

Justification and Senate 884 as filed.

Justification for SB 884

An Act Relative to Specialty Licensure

The proposed legislation would help to ensure regulatory parity by refining the definition of clinic to include a newly described category of existing outpatient practice facilities that are not already licensed as clinics, hospitals and ASCs, to be entitled specialty health care providers. Such facilities provide anesthesia, conscious sedation, diagnostic injections, imaging services and major medical, diagnostic and therapeutic equipment. They also include such providers such as endoscopy centers and exclude dental facilities.

The legislation would accomplish a few things. First, it would close a loophole that currently exists under Chapter 305 of the Acts of 2008 (the Cost Containment legislation) and under DPH regulations, as follows: Currently, some specialty health care providers that offer the type of outpatient services provided by hospitals and ASCs (including physician practices) are exempt from the requirement to be clinic licensed ASCs and subject to determination of need (DoN) simply because they choose to not maintain Medicare certification and be regulated as an ASC. The type of payer reimbursement received by a health care provider should not govern the health care quality/patient protection requirements to which a health care provider is subject. By including such providers within the definition of clinic, they would be subject to the same type of DPH licensure requirements as hospitals and ASCs for such outpatient procedures. In this way, patients would be ensured of a consistent level of health care quality/patient protections regardless of both the setting in which their care is delivered and the type of payer reimbursement which they accept.

Second, the proposed legislation would provide regulatory parity for larger, sophisticated physician practices that are operating as outpatient providers but which have been exempt from licensure and regulation by DPH through the so-called physician practice exemption from clinic licensure (PPE). The Legislature enacted the PPE in 1979 to evidence that DPH was not charged with the regulation of traditional doctor's offices. As the health care landscape changed, however, some physician practices evolved into complex outpatient diagnostic testing and treatment facilities and DPH took some steps to ensure that the PPE was not being abused. For example, consistent with the intent of the proposed legislation, DPH required the acquisition of innovative equipment and new technology by physicians to be subject to DoN. Also, in a few cases, DPH investigated physician ownership and control of physician imaging and other clinic-like practices to determine if the PPE was being abused, but did not have the resources to consistently police if physician owners were in fact actively involved in running a facility or were just passive investors.

Now, additional steps are necessary to ensure that the PPE is not further abused. Currently, a facility providing significant outpatient diagnostic testing and therapeutic services can open at any time in any community without review or regulatory oversight just because it is physician-owned. The proposed legislation, by including Specialty Health Care Providers within the definition of clinic, would subject such facilities to DPH licensure requirements. In this way, patients would be ensured of a consistent level of health care quality/patient protections for such outpatient procedures regardless of the setting in which their care is delivered.

The proposed legislation would have the effect of leveling the playing field by reducing inequities among like health care providers. Specialty Health Care Providers duplicate many of the outpatient services provided by their regulated counterparts, and are able to do so at lower expenses in large part because they are not subject to the same regulatory requirements. Such providers also are able to operate so successfully in large part because they attract better paying patients because they do not have to provide care to the indigent or uninsured. By requiring that Specialty Health Care Providers be subject to DoN, DPH can mandate conditions of approval including without limitation the requirement that they serve MassHealth recipients.

SENATE No. 884

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Specialty Licensure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert A. O'Leary	Cape and Islands
Christine E. Canavan	10th Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SPECIALTY LICENSURE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1: (A) Section 25B of chapter 111 of the general laws, as appearing in the 2006 official edition, is hereby amended, in line 22, by inserting, after the words "as defined in section fifty'two" the following: -

"speciality health care providers as defined in this section".

(B) said section 25B of said chapter 111, as so appearing, is hereby further amended, within the definition of "expenditure minimum with respect to substantial capital expenditures" after the clause "other than ambulatory surgery" the following: -

“or other than expenditures with respect to a speciality health care provider”.

(C) Said section 25B of said chapter 111, as so appearing, is hereby further amended by adding, at the end thereof, the following:

Specialty health care provider,” any entity including a physician practice providing outpatient services typically provided in a hospital setting, including but not limited to: (1) an entity providing anesthesia, conscious sedation and/or diagnostic injection services (including endoscopy services and excluding dental facilities); (ii) an entity employing major medical, diagnostic and/or therapeutic equipment, including but not limited to equipment defined as new technology or as providing an innovative service, pursuant to chapter 111, section 25B and excluding x-ray equipment; and (iii) which is not a hospital, ambulatory surgical center or community health center. The department shall promulgate regulations with respect to the classification of specialty health care providers.”

(D) Said chapter 111 of the general laws, is hereby amended by inserting after section 53G, as added by section 11 of chapter 305 of the acts of 2008, the following new section: -

Section 53H. “Notwithstanding any general or special law or regulation to the contrary, any specialty health care provider shall be a clinic for the purpose of licensure under section 51 and no original license shall be issued pursuant to said section 51 to establish any such specialty health care provider clinic unless there is a determination by the department that there is a need for such a facility. The department shall promulgate regulations to implement this section, including with respect to the classification and grandfathering of existing specialty health care providers.”