

MAINE STATE LEGISLATURE

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(Governor's Bill)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1794

S. P. 506

In Senate, May 20, 1977

The Committee on State Government suggested and ordered printed.

MAY M. ROSS, Secretary

Presented by Senator Carpenter of Aroostook.

Cosponsors: Senator Pray of Penobscot and Senator Martin of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Establish a Health Facilities Cost Review Board.

Be it enacted by the People of the State of Maine, as follows:

22 MRSA c. 105 is enacted to read:

CHAPTER 105

HEALTH FACILITIES COST REVIEW BOARD

§ 351. Findings and declaration of purpose

The Legislature finds that rising costs of health care and services provided by health care facilities are a matter of vital concern to the people of this State and have a direct relationship to the ability of the people to obtain necessary health care. It is further found and declared that health is a right of the people and one of the primary purposes for which governments are established, and it is, therefore, essential that an effective cost control program be established which will both enable and motivate facilities to control their spiraling costs. It is the legislative intent, in pursuance of this declared public policy, to provide for measures on a statewide basis to control health facility costs without the sacrifice of quality of service.

The primary purpose of this chapter is to promote the economic delivery of quality and effective health care services to the people by establishing a health facilities cost review board with authority over financial disclosure, prospective budget and rate review, and other related matters, which will assure all purchasers of health care services that total delivery costs are reasonably related to total delivery services, that rates are reasonably re-

lated to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination.

§ 352. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and terms shall have the following meanings.

1. Board. "Board" means the Health Facilities Cost Review Board established by this chapter.

2. Health facility. "Health facility" means any health care facility required to be licensed under chapter 405 or its successor.

§ 353. Health Facilities Cost Review Board, membership; terms; vacancies

1. Health Facilities Cost Review Board; established. There is established a Health Facilities Cost Review Board, which shall function as an independent board within the Department of Human Services. The board shall be composed of 7 members. The Governor shall appoint 5 members in accordance with the following requirements:

A. One member shall be appointed from a list of 3 names submitted by the Maine Hospital Association;

B. One member shall be appointed from a list of 3 names submitted by the Maine Health Care Association;

C. One member shall be a certified public accountant; and

D. Two public members shall be appointed as consumers of health care. The public members shall not be affiliated with, employed by or have any post professional affiliation with any health care facility or institution, health product manufacturer or corporation or insurer providing coverage for hospital or medical care.

The Commissioner of Human Services and the Superintendent of the Bureau of Insurance shall be as ex officio voting members of the board.

2. Term of appointed members. Appointed members of the board shall serve for a term of 4 years and shall require confirmation by the Legislature. Members shall hold office until the appointment and qualification of their successors. Of the members first appointed by the Governor, 2 shall hold office for 4 years, one shall hold office for 3 years, one shall hold office for 2 years and one shall hold office for one year.

3. Vacancies. Vacancies among appointed members shall be filled by appointment by the Governor for the unexpired term. If a vacancy occurs when the Legislature is not in session, the Governor may make an interim appointment, subject to confirmation by the Legislature during its next regular session. The Governor may remove any appointed member who becomes disqualified by virtue of the requirements of subsection 1, or for neglect of any duty required by law, or for incompetency or dishonorable conduct.

§ 354. Meetings; quorum; chairman compensation

The board, at its first meeting, and annually thereafter at its first meeting in each fiscal year, shall elect from its members a chairman who shall be one of the public members, a vice-chairman and such other officers as it may deem necessary. Members of the board shall be reimbursed for their reasonable and necessary expenses incurred in conducting the business of the board.

§ 355. Delegation of duties

The board by order may direct, as may be necessary to carry out the functions of the board, that any of its work under any provision of law be assigned or referred to an individual member of the board or to an agent designated and authorized by the board for action thereon, provided that any final decision or order made pursuant to sections 362 or 363 shall be approved by the board. Any such designated agent shall be a member of the staff assigned to the board. Such individual member of the board or designated agent has authority to hear and determine, order, certify, report or otherwise act as to any work, business or functions assigned or referred to him under this chapter. Except as otherwise provided in this chapter, any order, decision or requirement of an individual commissioner or designated agent with respect to any matter assigned or referred to him under this section has the same force and effect and may be made and evidenced in the same manner as if made or taken by the board.

§ 356. Director; staff; services; receipt of funds

The Commissioner of Human Services shall employ and furnish such staff, facilities, data and assistance as are necessary to fulfill the responsibilities of the board and to carry out the purposes of this chapter. Any staff so assigned to the board shall be subject to the supervision of the board. The commissioner, on behalf of the board, or the board may contract with 3rd parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort and make the best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing or otherwise using any information made available to it under its contractual responsibility, without specific written authorization of the board.

The board may apply for and receive and accept grants, gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs.

§ 357. Uniform system of accounting and reporting

The board shall establish, after consultation with appropriate agencies and organizations and public hearings, a uniform system of accounting and financial reporting, including such cost allocation methods as it may prescribe, by which health facilities shall record their revenues, expenses, other income, other outlays, assets, liabilities and fund balances, net worth, units of service and other statistics. All health facilities shall adopt the system for their fiscal

year period to be effective at such time and date as the board shall direct. The board may allow and provide for modifications in the accounting and reporting system in order to better carry out its functions or to reflect differences in the scope or type of services, size and other differences among health facilities subject to the requirements of this chapter. To the extent feasible, the board in establishing the uniform system shall take into account the data requirements of relevant reimbursement programs. Existing systems of accounting and reporting used by health facilities and model system, such as the American Hospital Association chart of accounts, shall be examined and given due consideration by the board in developing the uniform system of accounting and reporting required by this section.

§ 358. Financial reports

1. Financial statements or reports. Every health facility shall file with the board, as applicable, at intervals specified by the board, but at least annually, the following financial statements or reports, the form and contents of which shall be prescribed by the board:

- A. A balance sheet detailing the assets, liabilities and fund balances, net worth, of the facility;
- B. A statement of revenue, expenses, income or loss from operations, non-operating revenues and expenses and excess of revenues over expenses for the fiscal period ending on the balance sheet date;
- C. A statement of changes in fund balance, net worth;
- D. A statement detailing the source and application of funds, changes in financial position, expended by the facility for the period encompassed by the income statement required by paragraph B;
- E. Notes to financial statements; and
- F. Such other reports of the costs incurred or to be incurred in rendering or providing services and financial requirements of health facilities as the board may require.

2. More than one licensed facility operated. Where more than one licensed facility is operated by the reporting organization, the information required by this section shall be reported for each facility separately.

3. Certification required. The board shall require certification of such financial reports as it may specify and may require attestation as to such statements from responsible officials of the facility that such reports have to the best of their knowledge and belief been prepared in accordance with the system of accounting and reporting.

4. Reports open for public inspection. All reports, except privileged medical information as defined by the board, which are filed with the board under this chapter shall be open to public inspection.

5. Further investigation. Whenever a further investigation is considered necessary or desirable by the board to verify the accuracy of information in

the statements and reports made by health facilities, the board may make any necessary further examination and shall have the right of inspection of the facility's records, books, audits and accounts.

§ 359. Analyses and studies

From time to time, the board shall conduct or cause to be conducted analyses and studies relating to health care costs, to the financial status of any facility subject to this chapter, or to any other appropriate related matters as it deems desirable, and is authorized to publish and disseminate such information relating to such analyses and studies as it deems desirable and in the public interest. The board may coordinate its activities with other governmental and health planning agencies in developing its analyses and studies where this will promote economy, avoid duplication of effort and make the best use of available expertise. The board shall also prepare, file, publish or disseminate such summaries, compilations or other supplementary reports based on information filed with the board as will advance the purposes of this chapter.

§ 360. Reports to Governor and Legislature

The board shall prepare and, prior to each legislative session beginning in January, 1978, transmit to the Governor and to the Legislature an annual report of its operations and activities for the preceding fiscal year, together with such findings and recommendations as the board deems necessary.

§ 361. Health facility rates

From and after a date as the board may direct, and the Legislature shall approve, the board shall have the power to initiate such reviews or investigations as may be necessary to assure all purchasers of health facility services that the rates and charges of health facilities are reasonable and just, that rates and charges are set equitably among all purchasers or classes or purchasers of services without undue discrimination or preference, and to otherwise carry out the purposes of this chapter.

In order to properly discharge these obligations, the board shall have full power to review and approve the reasonableness of proposed operating and capital expenditures' budgets, projected annual revenues and the rates and charges proposed to generate that revenue established or requested by any health facility. No health care facility shall charge for services at rates or charges other than those established in accordance with the procedures established under this chapter.

In the interest of promoting the most efficient and effective use of health care service, the board may promote and approve alternative methods of rate or charge determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of this chapter.

§ 362. Budget approval

Any health care facility requested to do so by the board, provided such request is made upon 6-months' notice, shall submit annually to the board its proposed operating and capital expenditures' budget for its next fiscal

year at least 3 months prior to the proposed adoption date of such budget. The board shall review such proposed budget and notify the facility of its intention to approve, disapprove or modify such budget not later than 45 days before its proposed adoption date. The board shall provide for public notice and a public hearing for the purpose of receiving oral or written comments on its proposed action. Within 15 days after such hearing the board shall recommend a budget for the facility which it considers reasonable. If the facility refuses to accept such budget recommendations and agreement cannot be reached by the board and the facility at least 15 days before the proposed adoption date, the board shall order the facility to adopt a budget which the board deems acceptable for the coming fiscal year. In the event of unforeseen and material changes in circumstances during any fiscal year, any facility which has submitted a budget to the board pursuant to this section may submit a proposed revised budget to the board pursuant to the rules and regulations adopted by the board.

§ 363. Request for change in rates

1. Prior approval or amendment required. Except with respect to any change in rates or charges provided for in a budget approved in accordance with section 362, no health care facility, from and after the date established by the board pursuant to section 361, shall change or amend its rates or charges without prior approval by the board of such change or amendment pursuant to this section.

2. Filing of request. Any health care facility which proposes to change its rates or other charges which require prior approval of the board shall file a request in writing for such proposed change with the board for its review at least 3 months prior to the effective date of such change. All requests shall be in the form and content prescribed by the board and shall contain such supporting data as the health care facility seeking the change deems appropriate. Upon receipt of a request, the board shall institute proceedings to determine the reasonableness of the request.

3. Hearing and investigation. Upon receipt of a request for any change in rates or charges, the board shall have the power to hold a public hearing and to investigate the reasonableness of the request. A public hearing shall be held to consider any proposed change if requested by the facility seeking the change, or by any public or private 3rd party payor which contributes at least 10% of the facility's gross revenues, or by any 10 residents making a request which the board determines to be reasonable. If a hearing on a request is not otherwise scheduled, the board shall provide for public notice of the request to allow interested persons the opportunity to request a public hearing. Notice of the time and place of any such hearing shall be given to the facility, to any person who has indicated an interest in the hearing and to the public at least 7 days prior to any public hearing. At any such hearing, the burden of proof to show that any proposed change in rates or charges is reasonable and consistent with this chapter shall be upon the facility seeking such change. All such hearings and proceedings shall be conducted by a person or persons designated by the board. The hearing shall be at a time and place designated by the board. All interested parties attending

the hearing shall be given reasonable opportunity to present their views or arguments in writing or orally. The hearing may be conducted without compliance with formal rules of evidence.

4. Temporary rate change; reparation adjustment. The board may, at its discretion, permit any facility to make a temporary change in its rates or charges which shall be effective in advance of any review procedure upon making a written finding that such temporary change is in the public interest. Notwithstanding such temporary change in rates or charges, the review procedures set out in this section shall be conducted as soon thereafter as is practicable. Upon the conclusion of such review procedures, the board may order reparation or adjustment of such temporary rates or charges. The amount of any such reparation or adjustment shall not exceed the difference between the rates or charges approved by the board at the conclusion of its review procedures and the temporary rates or charges authorized by the board.

5. Board's order. Within 3 months after receiving a request to change rates or charges, the board shall issue an order approving, disapproving or modifying the request. Every decision and order of the board in any contested proceeding shall state the grounds for the board's conclusions. Such orders, except as otherwise provided by law, shall be prospective in nature.

6. Unjustified rate increase. The board may examine and analyze any increase in the rates and charges of any health care facility which increase was effected on or after the effective date of this chapter and prior to the date established by the board pursuant to section 361, and when, in the judgment of the board, any such increase is found to be unreasonable, the board shall provide for a public hearing relative to such increase, at least 2 weeks' notice of which shall have been given to the facility by certified mail and to the public by publication in a newspaper having a circulation in the area served by the facility. Such hearing shall be held at the discretion of the board in Augusta or in the area so served. If, within 45 days of such hearing, the board makes a finding that such rate increase was not justified, it may order the facility to reduce such rates or charges and may order the reparation or adjustment of such rates or charges. The amount of any such reparation or adjustment shall not exceed the difference between the reduced rates or charges and the rates or charges which the facility has charged in excess of such reduced rates or charges.

7. Number of applications limited. No health care facility may apply for a rate increase, pursuant to this section, more than once during its fiscal year, except as authorized by the board as being in the public interest.

§ 364. Relevant factors for consideration

In its deliberations under sections 361 to 364, the board shall take into consideration the necessary expenses of the facility concerned, the effectiveness of its delivery of health care services, whether the facility is proprietary or not for profit, the quality of available health care, the duplication of services by institutions in the area served, the recommendations and priorities established by the state and regional health planning agencies, and any other factors which the board deems relevant.

§ 365. Additional powers of the board

In addition to the powers granted to the board elsewhere in this chapter, the board may:

1. Rules. Adopt, amend and repeal such rules and regulations as are necessary for the proper administration and enforcement of this chapter. The board shall provide for public notice and hearing on all proposed rules and regulations prior to their adoption;

2. Public hearings; investigations. Hold public hearings and conduct investigations. The board, or any member thereof, or any agent designated and authorized by the board may conduct any inquiry, investigation or hearing under this chapter and shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. Neither the board, nor any member thereof, nor any designated agent shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the board;

3. Subpoenas. Subpoena witnesses and require the production of records, papers and documents. The board, any member thereof, or any agent designated and authorized by the board shall have power to subpoena witnesses and require the production of records, papers and documents pertinent to the subject matter of any investigation, inquiry or hearing. Each witness subpoenaed by the board shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Superior Court, to be paid by the party requesting the subpoena. Such process shall extend to all parts of the State and may be served by any person authorized to serve process of courts of record. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question asked by the board, any member thereof or any designated agent, or to produce any record, paper or document pursuant thereto, the board, any member thereof or any designated agent before whom the matter is pending, may apply to the Superior Court for Kennebec County or for the county in which the matter is pending, or to any justice of that court if the same is not in session, setting forth such disobedience to process or refusal to answer, and that court or such justice shall cite such person to appear before that court or such justice to answer such question or to produce such records, papers and documents;

4. Audit. Audit, examine and inspect the accounts, books, records and documents of any health care facility; and

5. Other powers. Exercise, subject to the limitations and restrictions imposed in this chapter, all other powers which are reasonably necessary to carry out the expressed objects and purposes of this chapter.

§ 366. Application for reconsideration

After an official decision or order has been made by the board or made by a member thereof or its designated agent, and has become the decision of the board as provided in section 355, any person aggrieved may within 20 days thereafter, or within such additional time as the board may authorize

upon request made within such period, make application for reconsideration of the same or any matter determined therein. Such application shall be governed by such general rules as the board may establish and shall specify with particularity any grounds upon which the applicant considers the decision unlawful. Any such application shall, within 30 days after the filing thereof, be considered and acted upon by the board. Failure to act within such period shall be deemed a denial of the application. The board may reconsider its decision or order if sufficient reason therefor is shown. If an application for reconsideration of a decision or order is granted, the matter shall be stayed or postponed by the board. If after reconsideration of a decision or order it appears that the original decision or order is in any respect unjust or unwarranted, the board may reverse, change or modify the same accordingly. When an application for rehearing of any decision or order of the board has been made and has been denied, or after reconsideration otherwise disposed of by the board, such action shall be final and a suit to enforce, enjoin, suspend, modify or set aside such decision may be brought in the Superior Court as set forth in this chapter, but not otherwise. No person shall in any court urge or rely on any ground not set forth in the application for reconsideration.

§ 367. Review by Superior Court

Any person aggrieved by any final decision of the board made in accordance with section 366, within 30 days after receipt of written notice thereof from the board, may appeal to the Superior Court for the county in which the health facility is located or to the Superior Court for Kennebec County, and that court may affirm, modify or set aside the decision of the board. No new or additional evidence may be introduced in the Superior Court, but the cause shall be heard on the record of the board as certified by it. The findings and conclusions of the board on disputed questions of fact shall be final and shall not be subject to review, except that, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of a petitioner under the Constitution of the United States or under the Constitution of the State of Maine, the court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the board material to the determination of the constitutional question shall not be final. An appeal to the Superior Court shall not act as a stay of the decision appealed from unless so ordered by the board or by the court.

§ 368. Enforcement

The Attorney General or the district attorney for a district in which a health care facility is located, upon the request of the board, shall institute and prosecute actions or proceedings for the enforcement of this chapter or any order or decision of the board rendered in pursuance of any statutory provision. The Superior Court, on application of the Attorney General, a district attorney or the board, may enforce, by appropriate decree or process, any provision of this chapter or any act, rule, regulation, decision or order of the board rendered in pursuance of any statutory provision.

§ 369. Penalty

Any person or health care facility violating any provision of this chapter or any valid order, rule or regulation made or promulgated pursuant to this chapter shall be liable for a civil penalty of \$100 a day.

§ 370. Partial invalidity

If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect any provision or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

STATEMENT OF FACT

The Legislature finds that rising costs of health care and services provided by health care facilities are a matter of vital concern to the people of this State and have a direct relationship to ability of the people to obtain necessary health care. It is further found and declared that health is a right of the people and one of the primary purposes for which governments are established, and it is, therefore, essential that an effective cost control program be established which will both enable and motivate facilities to control their spiraling costs. It is the legislative intent, in pursuance of this declared public policy, to provide for measures on a statewide basis to control health facility costs without the sacrifice of quality of service. This bill will provide a mechanism for public accountability for charges made by the health care provider community to the citizens of the State of Maine.

The primary purpose of this bill is to promote the economic delivery of quality and effective health care services to the people by establishing a Health Facilities Cost Review Board with authority over financial disclosure, prospective budget and rate review, and other related matters, which will assure all purchasers of health care services that total delivery costs are reasonably related to total delivery services, that rates are reasonably related to aggregate costs and that such rates are set equitably among all purchasers of these services without undue discrimination.

It will require at least 18 months to develop standard information and systems before the board can reasonably be expected to establish rates. Before any rate setting can occur additional legislative approval will be required.