LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION

November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION

January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

§708-A. In-pack sweepstakes, contests and games

Notwithstanding any provision of law to the contrary, a certificate of approval holder, wholesale licensee or retail licensee may offer sweepstakes, games and contests inside packages of alcoholic beverages, if that offer is not contingent on the purchase of an alcoholic beverage.

See title page for effective date.

CHAPTER 583

S.P. 636 - L.D. 1644

An Act to Amend the Hospital Cooperation Act of 1992 to Facilitate Integrated Health Care Delivery Systems by Authorizing and Supervising Certain Hospital Mergers

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the merger of certain hospitals or their parent organizations in this State can provide opportunities for measurable and substantial improvements in the quality, accessibility and cost-effectiveness of health care delivered to citizens of this State; and

Whereas, hospital mergers may provide a foundation for future development of integrated health care delivery systems, which can further improve the quality, accessibility and cost-effectiveness of health care; and

Whereas, some mergers of hospitals in this State may involve a substantial percentage of available hospital providers in particular regions of the State and result in undue anticompetitive effects. These mergers should be permitted only if the likely public benefits of the transaction outweigh their likely disadvantages, and governmental supervision of the merging hospitals ensures that any likely benefits to the public from the merger outweigh any likely disadvantages attributable to a reduction in competition from the merger; and

Whereas, it is in the public interest to establish an effective system of governmental review of such hospital mergers when proposed and supervision of approved mergers; and

Whereas, in the judgment of the Legislature the procedures established by this measure will provide sufficient government review and supervision so as to ensure that only those hospital mergers whose likely benefits will outweigh their likely disadvantages will receive favorable consideration under this Act; and

Whereas, certain hospitals operating in the State or their parent organizations are in the process of planning a merger to provide coordinated hospital care. These hospitals desire to complete all necessary steps to provide hospital services on an integrated basis by January 1, 1997; and

Whereas, the process of an initial administrative review established by this Act must begin in mid-1996 in order to be completed in sufficient time to allow a determination whether and under what circumstances such hospital mergers should be approved under the authority of this measure; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §1882, sub-§1, as amended by PL 1995, c. 232, §1, is further amended to read:

1. Cooperative agreement. "Cooperative agreement" means an agreement among 2 or more hospitals or nonprofit mental health care providers for the sharing, allocation or referral of patients, personnel, instructional programs, mental health services, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals or nonprofit mental health care providers, or for the coordinated negotiation and contracting with payors or employers or for the merger of 2 or more hospitals.

Sec. 2. 22 MRSA §1882, sub-§2-A is enacted to read:

2-A. Merger. "Merger" means a transaction by which ownership or control over substantially all of the stock, assets or activities of one or more licensed and operating hospitals is placed under the control of another licensed hospital or hospitals or the parent organization of that hospital or hospitals.

Sec. 3. 22 MRSA §1883, sub-§2-A is enacted to read:

2-A. Letter of intent. Parties to a hospital merger agreement who intend to file an application for a certificate of public advantage for the merger transaction shall file a letter of intent describing the proposed merger with the department and the

Attorney General at least 45 days prior to the filing of the application for a certificate of public advantage.

Sec. 4. 22 MRSA §1883, sub-§3, as enacted by PL 1991, c. 814, §1, is repealed and the following enacted in its place:

3. Procedure for department review. The following procedures apply to the review of the application by the department.

A. The department shall review and evaluate the application in accordance with the standards set forth in subsection 4.

B. The department shall furnish copies of any letter of intent, application or decision to a person who requests copies and to a person who registers annually with the department for that purpose. A person may provide the department with written comments concerning the application within 30 days after the application is filed. The department shall provide the Attorney General with copies of all comments.

C. The department may hold a public hearing in accordance with rules adopted by the department. Intervention is governed by the provisions of Title 5, section 9054.

D. The parties to a cooperative agreement may withdraw their application and thereby terminate all proceedings under this chapter as follows:

(1) Without the approval of the department, the Attorney General or the Superior Court anytime prior to the filing of an answer or responsive pleading in a court action under section 1885, subsection 2 or prior to entry of a consent decree under section 1885, subsection 7; or

(2) Without the approval of the department, anytime prior to the issuance of a final decision under paragraph E if a court action has not been filed under section 1885, subsection 2.

E. The department shall grant or deny finally the application no less than 40 days nor more than 90 days after the filing of the application. The department shall issue a recommended decision at least 5 days prior to issuing a final decision granting or denying the application. The recommended and final decisions must be in writing and set forth the basis for the decision.

Sec. 5. 22 MRSA §1883, sub-§4, ¶¶A and B, as amended by PL 1995, c. 232, §4, are further amended to read:

A. In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) Enhancement of the quality of hospital or nonprofit mental health care or related care provided to Maine citizens;

(2) Preservation of hospital or nonprofit mental health care provider and related facilities in geographical proximity to the communities traditionally served by those facilities;

(3) Gains in the cost efficiency of services provided by the hospitals or nonprofit mental health care providers involved;

(4) Improvements in the utilization of hospital or nonprofit mental health care provider resources and equipment; ~~and~~

(5) Avoidance of duplication of hospital or nonprofit mental health care resources~~.~~; and

(6) Continuation or establishment of needed educational programs for health care professionals and providers.

In any certificate for a merger issued under this chapter, the department shall make specific findings as to the nature and extent of any likely benefit found under this paragraph.

B. The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(2) The extent of any reduction in competition among hospitals, physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals or nonprofit mental health care providers that is likely to result directly or indirectly from the hospital cooperative agreement;

(3) The extent of any likely adverse impact on patients or clients in the quality, availability and price of health care services; ~~and~~

(4) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement~~.~~; and

(5) The extent of any likely adverse impact on the access of persons in in-state educational programs for health professions to existing or future clinical training programs.

Sec. 6. 22 MRSA §1883, sub-§4, ¶C is enacted to read:

C. In evaluating the cooperative agreement under the standards in paragraphs A and B, the department shall consider the extent to which any likely disadvantages may be ameliorated by any reasonably enforceable conditions and the extent to which the likely benefits or favorable balance of benefits over disadvantages may be enhanced by any reasonably enforceable conditions under subparagraph (2).

(1) In any certificate issued under this subsection, the department may include conditions reasonably necessary to ameliorate any likely disadvantages of the type specified in paragraph B, subparagraphs (1) to (3).

(2) In any certificate issued under this subsection, the department may include additional conditions, if proposed by the applicants, designed to achieve public benefits, which may include but are not limited to the benefits listed in paragraph A.

(3) In any certificate issued under this subsection the department shall require the applicants to report periodically the extent of their compliance with any conditions issued under this paragraph. The department shall review the applicant's submission and compliance and report the results of its review to the Attorney General. Reviews are required as follows:

(a) For transactions not involving mergers, at least once in the first 39 months after issuance of the certificate; and

(b) For transactions involving mergers, between 27 and 39 months after issuance of the certificate. In this review the department also shall analyze the extent to which benefits have been achieved by the merger.

Sec. 7. 22 MRSA §1883, sub-§6, as enacted by PL 1991, c. 814, §1, is amended to read:

6. Certificate termination and enforcement. If the department determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may initiate proceedings to terminate the certificate of public advantage ~~in accordance with Title 5, chapter 375, subchapter IV~~. The department may institute proceedings to enforce any conditions included in the certificate if it determines that the applicants are not in substantial compliance with such conditions. All proceedings under this subsection must be conducted under Title 5, chapter 375, subchapter IV.

Sec. 8. 22 MRSA §1885, sub-§1, as amended by PL 1993, c. 719, §10 and affected by §12, is further amended to read:

1. Investigative powers. The Attorney General, at any time after an application is filed under section 1883, subsection 2, or a letter of intent is filed under section 1883, subsection 2-A, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

Sec. 9. 22 MRSA §1885, sub-§§2 and 3, as enacted by PL 1991, c. 814, §1, are amended to read:

2. Court action; time limits. The Attorney General may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in Superior Court. The Attorney General may file an action before or after the department acts on the application for a certificate ~~but, except as provided in subsection 5~~; however, the action must be brought no later than 40 days following the department's approval of an application for a certificate of public advantage. After the filing of a court action under this subsection, the department may not take any further action under this chapter and the time periods specified for departmental action under section 1883, subsection 3 are tolled until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

3. Automatic stay. Upon the filing of the complaint in an action under subsection 2, the

department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The applicants for certificate of public advantage may apply to the Superior Court for relief from that stay; the relief may be granted only upon showing of compelling justification. The Attorney General may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

Sec. 10. 22 MRSA §1885, sub-§5, ¶B, as enacted by PL 1991, c. 814, §1, is amended to read:

B. In any action under this subsection, if the Attorney General first establishes by a preponderance of evidence that the department's certification was obtained as a result of material misrepresentation to the department or the Attorney General or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement ~~are outweighed by~~ outweigh the disadvantages attributable to any reduction in competition resulting from the agreement.

Sec. 11. 22 MRSA §1885, sub-§5-A is enacted to read:

5-A. Enforcement of conditions. Conditions included in a certificate may be enforced according to this subsection.

A. If the parties to a cooperative agreement not involving a merger are not in substantial compliance with any conditions included in the certificate under section 1883, subsection 4, or in a consent decree entered under subsection 7, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or other appropriate equitable remedies. If the Superior Court grants such relief and that relief is not effective in securing compliance with the conditions, the Superior Court may impose additional equitable remedies, including the exercise of civil contempt powers, or may cancel the certificate of public advantage upon a determination that advantages to be gained by canceling the certificate outweigh the unavoidable costs resulting from a cancellation.

B. If the parties to a cooperative agreement involving a merger are not in substantial compliance with any conditions included in the certificate under section 1883, subsection 4, or in a consent decree entered under subsection 7, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions. If the parties to the merger fail to comply with any court order compelling compliance with such conditions, the Superior Court may impose additional equitable remedies to secure compliance with its orders, including the exercise of civil contempt powers or appointment of a receiver. If these additional measures are not effective in securing compliance with the conditions, and the Superior Court determines that the advantages to be gained by divestiture outweigh the unavoidable costs of requiring divestiture, the Superior Court may cancel the certificate and order divestiture of assets.

Sec. 12. 22 MRSA §1885, sub-§7, as enacted by PL 1991, c. 814, §1, is amended to read:

7. Resolution by consent decree. The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order ~~that~~ with the consent of the parties~~, modifies the cooperative agreement~~. The consent decree may contain any conditions authorized by section 1883, subsection 4, paragraph C. A consent decree under this subsection may not be filed with the Superior Court until 30 days after the filing of the application under section 1883, subsection 2. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 1886 and the cooperative agreement has the effectiveness specified in section 1886.

Sec. 13. 22 MRSA §1886, sub-§§1 and 2, as enacted by PL 1991, c. 814, §1, are amended to read:

1. Validity of certified cooperative agreements. Notwithstanding Title 5, chapter 10, Title 10, ~~section 1101~~ chapter 201 or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Title 5, chapter 10, Title 10, ~~section 1102~~ chapter 201 or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

2. Validity of cooperative agreements determined not in public interest. If ~~the department or~~, in any action by the Attorney General, the Superior Court determines that the applicants have not estab-

lished by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect when the judgment becomes final after the time for appeal has expired or the judgment of the Superior Court is affirmed on appeal.

Sec. 14. 22 MRSA §1886, sub-§4, as enacted by PL 1991, c. 814, §1, is repealed.

Sec. 15. 22 MRSA §1889 is enacted to read:

§1889. Application fee

Any application for a certificate of public advantage involving a merger must be accompanied by an application fee of $10,000, unless the hospitals seeking to merge each have less than 50 licensed beds, in which case the fee is $2,500. The department shall place these funds into a nonlapsing dedicated revenue account and funds may be used only by the Attorney General for the payment of the cost of experts and consultants in connection with reviews conducted under this chapter.

Sec. 16. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1995-96	1996-97
ATTORNEY GENERAL, DEPARTMENT OF THE		
Administration - Attorney General		
All Other	$20,000	$50,000
Provides funds for contractual services of experts to review hospital merger applications.		

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 1, 1996.

CHAPTER 584

S.P. 643 - L.D. 1687

An Act to Make Changes to the Motor Vehicle Laws

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

PART A

Sec. A-1. 29-A MRSA §504, sub-§5, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

5. Truck or truck tractor and semitrailer. In computing fees for a combination of truck or truck tractor and semitrailer, the vehicle to be registered for gross weight is the truck or truck tractor and the rate is the same as for a truck of similar gross vehicle weight. The gross weight used to determine the registration fee under subsection 1 is the combined gross weight of the truck or truck tractor and semitrailer.

Sec. A-2. 29-A MRSA §1905-A is enacted to read:

§1905-A. Turn signal

1. Requirement. Except as provided in subsection 3, a motor vehicle, trailer or semitrailer must be equipped with electric flashing turn signal lamps. A motor vehicle must emit white or amber light from the turn signals to the front of the vehicle and a motor vehicle, trailer or semitrailer must emit amber or red light from the turn signals to the rear of the vehicle.

2. Vehicles physically connected. When a vehicle that is being operated is physically connected to another vehicle, only the last vehicle must carry turn signals to the rear.

3. Vehicles manufactured without turn signal. Automobiles and trucks less than 80 inches in width, manufactured or assembled prior to January 1, 1953 need not be equipped with electric turn signal lamps.

4. Exception for farm tractors. This section does not apply to unregistered farm tractors.

Sec. A-3. 29-A MRSA §1953, sub-§2, ¶A, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

A. A truck with a registered gross vehicle weight of 6,000 pounds or less;

Sec. A-4. 29-A MRSA §2358, sub-§§1 and 2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to read:

1. Travel to scales. If scales are not available, the officer may require that an operator of a vehicle go to the nearest ~~public scales~~ location capable of weighing the vehicle, if the travel does not increase by more than 5 miles the distance that the operator may ~~reasonably~~ travel to reach ~~its~~ the operator's destination.