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Julie B. Pinkham
55 Island Ave.
Quincy, MA 02169

Re: Initiative Petition No. 21-07, Initiative Petition for An Act to Limit Excessive Hospital Operating Margins through Greater Financial Transparency

Dear Ms. Pinkham:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August this year. I regret that we are unable to certify that the proposed law complies with Article 48. Our decision, as with all decisions on certification of initiative petitions, is based solely on art. 48's legal standards and does not reflect the Attorney General's policy views on the merits of the proposed law.

Below, we summarize the proposed law and then explain why Article 48, the Init., Pt. 2, § 3, which requires that a proposed law "contain[] only subjects ... which are related or which are mutually dependent," precludes its certification.

Initiative Petition No. 21-07 proposes a law that would impose financial penalties and reporting obligations on certain hospitals, create a fund to expand Medicaid reimbursement and maintain certain essential health services, and restrict activities for certain hospital chief executives.

Section 1 of the petition is titled "Definitions" and provides a single definition for the term "Facility." The definition reads: "an Acute care hospital licensed under Section 51, of Chapter 111 of the General Laws, the teaching hospital of the University of Massachusetts medical school, which contains a majority of medical-surgical, pediatric, obstetric and maternity beds, as defined by the Department of Public Health." G.L. c. 111, § 51, referenced in this section, is a statutory provision for the licensing of "hospitals, institutions for care of unwed mothers, or clinics."



Section 2 of the proposed law provides that a facility (as defined in Section 1) that accepts funds from the Commonwealth and reports to the Center for Health Information and Analysis (“CHIA”) an “annual operating margin” over 8% in a given fiscal year shall be subject to a civil penalty equal to “the amount by which the annual operating margin exceeds 8%.”

Section 3 of the proposed law provides that a facility (as defined in Section 1) that accepts funds from the Commonwealth will report to CHIA annually “all financial assets owned by the facility, including those held in financial institutions outside the United States or invested outside the United States.” The section further provides that CHIA will make that information public within 7 calendar days of receipt “[u]nless prohibited by other law.”

Section 4 establishes a “Medicaid Reimbursement Enhancement Fund,” into which the civil penalties collected pursuant to Section 2 would be deposited. “Subject to appropriation,” monies in that fund would then be “used to improve Medicaid reimbursement to eligible hospitals and where applicable keep open services proposed for closure by Acute Care Hospitals that are deemed essential services by the Department of Public Health.”

Section 5 of the proposed law provides that a Chief Executive Officer of a facility (as defined in Section 1) is prohibited from “serving on the Board of Directors or receiving compensation from any company that develops, manufactures, or sells medical services or products including but not limited to medical devices and pharmaceuticals.”

Section 6 of the proposed law provides: “This act shall not be construed to impair any contract or agreement in effect as of July 1, 2024.”

Section 7 of the proposed law provides: “The Massachusetts Department of Public Health shall promulgate regulations governing the implementation, operation and enforcement of this act.”

Section 8 of the proposed law contains a severability clause.

Section 9 of the proposed law sets the effective date of the act as July 1, 2024.

While all parts of the proposed law nominally relate to “regulating hospitals,” the array of subjects in the law are too diverse to be considered a “unified” statement of public policy. The proposed law contains several distinct, independent subjects: Sections 2 and 4 seek to redistribute money from profitable hospitals to underfunded services; Section 3 seeks to provide transparency related to the financial position of hospitals; and Section 5 seeks to prevent conflicts of interest on the part of hospital CEOs. Although all three subjects arguably relate in some way to regulating hospitals in the Commonwealth, that common purpose is too broad to satisfy Article 48’s relatedness requirement.

Though “regulating hospitals” may be a consistent theme, it is similar in scope to the abstract, high-level “common purposes” that the Supreme Judicial Court has found

impermissibly broad, such as “making government more accountable to the people,” Opinion of the Justices, 422 Mass. 1212, 1220-21 (1996); “promoting more humane treatment of dogs,” Gray v. Attorney Gen., 474 Mass. 638, 647 (2016) (citing Carney v. Attorney Gen., 447 Mass. 218, 224, 231 (2006)); “elementary and secondary education,” *id.* at 649; and “strengthen[ing] the Massachusetts economy and set[ting] a foundation for inclusive growth,” Anderson v. Attorney Gen., 479 Mass. 780, 795 (2018). As the SJC has explained, “[i]t is not enough that the provisions in an initiative petition all ‘relate’ to some same broad topic at some conceivable level of abstraction.” Carney I, 447 Mass. at 230. If “[o]ne could imagine a multitude of diverse subjects all of which would ‘relate’ to” the general purpose of the proposed law – as is certainly the case with regulating hospitals – that general purpose is unacceptably broad. Opinion of the Justices, 422 Mass. at 1221.

In contrast, judicially approved “common purposes” have been more specific, such as “restricting the benefits and incidents of marriage to opposite sex couples,” Albano v. Attorney Gen., 437 Mass. 156, 161 (2002); “expanding the scope of the Commonwealth’s drug treatment programs and ... ‘fairly’ funding those programs,” Mazzone v. Attorney Gen., 432 Mass. 515, 529 (2000); “a detailed plan to legalize marijuana (with limits) for adult use,” Hensley v. Attorney Gen., 474 Mass. 651, 658 (2016); and “establish[ing] and enforce[ing] nurse-to-patient ratios in facilities in the Commonwealth,” Oberlies v. Attorney Gen., 479 Mass. 823, 830 (2018). No “unified statement of public policy” that would accurately describe this proposed law could be similar in scope to these permissible “common purposes.”

For these reasons, we are unable to certify that Petition No. 21-07 contains only subjects “which are related or which are mutually dependent,” as required by Article 48.

Very truly yours,



Anne Sterman
Deputy Chief, Government Bureau
617-963-2524

cc: William Francis Galvin, Secretary of the Commonwealth