

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 900, L.D. 2038)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2123

7
8 S.P. In Senate,

S. P. 967 In Senate, March 30, 1982
Reported by Senator Gill of Cumberland from the Committee on
Health and Institutional Services and printed under Joint Rules No. 2.
9 MAY M. ROSS, Secretary of the Senate

10
11 STATE OF MAINE
12

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

16 AN ACT to Amend the Maine Certificate
17 of Need Law.
18

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

20 **Sec. 1.** 22 MRSA §303, sub-§§2-A and 2-B are enacted to
21 read:

22 2-A. Annual operating costs. For purposes of section
23 304-A, subsection 4, paragraph B, "annual operating costs"
24 means the total incremental costs to the institution which
25 are directly attributable to the addition of a new health
26 service.

27 2-B. Appropriately capitalized expenditures. "Appropri-
28 ately capitalized expenditures" means those expenditures
29 which would be capitalized if the project were implemented.

30 **Sec. 2.** 22 MRSA §303, sub-§3, as enacted by PL 1977,
31 c. 687, §1, is amended to read:

1 3. Capital expenditure. "Capital expenditure" means
2 an expenditure, including a force account expenditure or
3 predevelopment activities, which under generally accepted
4 accounting principles is not properly chargeable as an
5 expense of operation and maintenance and, for the purposes
6 of this chapter, shall include capitalized interest on bor-
7 rowed funds and the fair market value of any property or
8 equipment which is acquired under lease or comparable
9 arrangement or through by donation.

10 Sec. 3. 22 MRSA §303, sub-§5, as enacted by PL 1977,
11 c. 687, §1, is amended to read:

12 5. Department. "Department" means the Department of
13 Human Services, but does not include the Certificate of Need
14 Advisory Committee within the department.

15 Sec. 4. 22 MRSA §303, sub-§§6-A and 6-B are enacted to
16 read:

17 6-A. Expenditure minimum for annual operating
18 costs. The "expenditure minimum for annual operating costs"
19 is:

20 A. For services commenced between January 1 and Decem-
21 ber 31, 1983, \$125,000 for the 3rd fiscal year, includ-
22 ing a partial first year;

23 B. For services commenced between January 1 and Decem-
24 ber 31, 1984, \$135,000 for the 3rd fiscal year, includ-
25 ing a partial first year;

26 C. For services commenced between January 1 and Decem-
27 ber 31, 1985, \$145,000 for the 3rd fiscal year, includ-
28 ing a partial first year; and

29 D. For services commenced after December 31, 1985,
30 \$155,000 for the 3rd fiscal year, including a partial
31 first year.

32 6-B. Generally accepted accounting prin-
33 ciples. "Generally accepted accounting principles" means
34 accounting principles approved by the American Institute of
35 Certified Public Accountants.

36 Sec. 5. 22 MRSA §303, sub-§7, first sentence, as
37 enacted by PL 1977, c. 687, §1, is amended to read:

38 "Health care facility" means any facility, whether public or
39 private, proprietary or not for profit, required to obtain a

1 certificate of need in accordance with federal laws and
2 regulations under the National Health Planning and Resources
3 Development Act of 1974, or any amendment, and shall include
4 hospitals, psychiatric hospitals, tuberculosis hospitals,
5 skilled nursing facilities, kidney disease treatment centers
6 including free standing hemodialysis units, intermediate
7 care facilities, rehabilitation facilities, ambulatory
8 surgical facilities, home health care providers certifiable
9 under Title XVIII of the Federal Social Security Act of
10 1965, as amended, and health maintenance organizations.

11 Sec. 6. 22 MRSA §303, sub-§§11-A and 11-B are enacted
12 to read:

13 11-A. Home health care provider. "Home health care
14 provider" means any business entity or subdivision thereof,
15 whether public or private, proprietary or not for profit,
16 which is engaged in providing acute, restorative, rehabili-
17 tative, maintenance, preventive or health promotion services
18 through professional nursing and at least one other
19 therapeutic service, such as physical therapy, occupational
20 therapy, speech pathology, home health aides, nurse assis-
21 tants, medical social work and nutritionist services, either
22 directly or through contractual agreement, in a client's
23 place of residence. This term does not apply to any sole
24 practitioner providing private duty nursing services or
25 other restorative, rehabilitative, maintenance, preventive
26 or health promotion services in a client's place or resi-
27 dence.

28 11-B. Hospital. "Hospital" means an institution which
29 primarily provides to inpatients by or under the supervision
30 of physicians, diagnostic services and therapeutic services
31 for medical diagnosis, treatment and care of injured, dis-
32 abled or sick persons or rehabilitation services for the re-
33 habilitation of injured, disabled or sick persons. This
34 term also includes psychiatric and tuberculosis hospitals.

35 Sec. 7. 22 MRSA §303, sub-§12-A is enacted to read:

36 12-A. Major medical equipment. "Major medical equip-
37 ment" means a single unit of medical equipment or a single
38 system of components with related functions which is used to
39 provide medical and other health services and which costs
40 \$300,000 or more. This term does not include medical equip-
41 ment acquired by or on behalf of a clinical laboratory to
42 provide clinical laboratory services, if the clinical labor-
43 atory is independent of a physician's office and a hospital
44 and has been determined under the United States Social
45 Security Act, Title XVIII, to meet the requirements of

1 Section 1861 (s), paragraphs 10 and 11 of that Act. In
2 determining whether medical equipment costs more than
3 \$300,000, the cost of studies, surveys, designs, plans,
4 working drawings, specifications and other activities essen-
5 tial to acquiring the equipment shall be included. If the
6 equipment is acquired for less than fair market value, the
7 term "cost" includes the fair market value.

8 **Sec. 8. 22 MRSA §303, sub-§13, as enacted by PL 1977,**
9 **c. 687, §1, is amended to read:**

10 13. Modification. "Modification" means the altera-
11 tion, improvement, expansion, extension, renovation or re-
12 placement of a health care facility or health maintenance
13 organization or portion thereof, including initial equipment
14 thereof and the replacement of equipment of or existing
15 buildings.

16 **Sec. 9. 22 MRSA §303, sub-§13-A is enacted to read:**

17 13-A. Obligation. An "obligation" for a capital
18 expenditure is considered to be incurred by or on behalf of
19 a health care facility:

20 A. When a contract, enforceable under Maine law, is
21 entered into by or on behalf of the health care facil-
22 ity for the construction, acquisition, lease or financ-
23 ing of a capital asset;

24 B. When the governing board of the health care facil-
25 ity takes formal action to commit its own funds for a
26 construction project undertaken by the health care
27 facility as its own contractor; or

28 C. In the case of donated property, on the date on
29 which the gift is completed under applicable Maine
30 law.

31 **Sec. 10. 22 MRSA §303, sub-§15, as enacted by PL 1977,**
32 **c. 687, §1, is amended to read:**

33 15. Person. "Person" means an individual, trust or
34 estate, partnership, corporation, including associations,
35 joint stock companies and insurance companies, the State or
36 a political subdivision or instrumentality, including a
37 municipal corporation of the State, or any other legal
38 entity recognized by state law.

39 **Sec. 11. 22 MRSA §303, sub-§16, as enacted by PL 1977,**
40 **c. 687, §1, is amended to read:**

1 16. Predevelopment activities. "Predevelopment activ-
2 ities" means any appropriately capitalized expenditure by or
3 on behalf of a health care facility made in preparation for
4 the offering or development of a new health service for
5 which a certificate of need would be required and arrange-
6 ments or commitments made for financing the offering or
7 development of the new health service; and shall include
8 site acquisitions, surveys, studies, expenditures for archi-
9 tectural designs, plans, working drawings and specifica-
10 tions.

11 Sec. 12. 22 MRSA §303, sub-§17-A is enacted to read:

12 17-A. Rehabilitation facility. "Rehabilitation facil-
13 ity" means an inpatient facility which is operated for the
14 primary purpose of assisting in the rehabilitation of dis-
15 abled persons through an integrated program of medical and
16 other services which are provided under competent profes-
17 sional supervision.

18 Sec. 13. 22 MRSA §303, sub-§18, as enacted by PL 1977,
19 c. 687, §1, is amended to read:

20 18. Secretary. "Secretary" means the United States
21 Secretary of Health, Education and Welfare and Human Ser-
22 vices and any other officer or employee of the United States
23 Department of Health, Education and Welfare and Human Ser-
24 VICES to whom the authority involved may be delegated.

25 Sec. 14. 22 MRSA §303, sub-§22, as enacted by PL 1977,
26 c.687, §1, is repealed.

27 Sec. 15. 22 MRSA §304, as amended by PL 1979, c. 375,
28 is repealed.

29 Sec. 16. 22 MRSA §304-A is enacted to read:

30 §304-A. Certificate of need required

31 No person may enter into any commitment for financing a
32 project which requires a certificate of need or incur an
33 obligation for the project without having sought and
34 received a certificate of need, except that this prohibition
35 shall not apply to commitments for financing conditioned
36 upon the receipt of a certificate of need or to obligations
37 for predevelopment activities of less than \$150,000.

38 A certificate of need from the department shall be re-
39 quired for:

1 1. Acquisition by lease, donation, transfer. Any ac-
2 quisition by or on behalf of a health care facility under
3 lease or comparable arrangement or through donation, which
4 would have required review if the acquisition had been by
5 purchase;

6 2. Acquisitions of major medical equipment. The fol-
7 lowing acquisitions:

8 A. The acquisition by any person of major medical
9 equipment that will be owned by or located in a health
10 care facility; or

11 B. The acquisition by any person of major medical
12 equipment not owned by or located in a health care
13 facility if:

14 (1) The equipment will not be used to provide
15 services for inpatients of a hospital, but the
16 person fails to file a written notice of intent to
17 acquire the equipment at least 60 days prior to
18 entering into a contract to acquire the equipment;
19 or

20 (2) The department finds, within 30 business days
21 after the date it receives a written notice of
22 intent to acquire the equipment, that the equip-
23 ment will be used to provide services for
24 inpatients of a hospital.

25 There shall be a waiver for the use of major medical equip-
26 ment on a temporary basis as provided in section 308, sub-
27 section 4.

28 3. Capital expenditures. The obligation by or on
29 behalf of a health care facility of any capital expenditure
30 of \$350,000 or more;

31 4. New health services. The offering or development
32 of any new health service. For purposes of this section,
33 "new health services" shall include only the following:

34 A. The obligation of any capital expenditures by or on
35 behalf of a health care facility which is associated
36 with the addition of a health service which was not
37 offered on a regular basis by or on behalf of the
38 facility within the 12-month period prior to the time
39 the services would be offered;

1 B. The addition of a health service which is to be
2 offered by or on behalf of a health care facility which
3 was not offered on a regular basis by or on behalf of
4 the facility within the 12-month period prior to the
5 time the services would be offered, and which, for the
6 3rd fiscal year of operation, including a partial first
7 year, following addition of that service, absent any
8 adjustment for inflation, is projected to entail annual
9 operating costs of at least the expenditure minimum for
10 annual operating costs; or

11 C. The addition of a health service which falls within
12 a category of health services which are subject to
13 review regardless of capital expenditure or operating
14 cost and which category the department has defined
15 through regulations promulgated pursuant to section
16 312, based on recommendations from the State Health
17 Coordinating Council;

18 5. Termination of a health service. The obligation of
19 any capital expenditure by or on behalf of a health care
20 facility which is associated with the termination of a
21 health service which was previously offered by or on behalf
22 of the health care facility;

23 6. Changes in bed complement. Any change in the
24 existing bed complement of a health care facility, in any
25 2-year period, which:

26 A. Increases or decreases the licensed or certified
27 bed capacity of the health care facility by more than
28 10% or more than 5 beds, whichever is less;

29 B. Increases or decreases the number of beds licensed
30 or certified by the department to provide a particular
31 level of care by more than 10% of that number or more
32 than 5 beds, whichever is less; or

33 C. Relocates more than 10% of the health care
34 facility's licensed or certified beds or more than 5
35 beds, whichever is less, from one physical plant to
36 another;

37 7. Predevelopment activities. Any appropriately capi-
38 talized expenditure of \$150,000 or more for predevelopment
39 activities proposed to be undertaken in preparation for any
40 project which would itself require a certificate of need;

41 8. New health care facilities. The construction,
42 development or other establishment of a new health care
43 facility; and

1 9. Other circumstances. In the following circum-
2 stances:

3 A. Any proposed use of major medical equipment to
4 serve inpatients of a hospital, if the equipment is not
5 located in a health care facility and was acquired
6 without a certificate of need, except acquisitions
7 waived under section 308, subsection 4; or

8 B. If a person adds a health service not subject to
9 review under subsection 4, paragraph A or C and which
10 was not deemed subject to review under subsection 4,
11 paragraph B at the time it was established and which
12 was not reviewed and approved prior to establishment
13 at the request of the applicant, and its actual 3rd
14 fiscal year operating cost, as adjusted with an appro-
15 prate inflation deflator promulgated by the Health
16 Facilities Cost Review Board pursuant to sections 360
17 and 366, exceeds the expenditure minimum for annual
18 operating cost in the 3rd fiscal year of operation fol-
19 lowing addition of these services.

20 Sec. 17. 22 MRSA §304-B is enacted to read:

21 §304-B. Subsequent review

22 Where a certificate of need has been issued, and
23 changes occur as specified in this section, a subsequent
24 review is required.

25 1. Criteria for subsequent review. The following ac-
26 tivities require subsequent review and approval, if the
27 department has previously issued a certificate of need and
28 if within one year after the approved activity is under-
29 taken:

30 A. There is a significant change in financing;

31 B. There is a change affecting the licensed or certi-
32 fied bed capacity as approved in the certificate of
33 need;

34 C. There is a change involving the addition or termina-
35 tion of the health services proposed to be rendered by
36 the facility;

37 D. There is a change in the site or the location of
38 the proposed facility; or

39 E. There is a substantial change proposed in the
40 design of the facility or the type of construction.

1 2. Procedures for subsequent review. Any person pro-
2 posing to undertake any activity requiring subsequent review
3 and approval shall file with the department, within 30 days
4 of the time that person first has actual knowledge of the
5 circumstances requiring subsequent review, a notice setting
6 forth the following information:

7 A. The nature of the proposed change;

8 B. The rationale for the change including, where
9 appropriate, an explanation of why the change was not
10 set forth in the original application or letter of
11 intent; and

12 C. Other pertinent detail subject to the procedures
13 and criteria set forth in section 309.

14 The department shall, within 30 days of receipt of the
15 information, advise that person in writing whether the pro-
16 posed change is approved. If not approved, the application
17 shall be treated as incomplete and reviewed in accordance
18 with the application procedures in section 306-A, subsection
19 4. If approved, the department shall amend the certificate
20 of need as appropriate. In either case, the department
21 shall consult with the Health Systems Agency.

22 Sec. 18. 22 MRSA §306, as enacted by PL 1977, c. 687,
23 §1, is repealed.

24 Sec. 19. 22 MRSA §306-A is enacted to read:

25 §306-A. Application process for a certificate of need

26 1. Letter of intent. Prior to filing an application
27 for a certificate of need, an applicant shall file a letter
28 of intent with the department no less than 30 days prior to
29 the date on which the application is to be filed. The
30 letter of intent shall form the basis for determining the
31 applicability of this chapter to the proposed expenditure or
32 action. A letter of intent shall be deemed withdrawn one
33 year after receipt by the department, unless sooner super-
34 seded by an application; provided that the applicant shall
35 not be precluded from resubmitting the same letter of
36 intent.

37 2. Application filed. Upon a determination by the
38 department, after consultation with the Health Systems
39 Agency, that a certificate of need is required for a pro-
40 posed expenditure or action, an application for a certifi-
41 cate of need shall be filed with the department if the

1 applicant wishes to proceed with the project. Upon receipt
2 of an application, the department shall immediately transmit
3 a copy of the application to the Health Systems Agency.

4 3. Additional information required. Additional infor-
5 mation may be required or requested as follows.

6 A. If, after receipt of an application, the department
7 or the Health Systems Agency determines that additional
8 information is necessary before the application can be
9 considered complete, the department may:

10 (1) Require the applicant to respond to 2 sets of
11 requests for additional information from the
12 department, the Health Systems Agency or both,
13 provided that a 2nd request is directly related to
14 the first information request or to the informa-
15 tion provided in response to the first request;
16 and

17 (2) Request, but not require, the applicant to
18 respond to additional sets of requests for infor-
19 mation, provided that each request is directly
20 related to the last request or to the information
21 provided in response to the last request.

22 B. The department shall immediately transmit the
23 response to any request for information to the Health
24 Systems Agency. The Health Systems Agency shall have
25 10 business days from the date on which the application
26 or response to any information request is filed with
27 the department in which to comment to the department
28 upon the completeness of the application, indicating
29 specifically and in writing any additional information
30 which the Health Systems Agency requires before it can
31 consider the application complete.

32 C. Within 15 business days after the filing of an
33 application or response to any information request,
34 whichever is applicable, with the department, the
35 department shall, after considering the requirements of
36 the Health Systems Agency, notify the applicant in
37 writing that:

38 (1) The application contains all necessary infor-
39 mation required and is complete; or

40 (2) Additional information is required by the
41 department or by the Health Systems Agency. If,
42 after receipt of the applicant's response to the

1 2nd or any subsequent request, the department
2 determines that additional information is re-
3 quired, the notification shall also include a
4 statement of the basis and rationale for that
5 determination.

6 4. Review of incomplete application. Upon receipt of
7 the 3rd or any subsequent notice described in subsection 3,
8 paragraph C, subparagraph 2, the applicant must notify the
9 department in writing that:

10 A. It will provide the additional information
11 requested by the department. Following completion, it
12 shall be entered into the next review cycle; or

13 B. That it is not able to or does not intend to pro-
14 vide the information requested and requests the appli-
15 cation be entered into the next appropriate review
16 cycle. In that case, the applicant shall be prohibited
17 from submitting the information it had declined to pro-
18 vide into the record after the 25th day of the review
19 cycle and the information shall not be considered in
20 the determination to issue or to deny a certificate of
21 need. If the applicant provides the information
22 requested prior to the 25th day of the review cycle,
23 the application may, at the discretion of the depart-
24 ment, be returned to the beginning of the review cycle.
25 Failure to submit additional information requested by
26 the Health Systems Agency or the department may result
27 in an unfavorable recommendation by the Health Systems
28 Agency and may result in subsequent denial of the
29 application by the department, as long as the denial is
30 related to applicable criteria and standards.

31 5. Competitive reviews. In cases of competitive
32 reviews, applicants shall submit additional information
33 requested by the Health Systems Agency or the department
34 within 30 business days or within a longer period of time,
35 provided that the department and all competing applicants
36 agree.

37 6. Automatic withdrawal. Any incomplete application
38 shall be deemed withdrawn if the applicant fails to respond
39 to a request for additional required information within one
40 year of the date such request was forwarded by the depart-
41 ment.

42 **Sec. 20. 22 MRSA §307, sub-§1, first sentence, as**
43 **enacted by PL 1977, c. 687, §1, is amended to read:**

1 Upon determination that an application is complete, or upon
2 receipt of a notice under section 306-A, subsection 4, para-
3 graph B, or upon grouping of the application with other
4 pending applications, the department shall provide for writ-
5 ten notification of the beginning of a review.

6 Sec. 21. 22 MRSA §307, sub-§1, as enacted by PL 1977,
7 c. 687, §1, is amended by adding after the 2nd sentence a
8 new sentence to read:

9 The notice shall be provided to all persons who have
10 requested notification by means of asking that their names
11 be placed on a mailing list maintained by the department for
12 this purpose.

13 Sec. 22. 22 MRSA §307, sub-§1, ¶¶C and D, as enacted
14 by PL 1977, c. 687, §1, are amended to read;

15 C. A statement that a public hearing will be held
16 during the course of a review if requested by persons
17 directly affected by the review and the date by which
18 the requests must be received by the department; and

19 D. A description of the manner in which public notice
20 will be given of a public hearing if one is to be held
21 during the course of the review; and

22 Sec. 23. 22 MRSA §307, sub-§1, ¶E is enacted to read:

23 E. A statement of the manner and time in which persons
24 may register as affected persons.

25 Sec. 24. 22 MRSA §307, sub-§2, as enacted by PL 1977,
26 c. 687, §1, is repealed.

27 Sec. 25. 22 MRSA §307, sub-§§2-A and 2-B are enacted
28 to read:

29 2-A. Certificate of Need Advisory Committee. There is
30 established within the Department of Human Services a Cer-
31 tificate of Need Advisory Committee, which shall participate
32 with the department in the public hearing process.

33 A. The committee shall be composed of 10 members, 9 of
34 whom shall be appointed by the Governor. The Commis-
35 sioner of Human Services shall name his designee to
36 serve as an ex officio nonvoting chairman of the com-
37 mittee. The 9 members appointed by the Governor shall
38 be selected in accordance with the following require-
39 ments.

1 (1) Four members shall be appointed to represent
2 the following.

3 (a) One member shall represent the hospi-
4 tals.

5 (b) One member shall represent the nursing
6 home industry.

7 (c) One member shall represent major
8 3rd-party payors.

9 (d) One member shall represent physicians.

10 In appointing these representatives, the Governor
11 shall consider recommendations made by the Maine
12 Hospital Association, the Maine Health Care Asso-
13 ciation, the Maine Medical Association, the Maine
14 Osteopathic Association and other representative
15 organizations; and

16 (2) Five public members shall be appointed as
17 consumers of health care. Neither the public mem-
18 bers nor their spouses or children may, within 12
19 months preceding the appointment, have been affil-
20 iated with, employed by, or have had any profes-
21 sional affiliation with any health care facility
22 or institution, health product manufacturer or
23 corporation or insurer providing coverage for
24 hospital or medical care, and provided that nei-
25 ther membership in or subscription to a service
26 plan maintained by a nonprofit hospital and medi-
27 cal service organization, nor enrollment in a
28 health maintenance organization, nor membership as
29 a policyholder in a mutual insurer or coverage
30 under such a policy, nor the purchase of or cover-
31 age under a policy issued by a stock insurer may
32 disqualify a person from serving as a public
33 member.

34 B. Appointed members of the committee shall serve for
35 terms of 4 years. Members shall hold office until the
36 appointment and confirmation of their successors. Of
37 the members first appointed by the Governor, the member
38 representing hospitals and 2 public members shall hold
39 office for 4 years, the member from the nursing home
40 industry and one public member shall hold office for 3
41 years, the member from the insurance field and one
42 public member shall hold office for 2 years and the
43 physician and one public member shall hold office for
44 one year.

1 C. Vacancies among appointed members shall be filled
2 by appointment by the Governor for the unexpired term.
3 The Governor may remove any appointed member who
4 becomes disqualified by virtue of the requirements of
5 paragraph A, or for neglect of any duty required by
6 law, or for incompetency or dishonorable conduct.

7 D. Each appointed member of the committee shall
8 receive a per diem allowance of \$25 for each day that
9 he is actively engaged in performing the work of the
10 committee and each member shall be reimbursed for the
11 actual and necessary traveling and other expenses
12 incurred in the discharge of his duties.

13 E. Five members of the committee shall constitute a
14 quorum. Actions of the committee shall be by majority
15 vote.

16 2-B. Public hearing. A public hearing shall be held
17 during the course of a review by either the Certificate of
18 Need Advisory Committee or the Health Systems Agency, or
19 both, if requested by persons directly affected by the
20 review pursuant to subsection 1. Nothing in this section
21 may be construed to prevent the department from holding
22 informational meetings with applicants and interested and
23 affected persons prior to the conduct of the hearing. In
24 the event no hearing has been requested prior to an informa-
25 tional meeting or receipt of the preliminary staff report,
26 the applicant or any directly affected persons may request a
27 hearing within 10 days of either circumstance, provided that
28 the review period shall be extended by 60 days if such a
29 hearing is requested. In the case of grouped applications,
30 the extension shall apply to all competing applications.

31 A. The committee or agency shall provide notice of its
32 hearings in accordance with the procedure described in
33 subsection 1 .

34 B. Findings, recommendations, reports, analyses and
35 related documents prepared by the staff of the agency
36 shall be in final form and be made available to
37 affected persons at least 5 business days prior to its
38 hearings. The department shall make its preliminary
39 staff report available to the committee and affected
40 persons at least 5 business days prior to a public
41 hearing conducted by the committee.

42 C. In a hearing conducted by the committee, any person
43 shall have the right to be represented by counsel or to
44 present oral or written arguments and evidence relevant

1 to the matter which is the subject of the hearing. Any
2 person directly affected by the matter may conduct
3 reasonable questioning of persons who make relevant
4 factual allegations.

5 D. The designated representative of the department on
6 the Certificate of Need Advisory Committee shall serve
7 ex-officio as a nonvoting presiding officer and, in con-
8 sultation with the appointed members of the committee,
9 shall rule on the relevance of argument and evidence
10 and make determinations as to reasonable questioning.
11 Appointed members of the committee may conduct reason-
12 able questioning in the course of a hearing.

13 E. The department or agency shall record all hearings
14 and any subsequent proceedings of the committee with
15 respect to the application in a form susceptible to
16 transcription. The department shall transcribe the
17 recording when necessary for the prosecution of an
18 appeal.

19 F. During the first 7 business days following the
20 close of a public hearing conducted by the committee
21 interested or affected persons may submit written com-
22 ments concerning the review under consideration. The
23 department shall provide copies of comments submitted
24 in that manner to all persons registered as affected
25 persons and to appointed members of the committee. In
26 reviews where no hearing is held, interested or
27 affected persons may submit comments 10 days after the
28 submission of the preliminary staff report, but no
29 later than the 70th day of a 90-day review cycle or the
30 130th day of a 150-day review cycle.

31 G. In the event that circumstances require the depart-
32 ment to obtain further information from any source or
33 to otherwise contact registered affected persons fol-
34 lowing the public hearing and submission of comments
35 under paragraph F or, when no hearing is held, follow-
36 ing the 80th day of a 90-day review cycle or the 140th
37 day of a 150-day review cycle, the department shall:

38 (1) Provide written notice to all registered
39 affected persons who shall have at least 3 busi-
40 ness days to respond; or

41 (2) Convene a public meeting with reasonable
42 notice with participation of the committee at its
43 discretion and affording directly affected persons
44 the opportunity to conduct reasonable questioning.

1 In either event, notwithstanding any other provision of
2 this chapter, the time period in which a decision is
3 required shall be extended 20 days. Any written com-
4 ments shall be forwarded to the committee.

5 H. At its next meeting following the receipt of com-
6 ments pursuant to paragraph F or G, or in the case of a
7 public hearing pursuant to paragraph G, the committee
8 shall make a recommendation of approval or disapproval
9 with respect to the application or applications under
10 consideration. The recommendation shall be determined
11 by majority vote of the appointed members present and
12 voting. Members of the committee may make additional
13 oral comments or submit written comments, as they deem
14 appropriate, with respect to the basis for their recom-
15 mendations or their individual views. The committee
16 recommendation and any accompanying comments shall be
17 forwarded to the commissioner.

18 I. At the time the staff submits its final report to
19 the commissioner, a copy of the report shall be sent to
20 the applicant and a notification shall be sent to all
21 registered affected persons. No further comments may
22 be accepted.

23 J. There shall be no contact with respect to the
24 application after a hearing commences between members
25 of the committee or the department and affected parties
26 or anyone acting on their behalf, except in accordance
27 with the procedures set forth in this section.

28 **Sec. 26.** 22 MRSA §307, sub-§5, as enacted by PL 1977,
29 c. 687, §1, is repealed.

30 **Sec. 27.** 22 MRSA §307, sub-§5-A is enacted to read:

31 5-A. Decision by the department. Decisions by the
32 commissioner shall be made in accordance with the following
33 procedures.

34 A. The department shall prepare its final staff report
35 based solely on the record developed to date, as de-
36 defined in paragraph C, subparagraphs (1) to (6).

37 B. After reviewing each application, the commissioner
38 shall make a decision either to issue a certificate of
39 need or to deny the application for a certificate of
40 need. The decision of the commissioner shall be based
41 on the informational record developed in the course of
42 review as specified in paragraph C. Notice of the

1 decision shall be sent to the applicant, the committee
2 and the Health Systems Agency. This notice shall
3 incorporate written findings which state the basis of
4 the decision, including the findings required by
5 section 309, subsection 1. If the decision is not con-
6 sistent with the recommendations of the Health Systems
7 Agency or the Certificate of Need Advisory Committee,
8 the commissioner shall provide a detailed statement of
9 the reasons for the inconsistency.

10 C. For purposes of this subsection, "informational
11 record developed in the course of review" includes the
12 following:

13 (1) All applications, filings, correspondence and
14 documentary material submitted by applicants,
15 interested or affected persons, or the Health Sys-
16 tems Agency prior to the termination of the public
17 comment period under subsection 2-B, paragraph F
18 or, if no hearing is held, prior to the 80th day
19 of a 90-day review cycle and prior to the 140th
20 day of a 150-day review cycle;

21 (2) All documentary material reflecting informa-
22 tion generated by the department prior to termina-
23 tion of the public comment period or, if no hear-
24 ing is held, prior to the 80th day of a 90-day
25 review cycle and prior to the 140th day of a
26 150-day review cycle;

27 (3) Stenographic or electronic recording of any
28 public hearing or meeting held during the course
29 of review, whether or not transcribed;

30 (4) All material submitted or obtained in accor-
31 dance with the procedures in subsection 2-B, para-
32 graph G;

33 (5) The staff report of the agency, the prelimi-
34 nary staff report of the department and the recom-
35 mendations of the committee;

36 (6) Officially noticed facts; and

37 (7) The final staff report of the department.

38 Documentary materials may be incorporated in the record
39 by reference, provided that registered affected persons
40 are afforded the opportunity to examine the materials.

1 Sec. 28. 22 MRSA §307, sub-§6, as enacted by PL 1977,
2 c. 687, §1, is repealed.

3 Sec. 29. 22 MRSA §307, sub-§6-A is enacted to read:

4 6-A. Review cycles. The department shall establish
5 review cycles for the review of applications. There shall
6 be at least 6 review cycles for each calendar year, the
7 dates for which shall be published at least 3 months in
8 advance. An application shall be reviewed during the next
9 scheduled review cycle following the date on which the
10 application is either declared complete or submitted for
11 review pursuant to section 306-A, subsection 4, paragraph B.
12 The department may hold an application for up to 90 days
13 following the commencement of the next scheduled review
14 cycle if, on the basis of one or more letters of intent on
15 file at the time the application is either declared complete
16 or submitted for review pursuant to section 306-A, subsec-
17 tion 4, paragraph B, the department expects to receive
18 within the additional 90 days one or more other applications
19 pertaining to similar types of services, facilities or
20 equipment affecting the same health service area. Pertinent
21 health service areas shall be defined in regulations promul-
22 gated by the department pursuant to section 312, based on
23 recommendations by the State Health Coordinating Council.

24 Sec. 30. 22 MRSA §308, sub-§4 is enacted to read:

25 4. Waiver of review of acquisitions of major medical
26 equipment. The department may waive the review of an ac-
27 quisition or proposed use of major medical equipment re-
28 quired pursuant to section 304-A if the equipment will be
29 used to provide services to inpatients of a hospital only on
30 a temporary basis in the case of:

31 A. A natural disaster;

32 B. A major accident; or

33 C. Equipment failure.

34 Sec. 31. 22 MRSA §309, sub-§1, ¶D, as enacted by PL
35 1977, c. 687, §1, is amended to read:

36 D. That the proposed services are consistent with the
37 orderly and economic development of health facilities
38 and health resources for the State and are in accor-
39 dance with standards, criteria or plans adopted and
40 approved pursuant to the annual implementation plan,
41 the health systems plan, and the state health plan and

1 the state medical facilities plan developed by the
2 Health Systems Agency and the department.

3 Sec. 32. 22 MRSA §309, sub-§2, 1A, as enacted by PL
4 1977, c.687, §1, is amended to read:

5 A. The relationship of the health services being
6 reviewed to the annual implementation plan, the health
7 systems plan, and the state health plan and the state
8 medical facilities plan;

9 Sec. 33. 22 MRSA §309, sub-§§3, 4 and 5 are enacted to
10 read:

11 3. Health maintenance organizations. Notwithstanding
12 subsections 1 and 2, if a health maintenance organization or
13 a health care facility which is controlled, directly or
14 indirectly, by a health maintenance organization applies for
15 a certificate of need, the department shall issue a certifi-
16 cate of need if it finds that:

17 A. Approval of the application is required to meet the
18 needs of the members of the health maintenance orga-
19 nization and of the new members which the organization
20 can reasonably be expected to enroll; and

21 B. The health maintenance organization is unable to
22 provide, through services or facilities which can
23 reasonably be expected to be available to the organiza-
24 tion, its institutional health services in a reasonable
25 and cost effective manner which is consistent with the
26 basic method of operation of the organization and which
27 makes the services available on a long-term basis
28 through physicians and other health professionals asso-
29 ciated with it. In assessing the availability of the
30 proposed health services from other providers, the
31 department shall consider only whether the services
32 from these providers:

33 (1) Would be available under a contract of at
34 least 5 years' duration;

35 (2) Would be available and conveniently accessi-
36 ble to physicians and other health professionals
37 associated with the health maintenance organiza-
38 tions;

39 (3) Would cost no more than if the services were
40 provided by the health maintenance organization;
41 and

1 (4) Would be available in a manner which is
2 administratively feasible to the health mainte-
3 nance organization.

4 4. Required approvals. Approval of proposed capital
5 expenditures shall comply with the following:

6 A. Except as provided in paragraph B, the department
7 shall issue a certificate of need for a proposed capi-
8 tal expenditure if:

9 (1) The capital expenditure is required to elimi-
10 nate or prevent imminent safety hazards, as de-
11 finied by applicable fire, building or life-safety
12 codes and regulations; to comply with state licen-
13 sure standards; or to comply with accreditation or
14 certificate standards which must be met to receive
15 reimbursement under the United States Social
16 Security Act, Title XVIII, or payments under a
17 state plan for medical assistance approved under
18 Title XIX of that Act; and

19 (2) The department has determined that the facil-
20 ity or service for which capital expenditure is
21 proposed is needed; the obligation of the capital
22 expenditure is consistent with the state health
23 plan; and the corrective action proposed by the
24 applicant is the most cost effective alternative
25 available under the circumstances.

26 B. Those portions of a proposed project which are not
27 required to eliminate or prevent safety hazards or to
28 comply with licensure, certification or accreditation
29 standards are subject to review in accordance with the
30 criteria established under section 312.

31 5. Standards applied in certificate of need. The com-
32 missioner shall, in issuing a certificate of need, make his
33 decision, to the maximum extent practicable, directly
34 related to criteria established under federal laws and stan-
35 dards or criteria prescribed in regulations promulgated by
36 the department pursuant to subsections 1 to 4 and section
37 312.

38 The commissioner shall not deny issuance of a certificate of
39 need, or make his decision subject to fulfillment of a con-
40 dition on the part of the applicant, except where the denial
41 or condition directly relates to criteria established under
42 federal laws and standards or criteria prescribed in regula-
43 tions promulgated by the department in accordance with sub-

1 sections 1 to 4 and section 312, which are pertinent to the
2 application.

3 Sec. 34. 22 MRSA §312, as enacted by PL 1977, c. 687,
4 §1, is amended by adding after the first sentence a new
5 sentence to read:

6 The department shall, to the extent applicable, take into
7 consideration recommendations contained in the state health
8 plan as approved by the Governor.

9 Sec. 35. 22 MRSA §316, as enacted by PL 1977, c. 687,
10 §1, is repealed.

11 Sec. 36. 22 MRSA §316-A is enacted to read:

12 §316-A. Exemptions

13 Except as otherwise specifically provided, nothing in
14 this Act shall be construed to preempt, replace or otherwise
15 negate the requirements of any other laws or regulations
16 governing health care facilities. The requirements of this
17 Act shall not apply with respect to:

18 1. Health care facilities. Any health care facility:

19 A. Operated by religious groups relying solely on
20 spiritual means through prayer for healing; or

21 B. For which any construction, modification or other
22 change subject to this Act has been reviewed and has
23 received approval pursuant to the United States Social
24 Security Act, Section 1122, from appropriate agencies
25 prior to the effective date of this Act;

26 2. Activities; acquisitions. Activities or acquisitions
27 by or on behalf of a health maintenance organization
28 or a health care facility controlled, directly or indi-
29 rectly, by a health maintenance organization or combination
30 of health maintenance organizations to the extent mandated
31 by the National Health Planning and Resources Development
32 Act of 1974, as amended and its accompanying regulations;

33 3. Home health care services. Home health care ser-
34 vices offered by a home health care provider prior to 90
35 days after adjournment of the Second Regular Session of the
36 110th Legislature; and

37 4. Home health care providers. Home health care
38 providers, as of the effective date of enactment of a home
39 health care provider licensing law.

1 Sec. 37. 22 MRSA §317, as enacted by PL 1977, c. 687,
2 §1, is repealed.

3 Sec. 38. 22 MRSA §317-A is enacted to read:

4 §317-A. Scope of certificate of need

5 1. Application determinative. A certificate of need
6 shall be valid only for the defined scope, premises and
7 facility or person named in the application and shall not be
8 transferable or assignable.

9 2. Maximum expenditure. In issuing a certificate of
10 need, the department shall specify the maximum capital
11 expenditures which may be obligated under this certificate.
12 The department shall, by regulations promulgated pursuant to
13 section 312, prescribe the method to be used to determine
14 capital expenditure maximums, establish procedures to moni-
15 tor capital expenditures obligated under certificates and
16 establish procedures to review projects for which the capi-
17 tal expenditure maximum is exceeded or expected to be
18 exceeded.

19 3. Periodic review. After the issuance of a certifi-
20 cate of need, the department shall periodically review the
21 progress of the holder of the certificate in meeting the
22 timetable for making the service or equipment available or
23 for completing the project specified in the approved appli-
24 cation. A certificate of need shall expire if the project
25 for which the certificate has been issued is not commenced
26 within 12 months following the issuance of the certificate.
27 The department may grant an extension of a certificate for
28 an additional specified time not to exceed 12 months if good
29 course is shown why the project has not commenced. The
30 department may require evidence of the continuing feasi-
31 bility and availability of financing for a project as a con-
32 dition for extending the life of certificate. In addition
33 if on the basis of its periodic review of progress under the
34 certificate, the department determines that the holder of a
35 certificate is not otherwise meeting the timetable and is
36 not making a good faith effort to meet it, the department
37 may, after considering any recommendation made by the Health
38 Systems Agency, and after a hearing, withdraw the certifi-
39 cate of need. The department shall in accordance with
40 section 312 promulgate the necessary procedures for with-
41 drawal of certificates of need.

42 Sec. 39. 22 MRSA §323 is enacted to read:

43 §323. Relationship to the United States Social Security
44 Act, Section 1122

1 1. Administration of Section 1122 reviews. The
2 department shall, in reviewing those capital expenditures
3 which require review under section 304-A and the United
4 States Social Security Act, Section 1122, and regulations
5 promulgated thereunder, allow the maximum flexibility per-
6 mitted under the United States Social Security Act, Section
7 1122, consistent with this chapter.

8 2. Thresholds for review. The department shall waive
9 review of proposed capital expenditures by health care
10 facilities under the United States Social Security Act,
11 Section 1122, and regulations promulgated thereunder, unless
12 those expenditures are subject to review under section
13 304-A.

14 3. Procedures. The department shall, pursuant to
15 section 312, modify its United States Social Security Act,
16 Section 1122 Procedures Manual as required by this section,
17 and shall promulgate the revised manual as a regulation on
18 or before January 1, 1983.

19 Sec. 40. 22 MRSA §324 is enacted to read:

20 §324. Review

21 If the National Health Planning and Resources Develop-
22 ment Act of 1974, Public Law 93-641, is repealed or signifi-
23 cantly altered, but no later than December, 1986, the
24 legislative joint standing committee having jurisdiction
25 over health and institutional services shall review the con-
26 tinuing feasibility of this chapter and shall make a report
27 to the Legislature and the Governor on its findings,
28 together with any accompanying legislation.

29 The committee shall study all dollar amounts stated in
30 this chapter as part of its review.

31 Sec. 41. 22 MRSA §325 is enacted to read:

32 §325. Health Systems Agency

33 The Legislature intends that, without regard to the
34 termination or substantial diminution of federal funding for
35 the Maine Health Systems Agency prior to the effective date
36 of this Act, the department shall continue to administer a
37 certificate of need program otherwise consistent with the
38 provisions of the Maine Certificate of Need Act.

1 This new draft adds transitional language to ensure
2 that the department will continue to operate a certificate
3 of need program, regardless of actions involving the Health
4 Systems Agency.

5 Finally, it makes the actions pertaining to home health
6 care providers and the Health Systems Agency effective 90
7 days after adjournment of the Second Regular Session of the
8 110th Legislature. The rest of this Act takes effect on
9 January 1, 1983.

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