



Massachusetts Council of Community Hospitals

Rationale for House No. 2065 AN ACT RELATIVE TO PHYSICIAN LETTER EXEMPTIONS

The proposed amendment will end, as of a specific date, any further use of so-called “physician letter exemptions” that arose out of two previous amendments to the determination of need (DoN) law.

As originally formulated, the DoN excluded from its reach facilities and services owned and operated exclusively by physicians out of concern that services and equipment incidental to traditional physicians’ practices not be unnecessarily swept into a somewhat cumbersome health care planning process.

With the emergence of MRI technology in the second half of the 1980’s, the Legislature recognized the first indication that the growth of entrepreneurial medicine had made the physician exclusion from the DoN law inappropriate. In 1991, the Legislature enacted an amendment to the determination of need law requiring all persons and entities—including the previously excluded physicians and physician-controlled entities—to obtain a determination of need before acquiring or implementing MRI equipment. Two years later, the Legislature expanded the universal determination of need requirement to any “innovative service or new technology”, including lithotripters, linear accelerators and PET scanners. These high-end, expensive pieces of diagnostic and treatment technology required careful, state-wide implementation planning in order to assure both equitable access and prudent cost control.

With the enactment of both the 1991 law and the 1993 law, the Legislature and Department of Public Health recognized the need to permit then existing and imminently planned MRI and other innovative technology projects to go forward notwithstanding the change in the law. The Department of Public Health permitted physicians with such projects to identify them and receive a “grandfathering” exemption from the new DoN requirement. Letters issued with respect to those projects became known as “physician letter exemptions” and have continued to circulate and be utilized well over a decade later.

A “physician letter exemption”, which essentially exempts an otherwise DoN-covered project from the DoN process, have been utilized for projects clearly not contemplated in 1991 or 1993 and have been known to be sold for considerable amounts.

The purpose of the amendment is to remove any remaining doubt about the continued viability of the “physician letter exemptions” by prohibiting their use in connection with any project not actually in service by the date specified in the amendment.

In December 2001, the Legislature enacted Section 18 of Chapter 203 of the Acts of 2001, prohibiting further use of “physician letter exemptions” in Berkshire County. The proposed amendment does not affect that earlier prohibition of “physician letter exemptions” in that small market.