

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

SECOND SUMMARY REPORT
TO THE
ONE HUNDRED AND FIFTH LEGISLATURE
VOLUME TWO

JANUARY, 1971



STATE OF MAINE
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STATE HOUSE
AUGUSTA, MAINE 04330

December 28, 1970

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TO THE MEMBERS OF THE 105TH LEGISLATURE:

The Legislative Research Committee hereby has the pleasure of submitting to you Volume II of its report on activities for the past two years.

This volume relates to all remaining matters except for State Government Reorganization H.P. 1468, which was undertaken by the Committee in conjunction with the State Planning Office and previously published and released by that office under separate cover on December 2, 1970.

We of the Committee gratefully acknowledge our indebtedness to the many individuals, organizations and agencies for their valuable contributions to the work of the Committee and it is our hope that the information contained in this report will be of assistance to the Members of the 105th Legislature and the people of the State of Maine.

Respectfully submitted,

William E. Dennett
Chairman
Legislative Research Committee

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON ASSOCIATED HOSPITAL SERVICE
to the
ONE HUNDRED AND FIFTH LEGISLATURE

January, 1971
Committee Publication 105-10

ASSOCIATED HOSPITAL SERVICES

ORDERED, the Senate concurring, that the Legislative Research Committee be, and hereby is, directed to study the subject matter of the Bill: "An Act to Provide for Taxation and Regulation of the Associated Hospital Service of Maine", House Paper No. 885, Legislative Document No. 1144 introduced at the regular session of the 104th Legislature, to determine whether the best interests of the State would be served by the enactment of such legislation; and be it further

ORDERED, that the State Bureau of Taxation and Department of Insurance are requested to provide the Committee with information, technical advice and such other needed assistance as they deem necessary to carry out the purposes of this Order; and be it further

ORDERED, that the Committee report its findings and recommendations at the next regular or special session of the Legislature.

HP 1226	House of Representatives	In Senate Chamber
Scott	Read and Passed	Read and Passed
Wilton	May 28, 1969	July 1, 1969
	Sent up for concurrence	In concurrence

SUBCOMMITTEE ON ASSOCIATED HOSPITAL SERVICE

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As directed by the One Hundred and Fourth Legislature under joint order, house paper 1226, the Legislative Research Committee has studied the subject matter of "An Act to Provide for Taxation and Regulation of the Associated Hospital Service of Maine", house paper 885, legislative document 1144, introduced at the regular legislative session of 1969.

In the course of study the Committee conducted public hearings on October 16, 1969 and April 15, 1970 and held numerous executive sessions on this subject. On the basis of testimony received by the Committee the following statements summarize the issues involved and the respective positions of the parties in interest.

MAINE INSURANCE COUNCIL

The Maine Insurance Council contends that there seems to be no question but that Associated Hospital Service of Maine is conducting a broad medical insurance operation. Therefore, they should be treated on the same basis as other medical insurers.

The Council does not seek to criticize Associated Hospital Service, nor to disregard their good service over many years to the Maine citizens whom they serve. It does feel, however, that all medical insurers, and the people they serve, should be subject to the same legal requirements.

There are three issues involved: Premium tax, regulation as a medical insurer and hospital discounts.

With respect to the premium tax, equal treatment can be achieved either by imposing the 1% tax on Associated Hospital

Service premiums or by removing the tax from commercial insurance premiums. The Council would agree that it does not make much sense to tax any medical insurance premium because that is the way in which a man pays in advance in a prudent manner for his medical risks. However, if the majority of Maine people are going to be taxed on their medical insurance premiums, the same burden should be imposed on those who pay Associated Hospital Service premiums. Based upon Associated Hospital Service figures for 1969, 1% of total premiums of \$25,841,058 would amount to additional State revenue of \$258,410. On the other hand, exemption of commercial insurance premiums would cause a revenue loss. The Committee has available from the Taxation Department whatever estimate is available. Whichever way the Legislature chooses to do it, the two types of medical insurers, and the people whom they serve, should have equal treatment.

Second, Associated Hospital Service should be subject to the same regulatory provisions applicable to commercial medical insurers. The public concerns with contract terms and protection of the individual insured are equally applicable. This can be accomplished by placing Associated Hospital Service under the provisions of the new Insurance Code so that the detailed provisions of Chapters 31 and 33 of Title 24-A with respect to insurance contracts, disclosure of terms, time limits on certain defenses, grace periods, reinstatement provisions, notice of claim provisions, rights to examine and return policies, provisions relating to insurance with other insurers, notice as to renewability and the

various other provisions for the protection of the individual would become applicable to Associated Hospital Service contracts. Among the other provisions of the Code which would become applicable would be the provisions of Chapter 17 requiring licensing and examination of sales representatives and Chapter 3, §§ 221-228 with respect to examination of the insurer and contribution toward examination expense. The only reason this was not done when the new Insurance Code was drafted was because the Revision Commission did not want to get into this controversy at that time. In this way, all members of the public would be given the same rights and the same protections with respect to all medical insurers.

Finally, is the issue of so-called hospital discounts. According to the testimony at the public hearing Associated Hospital Service obtains discounts from the three Waterville hospitals of approximately 15%, 10% and 6%, respectively. The schedule presented by Associated Hospital Service admitted an average of a 3.8% discount statewide and revealed that some hospitals grant far greater discounts; e.g., Hospital No. 13-10.1%, Hospital No. 25-14.5%, Hospital No. 36-12.9%, Hospital No. 48-17.7% and Hospital No. 52-18.4%. The Council takes issue with their claim of a 3.8% average figure because it fails to take into account the credit losses which the hospitals suffer in collecting balances from individual patients.

Whatever the proper computation of the so-called discount may be, the Council does not believe that there is any justification for Associated Hospital Service using its bargaining power and

relation to the hospitals to obtain such discounts. It is not fair to the rest of the community. It is the Council's belief that Associated Hospital Service should pay a 100% benefit just as does the commercial insurer and the man who pays his hospital bill out of his own pocket. Why should Associated Hospital Service be allowed to determine what portion of medical charges they see fit to pay, and leave the rest of the community to bear the burden which results!

It is interesting to note that the September 15, 1970 issue of "United States Law Week" reports that the Virginia Supreme Court of Appeals on September 4, 1970 held that the Blue Cross drug plan, under which participating Virginia pharmacists agreed to provide prescription drugs to Blue Cross subscribers at cost plus a fixed professional fee, violates federal and state prescriptions against price fixing. While the Virginia plan was somewhat different from the discounting practice here in Maine, the basic issue of discriminatory discounts is presented.

Obviously the discounting problem can be handled either by prohibiting discounts, requiring them to be phased out over some period, or by requiring the hospitals to offer the same discounts to all insurers. This latter approach was adopted by South Carolina in 1958. The Council is advised that the hospitals then sat down and negotiated the discounts out of their contracts with Associated Hospital Service.

Whichever way the Legislature may choose to proceed, it seems clear that the members of the community insured by Associated Hospital Service should not get a discount at the expense of the

other members of the community who have commercial insurance or who pay the bills out of their own pocket. Neither should the employer who pays for Associated Hospital Service coverage get the benefit of this advantage.

The Council favors the prohibition or phasing out of the discount because that is the only way to give fair treatment to the man who pays his own bill.

In the opinion of the Maine Insurance Council the foregoing three issues present basic questions of fair and equal treatment to Maine citizens with respect to the very important subject of medical insurance and the burden of payment for medical services.

ASSOCIATED HOSPITAL SERVICE OF MAINE, INC.

Associated Hospital Service of Maine, because it is currently legislatively tax exempt, takes no position for or against a proposal to eliminate the premium tax from indemnity commercial insurance carriers doing accident and health insurance business in the State of Maine. It is our position, however, that should the premium tax be eliminated, that the one per cent savings for domestic companies and the two per cent savings for foreign companies should be passed on to Maine consumers or to Maine providers of health care in the form of reduced premiums or expanded benefits. As more fully documented by the analysis presented to the Committee comparing the premiums received with the benefits paid out of various commercial indemnity companies it is obvious that at least in certain instances companies are retaining as high as 40 to 60 per cent of premiums for reserves and administrative expenses, etc.

Associated Hospital Service feels that before the premium tax can be eliminated that there must be some assurance that these revenues lost to the State be returned to Maine people and not be retained by the companies, a large number of which doing business in Maine being foreign companies who would not necessarily invest these additional tax savings within the State of Maine.

Associated Hospital Service of Maine feels, however, that the elimination of a premium tax on commercial indemnity insurance companies is one of the fiscal and socioeconomic situations facing the Committee and takes no official stand thereon.

Associated Hospital Service of Maine has consistently maintained that for many distinct reasons it is distinguishable from and is not a commercial indemnity insurance company, and therefore feels that it should not be included in the so-called "Maine Insurance Code" found in Title 24-A of the Revised Statutes of Maine of 1964. Currently its provisions are found "in toto" in Chapter 19 of Title 24, and as contended there is good reason, which was more fully brought out in the testimony before the Committee that it should remain as a separate chapter outside the Code. Associated Hospital Service of Maine does not, however, have any objections, and in fact welcomes any provisions which have been written into the Code for the purposes of the protection of insurance policyholders or to provide assistance and financing to the Insurance Commission in performance of its responsibilities. It is suggested, however, that non-profit hospital or medical service organizations be left in its present position in the Statutes and that sections

directly dealing with consumer protection or department responsibility and efficiency be written into the existing Chapter 19 of Title 24. Associated Hospital Service of Maine is at this time opposed to legislation limiting discounts by providers of health care because its passage would prohibit Associated Hospital Service of Maine's ability to reimburse hospitals on a cost-plus or fair market value for services rendered basis, which it has done since its inception some 30 years ago. As explained at the hearings in more detail, the purpose of the reimbursement formula currently in use, although it is admitted that this formula is not perfect, is an attempt upon the part of Associated Hospital Service, which is controlled by the hospitals in conformance with standards set by the American Hospital Association, to equitably treat different hospitals throughout the State upon the basis of required and necessary costs and not necessarily billed charges which may or may not include a number of factors contrary to modern comprehensive health care cost planning. It is recognized by all that costs of hospitalization have spiraled in recent years and the only possible way that this spiral will be contained is by utilization of cost controls. This is nationally recognized and similar formulas to that used by Associated Hospital Service of Maine are utilized by the Federal Government in its medicare and Federal Employees' Health Benefits programs. Currently there are many different methods to achieve these ends such as Governmental or quasi-Governmental regulation, incentive reimbursement programs, and prospective rather than retrospective reimbursement being proposed and in some cases actually utilized throughout the country. The problem is easily

recognizable, the solution difficult to achieve. To legislate, as proposed here, that Associated Hospital Service of Maine and its over 400,000 members in Maine be required to pay bills whose rates are set by autonomous hospital boards in some cases without regard to comprehensive planning would certainly be a step towards uncontrolled inefficiency, duplication of services, and general inflationary trends in hospital costs to the people of Maine. The only means currently available to Associated Hospital Service of Maine or in fact to the consumers of this State to control hospital costs is by virtue of the reimbursement formula negotiated between Blue Cross and the individual hospitals. The next proposed contracts to be negotiated between Blue Cross and the hospitals of Maine will contain additional points related to the hospital's responsibility such as licensing requirements, utilization review, and capital expenditure approval by comprehensive planning organizations, etc. It is through these negotiations that the club is provided for the hospitals to police themselves and to attempt to stem the uncontrolled spiraling health costs of today.

CONCLUSION

In view of the foregoing, the Committee considered each of the three issues in separate legislative proposals and after several conferences with legal counsel representing each side concludes as follows:

First, the Committee submits An Act Exempting Health Insurance Premiums from Premium Tax and unanimously recommends its adoption.

Amend Title 36, section 2511 to add the following words at the end thereof:

" , except that no such tax shall be applicable to

premiums on health insurance as defined by Title 24-A, section 704."

Add to Title 36, section 2513 the following words at the end thereof:

", except that no such tax shall be applicable to premiums on health insurance as defined by Title 24-A, section 704."

Second, after careful study and divided deliberation, the Committee submits, without recommendation, An Act Limiting Discounts by Providers of Health Care for legislative determination.

Amend Title 24-A to add a new section 2164-B as follows:

§2164-B. Limitation of Health Care Discounts

After December 31, 1972 no health insurer or hospital or medical service organization shall contract for, solicit or accept; and no provider of health care shall contract for or otherwise grant, a discount or contractual allowance on the payment of charges for health care services by health insurers or hospital or medical service organizations, except for any cash discount available to all those who pay for health care services. This provision shall not apply to transactions with agencies of the State or Federal Governments.

Third and last, the Committee submits An Act Placing Nonprofit Hospitals or Medical Service Organizations Under the Maine Insurance Code and unanimously favors its adoption.

Delete Title 24, Chapter 19.

Add to Title 24-A the following Chapter 57:

CHAPTER 57

NONPROFIT HOSPITAL OR MEDICAL SERVICE ORGANIZATIONS

§4251. Purposes

Any corporation organized under special Act of the Legislature or under Title 13, chapter 81 for the following purposes may be authorized by the commissioner on the terms and conditions provided for in this chapter:

1. Nonprofit hospital service plans. To establish, maintain and operate nonprofit hospital service plans, whereby hospital care may be provided by hospitals or groups of hospitals with which such corporation has a contract for such purpose, to such persons or groups of persons as become subscribers to such plan under a contract which entitles each subscriber to certain hospital care, and the hospital or hospitals so contracting with such corporation shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise specifically provided in this chapter.

2. Nonprofit medical service plans. To establish, maintain and operate nonprofit medical service plans, whereby medical or surgical service is provided to such persons or groups of persons as shall become subscribers to such plan under contracts with such corporation, either in the capacity of principal or agent of other nonprofit medical service corporation,

or insurers authorized to do business in this State, and the physician or physicians so contracting with such corporation, shall be governed by this section and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise specifically provided in this chapter.

3. Nonprofit health care plans. To establish, maintain and operate nonprofit health care plans whereby health care services not covered under subsections 1 and 2 may be provided by institutions or persons licensed for such purpose by the State of Maine with which such corporation has a contract for such purpose, to such persons or groups of persons as become subscribers to such plan under a contract which entitles each subscriber to certain specific health care and the licensed institution or persons so contracting with such corporation shall be governed by this chapter.

4. Principal or agent. In order to maintain and operate such plans, such corporation may act either in the capacity of principal or agent of other nonprofit hospital service corporations, or insurers authorized to do business in this State.

5. Contracts and agreements. To contract with any similar corporations in other states for the joint administration of their business, and to enter into reciprocal arrangements for the mutual benefit of their subscribers.

6. Services for governmental units. With the prior approval of the commissioner, such corporation shall have the right to utilize its organization and facilities to perform

services for the United States or the State of Maine Governments or the units or agencies of either or any charitable or non-profit organization involved in health care. Such utilization shall be on a cost basis resulting in no profit to the corporation.

7. Right to contract. The State, any county, city, town or other quasi-municipal corporation shall have the same right to contract with any corporation subject to this chapter as it may have under section 4501 with respect to insurers.

8. Indemnity health care contracts. Nothing in this chapter shall authorize an organization operating under this chapter to enter into indemnity health care contracts.

§ 4252. Incorporation

The articles of incorporation, and amendments thereto, of every corporation organized under this chapter shall be submitted to the commissioner, whose approval thereof shall be indorsed thereon before the same are filed with the Secretary of State.

§ 4253. Directors

There shall be not less than 7 directors of such a corporation and at least a majority of the directors must be at all times administrators, corporators, trustees or members of the clinical staff of the hospital or hospitals which have contracted with such corporation to render hospital service to the subscribers and the physicians and optometrists who have contracted with such corporation to render medical, surgical, obstetrical, optometric or related professional service to the subscribers.

§ 4254. Contracts

Such a corporation may enter into contracts for the rendering of health care to the subscribers only with institutions or persons licensed by the appropriate departments or boards of the several states. All contracts for the provision of health care issued by such a corporation shall constitute direct obligations of the provider of health care with which the corporation has contracted for such care.

Contracts issued under the health care plan shall provide that the private provider-patient relationship shall exist between the patient and provider of health care, and that the patient shall have a free choice of any provider of health care able and willing to provide such services, all of which shall be based upon definite agreements covering health care provided through duly licensed providers.

Any such provider of health care shall be free to refuse service for appropriate professional reasons.

Nothing in this section shall be construed to prohibit reciprocal arrangements for the exchange of health care between nonprofit hospital and medical service plans.

§ 4255. Application for authority to transact business

Application for the authority provided for in section 4256 must be made in the form required by the commissioner and must contain the information he deems necessary. The application must be accompanied by a copy of each of the following documents:

1. Certificate of incorporation. Certificate of incorporation;

2. Bylaws. Bylaws;

3. Proposed contracts. Proposed contracts between the corporation and participating providers of health care showing the terms under which the health care service is to be furnished to subscribers;

4. Rates and benefits. Contracts to be issued to subscribers, showing a table of the rates to be charged and the benefits to which they are entitled; and

5. Financial statement. Financial statement of the corporation, including the contributions paid or agreed to be paid to the corporation for working capital, the name of each contributor and the terms of each contribution. The contributions must total at least \$5,000.

§ 4256. Issuance, renewal of authority

1. Requirements. The commissioner shall issue a certificate of authority on payment of the fee as provided in section 601, if the applicant meets the following requirements:

A. Plan. It is established to provide a bona fide nonprofit health care plan.

B. Contracts. The contracts between the applicant and the participating providers of health care obligate each participating party to render service to which each subscriber may be entitled under the terms of the contract issued to the subscribers.

C. Rates and benefits. The rates charged and benefits to be provided are reasonable.

D. Contributions. Contributions to the working funds of the applicant are repayable only out of earned premiums in excess of operating expenses, payments to participating providers and an adequate reserve required by the commissioner.

E. Money available. The money available for working capital must be sufficient to cover all acquisition costs and operating expenses for a reasonable time from the date of the issuance of the certificate of authority.

2. Renewal. The certificate of authority shall be issued for a term of 1 year and shall be subject to renewal for a like period.

§ 4257. Reports

Every corporation organized under this chapter shall annually on or before the first day of April file in the office of the commissioner a statement verified by at least 2 of its principal officers showing its condition on the 31st day of December then next preceding. The report shall be in such form and shall contain such matters as the commissioner shall prescribe.

§ 4258. Examination

The commissioner, or any deputy or examiner or any other person whom he shall appoint for the purpose, shall have the power of visitation and examination into the affairs of any corporation described in section 4251; shall have free access to all of the books, papers and documents that relate to the business of the corporation, may summon and qualify witnesses under oath, and examine its officers, agents or employees or other persons in relation to the affairs,

transactions and conditions of the corporation.

The reasonable costs of such an examination shall be borne by the corporation examined.

§ 4259. Investments

Any corporation subject to this chapter shall be restricted in its investments in the same manner as are savings banks in this State.

§4260. Disputes

Any dispute, arising between a corporation subject to this chapter and any provider of health care with which such corporation has a contract for health care, may be submitted to the commissioner for his decision with respect thereto. Any decision and findings of the commissioner made under this chapter shall not be any bar to constituted legal procedure for the review of such proceedings in a court of competent jurisdiction.

§ 4261. Dissolution

Any dissolution or liquidation of a corporation subject to this chapter shall be conducted under the supervision of the commissioner, who shall have all power with respect thereto granted to him under the law with respect to the dissolution and liquidation of insurers.

§ 4262. Taxation

Every corporation subject to this chapter is declared to be a charitable and benevolent institution and its funds and property shall be exempt from taxation.

§ 4263. Agents - license required

No person, for himself or in behalf of any individual, firm,

association or corporation, shall sell or offer to sell any such health care as is provided for in this chapter without being licensed therefor by the commissioner.

§ 4264. Licensing, fees

The commissioner shall grant a license to sell such service as is provided for in this chapter in behalf of any individual, firm, association or corporation licensed therefor, to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on January 1st thereafter, and annually thereafter may be renewed so long as the commissioner shall be satisfied of the licensee's integrity, authority and responsibility to provide the service stipulated.

The applicant shall pay a license fee to the commissioner as provided in section 601.

§ 4265. Revocation of authority, license

The commissioner may revoke a certificate of authority or license granted under this chapter for cause at any time after hearing.

§ 4266. Other provisions applicable

The following chapters and provisions of this Title, where and to the extent not inconsistent with this chapter and the reasonable implications thereof, shall also apply as to the corporations which are subject to this chapter:

1. Chapter 1 (general definitions and provisions).
2. Chapter 3 (the insurance commissioner).

3. Chapter 7 (fees and taxes), except as otherwise expressly provided in this chapter.
4. Chapter 23 (trade practices and frauds).
5. Chapter 33 (health insurance contracts).
6. Chapter 35 (group and blanket health insurance).
7. Chapter 49 (continuity of management).
8. Chapter 59 (delinquent insurers; rehabilitation and liquidation).
9. Chapter 67 (transitory provisions).