

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 SECOND REGULAR SESSION  
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4 ONE HUNDRED AND TENTH LEGISLATURE  
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6 **Legislative Document**

**No. 1920**

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8 H. P. 1934 House of Representatives, February 3, 1982  
Approved for introduction by the Legislative Council pursuant to  
Joint Rule 26.

Referred to the Committee on Health and Institutional Services.  
Sent up for concurrence and 1,600 ordered printed.

9 EDWIN H. PERT, Clerk

Presented by Representative Lund of Augusta.

Cosponsors: Representative MacBride of Presque Isle and Senator  
Collins of Knox.

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11 STATE OF MAINE  
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13 IN THE YEAR OF OUR LORD  
14 NINETEEN HUNDRED AND EIGHTY-TWO  
15

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16 **AN ACT to Create an Independent**  
17 **Health Facilities Review Organization.**  
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19 **Emergency preamble.** Whereas, Acts of the Legislature  
20 do not become effective until 90 days after adjournment  
21 unless enacted as emergencies; and

22 Whereas, the Legislature enacted laws relating to cer-  
23 tificate of need in March, 1978, to carry out mandates of  
24 the National Health Planning and Resources Development Act  
25 of 1974 which incorporated a mechanism of review of health  
26 facilities projects by the Health Systems Agency; and

27 Whereas, the Health Systems Agency is now funded  
28 through March 31, 1982, and it appears that, because of fed-  
29 eral action, sufficient federal funding will not continue;  
30 and

31 Whereas, there is a need in Maine for a voluntary  
32 project review agency to carry out the functions of health

1 facilities project review in a fashion similar to that now  
2 accomplished by the Health Systems Agency; and

3       Whereas, it is desirable for the benefit of the public  
4 of the State for health care facilities to continue the  
5 review of health projects by an agency independent of State  
6 Government in order to assure that the best possible health  
7 care is delivered at the lowest possible cost; and

8       Whereas, unless enacted as an emergency, this legis-  
9 lation may not become effective prior to the reduction of  
10 funding for or expiration of funding for the Health Systems  
11 Agency; and

12       Whereas, in the judgment of the Legislature, these  
13 facts create an emergency within the meaning of the Consti-  
14 tution of Maine and require the following legislation as  
15 immediately necessary for the preservation of the public  
16 peace, health and safety; now, therefore,

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

18       Sec. 1. 22 MRSA §303, sub-§2, as enacted by PL 1977,  
19 c. 687, §1, is repealed and the following enacted in its  
20 place:

21       2. Annual implementation plan. "Annual implementation  
22 plan" means the annual statement of the goals for the health  
23 care system of the State and the strategies for achieving  
24 these goals.

25       Sec. 2. 22 MRSA 303,, sub-§10, as enacted by PL 1977,  
26 c. 687, §1, is repealed and the following enacted in its  
27 place:

28       10. Health Service Review Organization. "Health Ser-  
29 vice Review Organization" means the not-for-profit corpora-  
30 tion established to conduct reviews of projects in accor-  
31 dance with this chapter.

32       Sec. 3. 22 MRSA §303, sub-§11, as enacted by PL 1977,  
33 c. 687, §1, is repealed.

34       Sec. 4. 22 MRSA §306, sub-§§2-4, as enacted by PL  
35 1977, c. 687, §1, are amended to read:

36       2. Application filed. Upon a determination by the  
37 department, after consultation with the Health Systems

1 Agency Health Service Review Organization, that a certifi-  
2 cate of need is required for a proposed expenditure or ac-  
3 tion, an application for a certificate of need shall be  
4 filed with the department.

5 3. Applications. Upon receipt of an application, the  
6 department immediately shall transmit a copy of the applica-  
7 tion to the Health Systems Agency Health Service Review  
8 Organization. The Health Systems Agency Health Service  
9 Review Organization shall have 10 working days from the date  
10 on which the application is filed with the department in  
11 which to comment to the department upon the completeness of  
12 the application, indicating specifically and in writing, any  
13 additional information which the Health Systems Agency  
14 Health Service Review Organization requires before it can  
15 consider the application complete. Within 15 working days  
16 after the filing of an application with the department, the  
17 department, after considering the requirements of the Health  
18 Systems Agency Health Service Review Organization, shall  
19 notify the applicant that:

20 A. The application contains all necessary information  
21 required and is complete; or

22 B. Additional information is required by the depart-  
23 ment or by the Health Systems Agency Health Service  
24 Review Organization, or both.

25 4. Application completeness declared. The department,  
26 after consultation with the Health Systems Agency Health  
27 Service Review Organization, shall declare an application  
28 complete when the department is satisfied that all necessary  
29 information has been submitted. If in the judgment of the  
30 department an application is complete, but the Health Sys-  
31 tems Agency Health Service Review Organization determines  
32 that it requires additional information, the department  
33 shall so notify the applicant and shall allow the applicant  
34 15 working days from the date of that notice, or any addi-  
35 tional amount of time which the applicant may request to  
36 submit the additional information prior to declaring the  
37 application complete. Failure to submit additional informa-  
38 tion so requested may result in an unfavorable recommenda-  
39 tion by the Health Systems Agency Health Service Review  
40 Organization and may result in subsequent denial of the  
41 application by the department.

42 **Sec. 5.** 22 MRSA §307, sub-§§2-5, as enacted by PL  
43 1977, c. 687, §1, are amended to read:

1        2. Public hearing. A public hearing shall be held  
2 during the course of a review by either the department or  
3 the Health Systems Agency Health Service Review Organization  
4 if requested by persons directly affected by the review pur-  
5 suant to subsection 1.

6        3. Reviews. To the extent practicable, a review shall  
7 be completed and the department shall make its decision  
8 within 90 days after the date of notification under subsec-  
9 tion 1. The department, after consulting with the Health  
10 Systems Agency Health Service Review Organization, shall  
11 establish criteria for determining when it is not practi-  
12 cable to complete a review within 90 days. Whenever it is  
13 not practicable to complete a review within 90 days, the  
14 department, after consultation with the Health Systems  
15 Agency Health Service Review Organization, may extend the  
16 review period up to an additional 60 days. Any review  
17 period may be extended with the written consent to the  
18 applicant.

19        4. Review by Health Service Review Organization. The  
20 Health Systems Agency Health Service Review Organization  
21 shall be entitled to review all applications for a certifi-  
22 cate of need and shall have at least 70 days or 2/3 of the  
23 allotted time for a review, whichever is greater, in which  
24 to submit its recommendations and comments to the depart-  
25 ment, unless it consents in writing to a shorter period of  
26 time.

27        5. Review by department. After reviewing each appli-  
28 cation and after considering the recommendations of the  
29 Health Systems Agency Health Service Review Organization,  
30 the department shall make a decision either to issue a cer-  
31 tificate of need or to deny the application for a certifi-  
32 cate of need. Notice of the decision shall be sent to the  
33 applicant and to the Health Systems Agency Health Service  
34 Review Organization. This notice shall state the basis of  
35 the decision. If the decision is not consistent with the  
36 recommendations of the Health Systems Agency Health Service  
37 Review Organization, the department shall provide a detailed  
38 statement of the reasons for the inconsistency.

39        **Sec. 6. 22 MRSA §308, sub-§1, 3rd and 4th sentences,**  
40 **as enacted by PL 1977, c. 687, §1, are amended to read:**

41 These procedures shall provide for a shortened review by the  
42 Health Systems Agency Health Service Review Organization and  
43 for a public hearing to be held during the course of a  
44 review, if requested by any person directly affected by the

1 review. In order to waive requirements for a full review,  
2 the department, after consulting with the Health Systems  
3 Agency Health Service Review Organization, shall find that  
4 the proposed project:

5       **Sec. 7. 22 MRSA §308, sub-§2, as repealed and replaced**  
6 **by PL 1979, c. 601, §1, is amended to read:**

7       **2. Waiver of other requirements.** In order to expedite  
8 the review of an application submitted in response to an  
9 emergency situation, the department, after consultation with  
10 the Health Systems Agency Health Service Review Organiza-  
11 tion, may:

12       **A.** Waive the requirement that an applicant shall file  
13 a letter of intent with the department no less than 60  
14 days prior to the date on which an application is to be  
15 filed;

16       **B.** Limit the period within which the Health Systems  
17 Agency Health Service Review Organization may comment  
18 on the completeness of an application to less than 10  
19 working days from the date on which it was filed with  
20 the department; and

21       **C.** Establish a schedule for the review of an applica-  
22 tion which commences on a day other than the first day  
23 of an established review cycle and requires the Health  
24 Systems Agency Health Service Review Organization to  
25 submit its recommendations and comments to the depart-  
26 ment in less than 70 days from the day on which the  
27 review period commenced, provided that the Health Sys-  
28 tems Agency Health Service Review Organization shall be  
29 afforded no less than 2/3 of the time the department  
30 has allotted for the completion of its review.

31       **Sec. 8. 22 MRSA §309, sub-§1, first sentence, as**  
32 **enacted by PL 1977, c. 687, §1, is amended to read:**

33 A certificate of need shall be issued whenever the depart-  
34 ment, after considering the findings and recommendations of  
35 the Health Systems Agency Health Service Review Organiza-  
36 tion, determines:

37       **Sec. 9. 22 MRSA 309, sub-§1, ¶D, as enacted by PL**  
38 **1977, c. 687, §1, is amended to read:**

39       **D.** That the proposed services are consistent with the  
40 orderly and economic development of health facilities

1 and health resources for the State and are in accor-  
2 dance with standards, criteria or plans adopted and  
3 approved pursuant to the annual implementation plan,  
4 the ~~health systems plan~~, the state health plan and the  
5 state medical facilities plan developed by the Health  
6 Systems Agency State Health Coordinating Council and  
7 the department.

8 **Sec. 10.** 22 MRSA §309, sub-§2, ¶A, as enacted by PL  
9 1977, c. 687, §1, is amended to read:

10 A. The relationship of the health services being  
11 reviewed to the annual implementation plan, the ~~health~~  
12 ~~systems plan~~, the state health plan and the state medi-  
13 cal facilities plan;

14 **Sec. 11.** 22 MRSA §§323-327 are enacted to read:

15 §323. Health Service Review Organization

16 1. Membership. The Health Service Review Organization  
17 shall be a nonprofit corporation established under the laws  
18 of the State to conduct reviews of projects pursuant to its  
19 authority under this chapter.

20 The Health Service Review Organization shall be governed by  
21 a board of directors consisting of 15 members and shall  
22 function as an independent board. Qualifications for the  
23 members of the board shall be as follows and the Governor  
24 shall appoint those members described as public members. In  
25 making his appointments, the Governor shall seek to assure  
26 wide geographical representation on the board. Members of  
27 the board shall be selected in accordance with the following  
28 requirements.

29 A. Five public members shall be appointed as consumers  
30 of health care. Neither the public members nor their  
31 spouses or children may, within the 12 months preceding  
32 election, have been affiliated with, employed by or had  
33 any professional affiliation with any health care  
34 facility or institution, health product manufacturer or  
35 corporation, or insurer providing coverage for hospital  
36 or medical care; provided that neither membership in or  
37 subscription to a service plan maintained by a non-  
38 profit hospital and medical service organization,  
39 enrollment in a health maintenance organization,  
40 membership as a policyholder in a mutual insurer of  
41 coverage by such a policy, nor the purchase of coverage  
42 under a policy issued by a stock insurer shall disqual-  
43 ify a person from serving as a public member.

1        B. Five members shall be selected as providers of  
2 health care. Of that number, one member shall be se-  
3 lected from a list of 3 names submitted by the Maine  
4 Health Care Association; 2 members shall be selected  
5 from a list of 6 names submitted by the Maine Hospital  
6 Association; one member shall be selected from a list  
7 of 3 names submitted by the Maine Medical Association;  
8 and one member shall be selected from a list of 3 names  
9 submitted by the Maine Osteopathic Association.

10        C. Five members shall be selected as payers of health  
11 care. Of that number, 2 members shall be selected from  
12 a list of 6 names nominated by Maine Blue Cross and  
13 Blue Shield; 2 members shall be selected from a list of  
14 6 names submitted by the Commissioner of Human Ser-  
15 vices; one member shall be selected from a list of 3  
16 names submitted by the Commercial Health Insurers doing  
17 business in this State.

18        2. Terms of selected members. The selected members of  
19 the board shall serve terms of 4 years and shall hold  
20 office until election and confirmation of their successors.

21        3. Vacancies. Vacancies among members shall be filled  
22 for their unexpired terms. The corporation shall remove any  
23 member who becomes disqualified by virtue of the require-  
24 ments of subsection 1, for neglect of any duty required by  
25 law or for incompetency or dishonorable conduct.

26        §324. Powers and duties; standards

27        The Health Service Review Organization shall adopt,  
28 review, revise as necessary and utilize procedures and stan-  
29 dards required by this chapter and the provisions of the  
30 United States Social Security Act, Title 15, Section 1122 of  
31 the United States Public Health Service Act and United  
32 States Code, Title 42, Section 1320a-1 and the National  
33 Health Planning Act of 1974, Public Law 93-641, Public  
34 96-79, together with any amendments thereto and their accom-  
35 panying regulations and any additions or amendments thereto.  
36 The Health Service Review Organization shall provide for  
37 public notice and hearing on all proposed procedures and  
38 standards pursuant to the Maine Administrative Procedure  
39 Act, Title 5, chapter 375.

40        §325. State anti-trust exemption

41        Any health service review organization created pursuant  
42 to these provisions and any applicants submitting informa-



1 tion to such an organization shall be exempt from Title 5,  
2 sections 207 to 214, and Title 10, chapter 201, for its ac-  
3 tivities conducted pursuant to these provisions.

4 §326. Receipt of grants, gifts and other payments

5 The organization may apply for and receive grants,  
6 gifts and other payments, including property and services  
7 from any public or private entity or person, and may use  
8 those receipts for its activities pursuant to this chapter.  
9 It is the intent of the Legislature that 3rd-party payers  
10 of health care, including nonprofit hospital medical service  
11 organizations, such as Blue Cross and Blue Shield, may con-  
12 tribute to or make grants to the organization.

13 §327. Fee for service

14 The Health Service Review Organization shall be enti-  
15 tled to establish and charge a reasonable fee for its ser-  
16 vices in reviewing an application. Each application for  
17 certificate of need shall be accompanied by a reasonable fee  
18 based on a percentage of the cost of the health service or  
19 predevelopment activity, or a minimum of \$500 and a maximum  
20 of \$15,000 for each application. Fees shall be used by the  
21 organization for defraying its operating expenses. The fee  
22 shall be established pursuant to section 324.

23 **Sec. 12. Transition provisions; legislative intent;**  
24 **effective date.** This Act shall become effective but not  
25 operative on March 31, 1982, for the purposes of creation of  
26 the Health Service Review Organization, including the  
27 appointment of directors by the Governor and the promul-  
28 gation of standards. It shall become fully operative on  
29 July 1, 1982, for all other purposes. Upon the operative  
30 date of this Act, all applications filed prior to that date  
31 for review pursuant to the Maine Certificate of Need Act  
32 shall be transferred to the Health Service Review Organiza-  
33 tion, which shall review them or continue their review con-  
34 sistent with the standards applicable to them at the time of  
35 application. Thereafter, all new applications shall be pro-  
36 cessed pursuant to the provisions of this Act.

37 It is the intent of the Legislature that the provisions  
38 of this Act be interpreted in such a fashion that no appli-  
39 cant for project review will be deprived of any procedural  
40 rights during the transition period which the applicant  
41 would ordinarily have had; that upon the date when this Act  
42 becomes fully operative all new applications shall be pro-  
43 cessed in accordance with these new provisions. It is fur-

1 ther the intent of the Legislature that the Health Service  
2 Review Organization replace the Health Systems Agency and  
3 act with respect to project review and not to health plan-  
4 ning as did the Health Systems Agency prior to this Act.

5 **Emergency clause.** In view of the emergency cited in  
6 the preamble, this Act shall take effect on March 31, 1982,  
7 except as set forth in section 12.

8 STATEMENT OF FACT

9 This bill is designed to provide an organization to  
10 take the place of the Health Systems Agency, which is now  
11 funded through March 31, 1982. It will carry out the review  
12 and not the planning functions of the current Health Systems  
13 Agency, and the statutes have been amended in such a fashion  
14 as to not disturb any procedural or substantive actions of  
15 the statute. The organization which will be doing the  
16 reviewing will be a voluntary organization and will be sup-  
17 ported by fees from those health care facilities which util-  
18 ize its services. Its board will be composed of a number of  
19 public members, as well as representatives of the health  
20 care industry. There is no physical impact on State Govern-  
21 ment.

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