospital, the allowed  
36 rate of return on investment shall be a reasonable rate, determined  
37 annually by the commission after consideration of the rates of  
38 return on investments at comparable risk, but shall not be less than  
39 the rate (or weighted average of the rates) of interest borne by the  
40 institutions outstanding capital indebtedness;

41 (e) The level of utilization of and the need for the hospital's  
42 various revenue centers;

43 (f) Population-based statistics relating to medical care in the  
44 principal geographic area served by the hospital;

45 (g) The appropriateness of the services provided by the hospital,  
46 including an assessment of their conformity to the health systems  
47 plan and the state health plan established under 42 USC Section  
48 300K;

49 (h) The hospital's anticipated financial requirements for patient  
50 care and patient care-related education and research programs;

51 (i) The cost of developing and operating a quality assurance  
52 program for the hospital;

53 (j) Comparisons of the hospital with other hospitals in the same  
54 grouping as determined in accordance with Section 40 of this  
55 chapter;

56 (k) The extent to which the hospital has taken or failed to take  
57 steps to achieve economies consistent with effective and efficient  
58 delivery of quality health care services, including cooperative ar-  
59 rangements with other hospitals for joint use of medical facilities  
60 and services; and

61 (l) The long range capital expenditure plan of the hospital.

62 With respect to the hospital's anticipated financial requirements  
63 for working capital needs, the commission shall give consideration  
64 to the extent to which the budgeted requirements exceed the finan-  
65 cial resources that are reasonably considered necessary in order to  
66 permit good business practices to be followed without excessive  
67 short-term borrowing, giving due weight to efforts to obtain  
68 prompt payment for services rendered and the reasonableness of  
69 any proposed cash reserve to meet contingencies.

70 With respect to the hospital's anticipated financial requirements  
71 for payment of interest, the commission shall consider whether the

72 debt was incurred to meet a need of the hospital for capital expend-  
73 itures or operating costs and whether the rate of interest exceeds  
74 the rate that a prudent borrower would have had to pay on similar  
75 loans of like maturity in the relevant money market when the debt  
76 was incurred.

77 With respect to the hospital's anticipated financial requirements  
78 for credit losses and for the care of indigent patients, the commis-  
79 sion shall give consideration to the reasonableness of the hospital's  
80 credit, collection and indigent care practice, the external factors,  
81 including, but not limited to, such factors as economic conditions  
82 in the area served by the hospital, the availability of adequate  
83 health insurance coverage in the area, and, with respect to indigent  
84 care, the extent of community need.

85 The commission shall consider the extent to which purchasers  
86 and third-party payors avail themselves of discounts and allow-  
87 ances approved by the commission.

88 The commission may by regulation establish programs to pro-  
89 vide fiscal incentives for efficient hospital management.

90 Hospitals shall be required to maintain a quality assurance  
91 program for all patients, which program shall include monitoring  
92 the necessity of admission, appropriateness of the length of stay,  
93 proper utilization of services, and the evaluation of the quality of  
94 services rendered. Such quality assurance programs shall utilize, as  
95 a minimum, standards and criteria established by the professional  
96 standards review organization designated in the Commonwealth  
97 under 42 USC Section 300K. Where the hospital exceeds the  
98 approved revenue estimates for the prior fiscal year, the data  
99 collected by the quality assurance program will be subject to audit  
100 by the commission and review by the rate setting commission  
101 policy review board. A copy of the quality assurance program shall  
102 be placed on file with the commission. The commission shall  
103 require reports from hospitals on operation of quality assurance  
104 programs according to the provisions of section forty-five of this  
105 chapter. When inappropriate utilization levels are brought to the  
106 attention of the commission, such information shall be made avail-  
107 able to the department of public health.

108 The commission shall approve or disapprove a hospital's budget  
109 within sixty days of receipt of the budget. If the commission finds

110 any data submitted to be incomplete, incorrect, or otherwise unac-  
111 ceptable, it may suspend, upon written notification to the hospital  
112 specifying all deficiencies, the running of said sixty-day time limita-  
113 tion until such time as correct and acceptable data is received.  
114 Failure by the hospital to submit original data within the time  
115 specified by Section thirty-seven corrected data within the time  
116 specified by the commission shall suspend the implementation of  
117 new rates by the number of days of the delay in submission.

118 The Commission shall consult with agencies of the common-  
119 wealth and health systems agencies designated under 42 USC300k  
120 concerning the development and implementation by such agencies  
121 of health policies.

122 The commission shall prohibit reimbursement for capital expend-  
123 itures and the supporting operational expenses which require a  
124 certificate of need as provided by Section 25C of Chapter 111 of the  
125 General Laws, but for which no such certificate has been granted.

126 The commission shall review and comment upon all capital  
127 expenditure projects requiring review by Section 25C of Chapter  
128 111 of the General Laws, including, but not limited to, the less  
129 costly or more effective alternative methods of providing such  
130 services; the immediate and long-term financial feasibility of the  
131 proposal; the probable impact of the proposal on costs of and  
132 charges for services; and the availability of funds for capital and  
133 operating needs. If such capital expenditures are ultimately ap-  
134 proved, the commission shall accept such capital expenditures.  
135 The hospital shall be allowed a three-year period after a determina-  
136 tion of need is made as to any new service within which to fulfill the  
137 planned utilization rate. The commission shall monitor the service  
138 during the three-year period, after which it shall consider the actual  
139 utilization rate in approving subsequent prospective budgets.

140 To carry out the purposes of this section, the commission may  
141 enter into leases and agreements, including agreements with techni-  
142 cal and professional consultants, which may include third-party  
143 payors, hold public hearings, conduct investigations, initiate  
144 studies, perform audits, issue subpoenas and administer oaths for  
145 taking of testimony, and require the filing of information relating  
146 to any matter affecting the cost and availability of services in  
147 hospitals subject to the provisions of this chapter.

148 The budget of the commission shall be financed by assessments  
149 against hospitals in an amount to be determined by the commis-  
150 sion, on a biennial basis. Such assessments shall be considered an  
151 operating cost of the hospital includible in its budget and consid-  
152 ered by the commission as part of the financial requirements of the  
153 hospital.

154 The commission shall adopt and amend rules and regulations in  
155 accordance with General Laws Chapter thirty-A for the adminis-  
156 tration of its duties and powers and to effectuate the provisions and  
157 purposes of this chapter. Such regulations shall be adopted only  
158 upon consultation with representatives of non-profit hospital serv-  
159 ice corporations incorporated under chapter one hundred and  
160 seventy-six A, elected representatives of health systems agencies  
161 delegated pursuant to Title XV of the federal Public Health Service  
162 Act, companies authorized to sell accident and health insurance  
163 under chapter one hundred and seventy-five and the Massachu-  
164 setts Hospital Association.

165 Nothing in this chapter shall be construed to require payment by  
166 any third-party payor, under any program or contract for payment  
167 or reimbursement of expenses for health care services, for: (a)  
168 health care services not covered under such program or contract;  
169 or (b) that portion of any charge for services furnished by a hospital  
170 that exceed the amount covered by such program or contract.  
171 Nothing in this chapter shall be construed to supersede or modify  
172 any provision of such program or contract that requires payment  
173 of a deductible, co-payment, insurance premium, or enrollment  
174 fee, or that imposes any similar requirement.

1 SECTION 5. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out Section 39, as it appears in Section 4 of Chapter  
3 409 of the Acts of 1976, and inserting in place thereof the following  
4 section: —

5 *Section 39. Modifications in budget; approval; procedures; reg-*  
6 *ulations.*

7 Any hospital which proposes to modify its budget during the  
8 budget year shall submit an application therefor for approval  
9 by the commission. The commission shall approve or disapprove  
10 the application within sixty days after receipt of such submission.

11 The commission may approve or disapprove such applications in  
12 whole or in part. Information supporting the proposed modifica-  
13 tion budget, including projected actual cost, units of service, vo-  
14 lume and revenue data shall be furnished with the application.

15 The Commission shall from time to time issue regulations setting  
16 forth the procedure and substantive standards to be applied in  
17 reviewing applications for approval of modifications in budget.  
18 Said regulations shall provide that requested modification in  
19 budget shall be supported by the reasonableness of the underlying  
20 costs and shall provide for the approval of proposed modifications  
21 in budget if the increase proposed results from cost increases  
22 beyond the reasonable control of the individual hospital.

23 In reviewing applications under this section, the commission  
24 may consider changes in budget necessary to cover changes in  
25 intensity of services and changes in medical practice. In developing  
26 such regulations, the commission shall consult with representatives  
27 of non-profit hospital service corporations, the elected representa-  
28 tives of health systems agencies designated pursuant to Title XV of  
29 the federal Public Health Service Act, companies authorized to sell  
30 accident and health insurance under chapter one hundred and  
31 seventy-five, and the Massachusetts Hospital Association.

1 SECTION 6. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out section 40, as it appears in Section 4 of Chapter  
3 409 of the Acts of 1976, and inserting in place thereof the following  
4 section: —

5 *Section 40. Reviewing of applications for approval of charges,*  
6 *and of hospital budgets; adoption of methodology.* The commis-  
7 sion shall, for the purpose of reviewing budgets under section  
8 thirty-eight and applications under section thirty-nine, develop  
9 and adopt, by regulations issued hereunder, a methodology for  
10 reasonable grouping and comparing hospitals by any or all of the  
11 following criteria: size, service, department and other criteria ap-  
12 propriate for comparison. Such methodology shall be adopted by  
13 the commission only upon consultation with representatives of  
14 non-profit hospital service corporations incorporated under chap-  
15 ter one hundred and seventy-six A, elected representatives of  
16 health systems agencies designated pursuant to Title XV of the

17 federal Public Health Service Act, companies authorized to sell  
18 accident and health insurance under chapter one hundred and  
19 seventy-five and the Massachusetts Hospital Association.

1 SECTION 7. Chapter 6A of the General Laws is hereby amend-  
2 ed by repealing and striking out section 41, as it appears in Section  
3 4 of Chapter 409 of the Acts of 1976.

1 SECTION 8. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out section 42, as it appears in Section 4 of Chapter  
3 409 of the Acts of 1976, and inserting in place thereof the following  
4 section:—

5 *Section 42. Appeal in accordance with Section 36.* Any hospital  
6 aggrieved by any action of the commission on any budget filed  
7 under section thirty-seven or an application submitted under sec-  
8 tion thirty-nine, may file an appeal in accordance with section  
9 thirty-six of Chapter six A.

1 SECTION 9. Chapter 6A of the General Laws is hereby amend-  
2 ed by striking out section 44, as it appears in Section 4 of Chapter  
3 409 of the Acts of 1976, and inserting in place thereof the following  
4 section:—

5 *Section 44. Violations; civil penalty; enforcement.* Any hospital  
6 which makes a charge or accepts payment based upon a charge in  
7 excess of that approved by the commission under this chapter, or  
8 which fails to file with the commission data, statistics or schedules  
9 or other information required under this chapter or by any regula-  
10 tion promulgated by the commission or which falsifies the same,  
11 shall be subject to a civil penalty of not more than one thousand  
12 dollars for each day on which such violation occurs or continues,  
13 which penalty may be assessed in an action brought on behalf of  
14 the commonwealth in any court of competent jurisdiction. The  
15 attorney general of the commonwealth shall bring any appropriate  
16 actions including injunctive relief as may be necessary for the  
17 enforcement of the provisions of sections thirty-seven to forty-six,  
18 inclusive.

1 SECTION 10. Chapter 6A of the General Laws is hereby

2 amended by striking out section 45, as it appears in Section 4 of  
3 Chapter 409 of the Acts of 1976, and inserting in place thereof the  
4 following section: —

5 *Section 45. Standards systems for determining, etc., costs and*  
6 *charges.* The commission shall require each hospital to file annual  
7 financial statistical reports in accordance with standard systems of  
8 reporting within 90 days after the end of each fiscal year. The  
9 commission shall require each hospital to file quality assurance  
10 program reports at times established by regulations hereunder and  
11 in accordance with a standard system of reporting. The commis-  
12 sion shall, by regulations issued hereunder, specify standard sys-  
13 tems for determining, reporting, and auditing the costs and charges  
14 of every hospital, including methods by which each hospital shall  
15 allocate its costs and revenues and shall record its assets, liabilities,  
16 units of service, and departmental data; which recording shall not  
17 be in variance with generally accepted accounting principles. Such  
18 regulations shall provide for appropriate variations in such sys-  
19 tems designed to reflect differences in size, scope of services, and  
20 administrative capacity of hospitals, provided that such resulting  
21 systems shall allow for valid comparisons among hospitals as to  
22 costs and revenues.

1 SECTION 11. *Severability.* If any clause, sentence, paragraph  
2 subsection, section or chapter of this act shall be adjudged by any  
3 court of competent jurisdiction to be invalid, the judgment shall  
4 not affect, impair, or invalidate the remainder thereof, but be  
5 confined in its applicability to the specific portion of this act which  
6 is the subject of the controversy and as to which the judgment is  
7 rendered.

1 SECTION 12. *Repealing clause.* All laws and parts of laws in  
2 conflict with this act or any portion of this act are deemed to be  
3 superseded by the provisions of this act.

1 SECTION 13. This act shall take effect January first, *nineteen*  
2 *hundred and eighty-one.*





