

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TENTH LEGISLATURE  
4

5 **Legislative Document**

**No. 2038**

6  
7 S. P. 900

In Senate, March 1, 1982

Submitted by the Joint Standing Committee on Health and Institutional Services pursuant to Joint Rule 18. Approved by the Legislative Council June 4, 1981.

8 Reported by Senator Gill of Cumberland from the Committee on Health and Institutional Services and printed under Joint Rules No. 18.  
MAY M. ROSS. Secretary of the Senate

9  
10 STATE OF MAINE  
11

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

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

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

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

21 2-A. Annual operating costs. For purposes of section  
22 304-A, subsection 4, paragraph B, "annual operating costs"  
23 means the total incremental costs to the institution which  
24 are directly attributable to the addition of a new health  
25 service.

26 2-B. Appropriately capitalized expenditures. "Appropri-  
27 ately capitalized expenditures" means those expenditures  
28 which would be capitalized if the project were implemented.

29 Sec. 2. 22 MRSA §303, sub-§3 is amended to read:

30 3. Capital expenditure. "Capital expenditure" means  
31 an expenditure, including a force account expenditure or

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

8       **Sec. 3.** 22 MRSA §303, sub-~~§§~~6-A and 6-B are enacted to  
9 read:

10       6-A. Expenditure minimum for annual operating  
11 costs. The "expenditure minimum for annual operating costs"  
12 is:

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

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

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

22       D. For services commenced after December 31, 1985,  
23 \$155,000 for the 3rd fiscal year, including a partial  
24 first year.

25       6-B. Generally accepted accounting prin-  
26 ciples. "Generally accepted accounting principles" means  
27 accounting principles approved by the American Institute of  
28 Certified Public Accountants.

29       **Sec. 4.** 22 MRSA §303, sub-~~§~~7, first sentence, as  
30 enacted by PL 1977, c. 687, §1, is amended to read:

31 "Health care facility" means any facility, whether public or  
32 private, proprietary or not for profit, required to obtain a  
33 certificate of need in accordance with federal laws and  
34 regulations under the National Health Planning and Resources  
35 Development Act of 1974, or any amendment, and shall include  
36 hospitals, psychiatric hospitals, tuberculosis hospitals,  
37 skilled nursing facilities, kidney disease treatment centers  
38 including free standing hemodialysis units, intermediate  
39 care facilities, rehabilitation facilities, ambulatory  
40 surgical facilities, home health care providers certifiable  
41 under Title XVIII of the Federal Social Security Act of  
42 1965, as amended, and health maintenance organizations.

1           Sec. 5. 22 MRSA §303, sub-§§11-A and 11-B are enacted  
2 to read:

3           11-A. Home health care provider. "Home health care  
4 provider" means any business entity or subdivision thereof,  
5 whether public or private, proprietary or not for profit,  
6 which is engaged in providing acute, restorative, rehabili-  
7 tative, maintenance, preventive or health promotion services  
8 through professional nursing and at least one other  
9 therapeutic service, such as physical therapy, occupational  
10 therapy, speech pathology, home health aides, nurse assis-  
11 tants, medical social work and nutritionist services, either  
12 directly or through contractual agreement, in a client's  
13 place of residence. This term does not apply to any sole  
14 practitioner providing private duty nursing services or  
15 other restorative, rehabilitative, maintenance, preventive  
16 or health promotion services in a client's place or resi-  
17 dence.

18           11-B. Hospital. "Hospital" means an institution which  
19 primarily provides to inpatients by or under the supervision  
20 of physicians, diagnostic services and therapeutic services  
21 for medical diagnosis, treatment and care of injured, dis-  
22 abled or sick persons or rehabilitation services for the re-  
23 habilitation of injured, disabled or sick persons. This  
24 term also includes psychiatric and tuberculosis hospitals.

25           Sec. 6. 22 MRSA §303, sub-§12-A is enacted to read:

26           12-A. Major medical equipment. "Major medical equip-  
27 ment" means a single unit of medical equipment or a single  
28 system of components with related functions which is used to  
29 provide medical and other health services and which costs  
30 \$300,000 or more. This term does not include medical equip-  
31 ment acquired by or on behalf of a clinical laboratory to  
32 provide clinical laboratory services, if the clinical labor-  
33 atory is independent of a physician's office and a hospital  
34 and has been determined under the United States Social  
35 Security Act, Title XVIII, to meet the requirements of  
36 Section 1861 (s), paragraphs 10 and 11 of that Act. In  
37 determining whether medical equipment costs more than  
38 \$300,000, the cost of studies, surveys, designs, plans,  
39 working drawings, specifications and other activities essen-  
40 tial to acquiring the equipment shall be included. If the  
41 equipment is acquired for less than fair market value, the  
42 term "cost" includes the fair market value.

43           Sec. 7. 22 MRSA §303, sub-§13, as enacted by PL 1977,  
44 c. 687, §1, is amended to read:

1        13. Modification. "Modification" means the altera-  
2 tion, improvement, expansion, extension, renovation or re-  
3 placement of a health care facility or health maintenance  
4 organization or portion thereof, including initial equipment  
5 thereof and the replacement of equipment of or existing  
6 buildings.

7            **Sec. 8. 22 MRSA §303, sub-§13-A** is enacted to read:

8            13-A. Obligation. An "obligation" for a capital  
9 expenditure is considered to be incurred by or on behalf of  
10 a health care facility:

11            1. When a contract, enforceable under Maine law, is  
12 entered into by or on behalf of the health care facility for  
13 the construction, acquisition, lease or financing of a capi-  
14 tal asset;

15            2. When the governing board of the health care facil-  
16 ity takes formal action to commit its own funds for a con-  
17 struction project undertaken by the health care facility as  
18 its own contractor; or

19            3. In the case of the donated property, on the date on  
20 which the gift is completed under applicable Maine law.

21            **Sec. 9. 22 MRSA §303, sub-§15,** as enacted by PL 1977,  
22 c. 687, §1, is amended to read:

23            15. Person. "Person" means an individual, trust or  
24 estate, partnership, corporation, including associations,  
25 joint stock companies and insurance companies, the State or  
26 a political subdivision or instrumentality, including a  
27 municipal corporation of the State, or any other legal  
28 entity recognized by state law.

29            **Sec. 10. 22 MRSA §303, sub-§16,** as enacted by PL 1977,  
30 c. 687, §1, is amended to read:

31            16. Predevelopment activities. "Predevelopment activ-  
32 ities" means any appropriately capitalized expenditure by or  
33 on behalf of a health care facility made in preparation for  
34 the offering or development of a new health service for  
35 which a certificate of need would be required and arrange-  
36 ments or commitments made for financing the offering or  
37 development of the new health service; and shall include  
38 site acquisitions, surveys, studies, expenditures for archi-  
39 tectural designs, plans, working drawings and specifica-  
40 tions.

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

2           17-A. Rehabilitation facility. "Rehabilitation facili-  
3 ty" means an inpatient facility which is operated for the  
4 primary purpose of assisting in the rehabilitation of dis-  
5 abled persons through an integrated program of medical and  
6 other services which are provided under competent profes-  
7 sional supervision.

8           Sec. 12. 22 MRSA §303, sub-§18, as enacted by PL 1977,  
9 c. 687, §1, is amended to read:

10          18. Secretary. "Secretary" means the United States  
11 Secretary of Health, Education and Welfare and Human Ser-  
12 vices and any other officer or employee of the United States  
13 Department of Health, Education and Welfare and Human Ser-  
14 vices to whom the authority involved may be delegated.

15          Sec. 13. 22 MRSA §303, sub-§22, as enacted by PL 1977,  
16 c.687, §1, is repealed.

17          Sec. 14. 22 MRSA §304, as amended by PL 1979, c. 375,  
18 is repealed.

19          Sec. 15. 22 MRSA §304-A is enacted to read:

20          §304-A. Certificate of need required

21          No person may enter into any commitment for financing a  
22 project which requires a certificate of need or incur an  
23 obligation for the project without having sought and  
24 received a certificate of need, except that this prohibition  
25 shall not apply to commitments for financing conditioned  
26 upon the receipt of a certificate of need or to obligations  
27 for predevelopment activities of less than \$150,000.

28          A certificate of need from the department shall be re-  
29 quired for:

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

35          2. Acquisitions of major medical equipment. The fol-  
36 lowing acquisitions:

37          A. The acquisition by any person of major medical  
38 equipment that will be owned by or located in a health  
39 care facility; or

1 B. The acquisition by any person of major medical  
2 equipment not owned by or located in a health care  
3 facility if:

4 (1) The equipment will not be used to provide  
5 services for inpatients of a hospital, but the  
6 person fails to file a written notice of intent to  
7 acquire the equipment at least 60 days prior to  
8 entering into a contract to acquire the equipment;  
9 or

10 (2) The department finds, within 30 business days  
11 after the date it receives a written notice of  
12 intent to acquire the equipment, that the equip-  
13 ment will be used to provide services for  
14 inpatients of a hospital.

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

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

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

24 A. The obligation of any capital expenditures by or on  
25 behalf of a health care facility which is associated  
26 with the addition of a health service which was not  
27 offered on a regular basis by or on behalf of the  
28 facility within the 12-month period prior to the time  
29 the services would be offered;

30 B. The addition of a health service which is to be  
31 offered by or on behalf of a health care facility which  
32 was not offered on a regular basis by or on behalf of  
33 the facility within the 12-month period prior to the  
34 time the services would be offered, and which, for the  
35 3rd fiscal year of operation, including a partial first  
36 year, following addition of that service, absent any  
37 adjustment for inflation, is projected to entail annual  
38 operating costs of at least the expenditure minimum for  
39 annual operating costs; or

40 C. The addition of a health service which falls within  
41 a category of health services which are subject to  
42 review regardless of capital expenditure or operating

1 cost and which category the department has defined  
2 through regulations promulgated pursuant to section  
3 312, based on recommendations from the State Health  
4 Coordinating Council;

5 5. Termination of a health service. The obligation of  
6 any capital expenditure by or on behalf of a health care  
7 facility which is associated with the termination of a  
8 health service which was previously offered by or on behalf  
9 of the health care facility;

10 6. Changes in bed complement. Any change in the  
11 existing bed complement of a health care facility, in any  
12 2-year period, which:

13 A. Increases or decreases the licensed or certified  
14 bed capacity of the health care facility by more than  
15 10% or more than 5 beds, whichever is less;

16 B. Increases or decreases the number of beds licensed  
17 or certified by the department to provide a particular  
18 level of care by more than 10% of that number or more  
19 than 5 beds, whichever is less; or

20 C. Relocates more than 10% of the health care  
21 facility's licensed or certified beds or more than 5  
22 beds, whichever is less, from one physical plant to  
23 another;

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

28 8. New health care facilities. The construction,  
29 development or other establishment of a new health care  
30 facility; and

31 9. Other circumstances. In the following circum-  
32 stances:

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

38 B. If a person adds a health service not subject to  
39 review under subsection 4, paragraph A or C and which  
40 was not deemed subject to review under subsection 4,



1 paragraph B at the time it was established and which  
2 was not reviewed and approved prior to establishment  
3 at the request of the applicant, and its actual 3rd  
4 fiscal year operating cost, as adjusted with an appro-  
5 prate inflation deflator promulgated by the Health  
6 Facilities Cost Review Board pursuant to sections 360  
7 and 366, exceeds the expenditure minimum for annual  
8 operating cost in the 3rd fiscal year of operation fol-  
9 lowing addition of these services.

10 Sec. 16. 22 MRSA §304-B is enacted to read:

11 §304-B. Subsequent review

12 Where a certificate of need has been issued, and  
13 changes occur as specified in this section, a subsequent  
14 review is required.

15 1. Criteria for subsequent review. The following ac-  
16 tivities require subsequent review and approval, if the  
17 department has previously issued a certificate of need and  
18 if within one year after the approved activity is under-  
19 taken:

20 A. There is a significant change in financing;

21 B. There is a change affecting the licensed or certi-  
22 fied bed capacity as approved in the certificate of  
23 need;

24 C. There is a change involving the addition or termina-  
25 tion of the health services proposed to be rendered by  
26 the facility;

27 D. There is a change in the site or the location of  
28 the proposed facility; or

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

31 2. Procedures for subsequent review. Any person pro-  
32 posing to undertake any activity requiring subsequent review  
33 and approval shall file with the department, within 30 days  
34 of the time that person first has actual knowledge of the  
35 circumstances requiring subsequent review, a notice setting  
36 forth the following information:

37 A. The nature of the proposed change;

1           B. The rationale for the change including, where  
2           appropriate, an explanation of why the change was not  
3           set forth in the original application of letter of  
4           intent; and

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

7           The department shall, within 30 days of receipt of the  
8           information, advise that person in writing whether the pro-  
9           posed change is approved. If not approved, the application  
10           shall be treated as incomplete and reviewed in accordance  
11           with the application procedures in section 306-A, subsection  
12           4. If approved, the department shall amend the certificate  
13           of need as appropriate. In either case, the department  
14           shall consult with the Health Systems Agency.

15           Sec. 17. 22 MRSA §306, as enacted by PL 1977, c. 687,  
16           §1, is repealed.

17           Sec. 18. 22 MRSA §306-A is enacted to read:

18           §306-A. Application process for a certificate of need

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

30           2. Application filed. Upon a determination by the  
31           department, after consultation with the Health Systems  
32           Agency, that a certificate of need is required for a pro-  
33           posed expenditure or action, an application for a certifi-  
34           cate of need shall be filed with the department if the  
35           applicant wishes to proceed with the project. Upon receipt  
36           of an application, the department shall immediately transmit  
37           a copy of the application to the Health Systems Agency.

38           3. Additional information required. Additional infor-  
39           mation may be required or requested as follows.

40           A. If, after receipt of an application, the department  
41           or the Health Systems Agency determines that additional

1 information is necessary before the application can be  
2 considered complete, the department may:

3 (1) Require the applicant to respond to 2 sets of  
4 requests for additional information from the  
5 department, the Health Systems Agency or both,  
6 provided that a 2nd request is directly related to  
7 the first information request or to the informa-  
8 tion provided in response to the first request;  
9 and

10 (2) Request, but not require, the applicant to  
11 respond to additional sets of requests for infor-  
12 mation, provided that each request is directly  
13 related to the last request or to the information  
14 provided in response to the last request.

15 B. The department shall immediately transmit the  
16 response to any request for information to the Health  
17 Systems Agency. The Health Systems Agency shall have  
18 10 business days from the date on which the application  
19 or response to any information request is filed with  
20 the department in which to comment to the department  
21 upon the completeness of the application, indicating  
22 specifically and in writing any additional information  
23 which the Health Systems Agency requires before it can  
24 consider the application complete.

25 C. Within 15 business days after the filing of an  
26 application or response to any information request,  
27 whichever is applicable, with the department, the  
28 department shall, after considering the requirements of  
29 the Health Systems Agency, notify the applicant in  
30 writing that:

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

33 (2) Additional information is required by the  
34 department or by the Health Systems Agency. If,  
35 after receipt of the applicant's response to the  
36 2nd or any subsequent request, the department  
37 determines that additional information is re-  
38 quired, the notification shall also include a  
39 statement of the basis and rationale for that  
40 determination.

41 4. Review of incomplete application. Upon receipt of  
42 the 3rd or any subsequent notice described in subsection 3,  
43 paragraph C, subparagraph 2, the applicant must notify the  
44 department in writing that:

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

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

22       5. Competitive reviews. In cases of competitive  
23       reviews, applicants shall submit additional information  
24       requested by the Health Systems Agency or the department  
25       within 30 business days or within a longer period of time,  
26       provided that the department and all competing applicants  
27       agree.

28       6. Automatic withdrawal. Any incomplete application  
29       shall be deemed withdrawn if the applicant fails to respond  
30       to a request for additional required information within one  
31       year of the date such request was forwarded by the depart-  
32       ment.

33       Sec. 19. 22 MRSA §307, sub-§1, first sentence, as  
34       enacted by PL 1977, c. 687, §1, is amended to read:

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

40       Sec. 20. 22 MRSA §307, sub-§1, as enacted by PL 1977,  
41       c. 687, §1, is amended by adding after the 2nd sentence a  
42       new sentence to read:

1 The notice shall be provided to all persons who have  
2 requested notification by means of asking that their names  
3 be placed on a mailing list maintained by the department for  
4 this purpose.

5       **Sec. 21.** 22 MRSA §307, sub-§1, ¶¶C and D, as enacted  
6 by PL 1977, c. 687, §1, are amended to read;

7       C. A statement that a public hearing will be held  
8 during the course of a review if requested by persons  
9 directly affected by the review and the date by which  
10 the requests must be received by the department; and

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

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

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

17       **Sec. 23.** 22 MRSA §307, sub-§2, as enacted by PL 1977,  
18 c. 687, §1, is repealed.

19       **Sec. 24.** 22 MRSA §307, sub-§2-A is enacted to read:

20       2-A. Public hearing. A public hearing shall be held  
21 during the course of a review by either the department or  
22 the Health Systems Agency, or both, if requested by persons  
23 directly affected by the review pursuant to subsection 1.

24       A. The department or agency shall provide notice of  
25 its hearing in accordance with the procedure described  
26 in subsection 1 .

27       B. Findings, recommendations, reports, analyses and  
28 related documents prepared by the staff of the agency  
29 shall be in final form and be made available to  
30 affected persons at least 5 business days prior to its  
31 hearing. The department shall make its preliminary  
32 staff report available to affected persons at least 5  
33 business days prior to its hearing.

34       C. In a hearing, any person shall have the right to be  
35 represented by counsel or to present oral or written  
36 arguments and evidence relevant to the matter which is  
37 the subject of the hearing. Any person affected by the  
38 matter may conduct reasonable questioning of persons  
39 who make relevant factual allegations.

1 D. The department or agency shall record all hearings  
2 in a form susceptible to transcription. The department  
3 shall transcribe the recording when necessary for the  
4 prosecution of an appeal.

5 E. During the first 7 business days following the  
6 close of a public hearing conducted by the department,  
7 interested or affected persons may submit written com-  
8 ments concerning the review under consideration. The  
9 department shall provide copies of comments submitted  
10 in that manner to all persons registered as affected  
11 persons. In reviews where no hearing is held, inter-  
12 ested or affected persons may submit comments up until  
13 the 80th day of a 90-day review cycle or the 140th day  
14 of a 150-day review cycle.

15 F. In the event that circumstances require the depart-  
16 ment to obtain further information from any source or  
17 to otherwise contact registered affected persons fol-  
18 lowing the public hearing and submission of comments  
19 under paragraph E, or, when no hearing is held, follow-  
20 ing the 80th day of a 90-day review cycle or the 140th  
21 day of a 150-day review cycle, the department shall:

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

25 (2) Convene a public hearing with reasonable  
26 notice affording registered affected persons the  
27 opportunity to conduct reasonable questioning.

28 In either event, notwithstanding any other provision of  
29 this chapter, the time period in which decision is re-  
30 quired shall be extended 20 days.

31 G. At the time the staff submits its final report to  
32 the commissioner, a copy of the report shall be sent to  
33 the applicant and a notification shall be sent to all  
34 registered affected persons. No further comments may  
35 be accepted.

36 Sec. 25. 22 MRSA §307, sub-§5, as enacted by PL 1977,  
37 c. 687, §1, is repealed.

38 Sec. 26. 22 MRSA §307, sub-§5-A is enacted to read:

39 5-A. Review by department. Review by the department  
40 shall consist of the following elements.

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

4 B. After reviewing each application, the commissioner  
5 shall make a decision either to issue a certificate of  
6 need or to deny the application for a certificate of  
7 need. The decision of the commissioner shall be based  
8 on the informational record developed in the course of  
9 review as specified in paragraph C. Notice of the  
10 decision shall be sent to the applicant and to the  
11 Health Systems Agency. This notice shall incorporate  
12 written findings which state the basis of the decision,  
13 including the findings required by section 309, subsec-  
14 tion 1. If the decision is not consistent with the  
15 recommendations of the Health Systems Agency, the  
16 department shall provide a detailed statement of the  
17 reasons for the inconsistency.

18 C. For purposes of this subsection, "informational  
19 record developed in the course of review" includes the  
20 following:

21 (1) All applications, filings, correspondence and  
22 documentary material submitted by applicants,  
23 interested or affected persons, or the Health Sys-  
24 tems Agency prior to the termination of the public  
25 comment period under subsection 2-A, paragraph E  
26 or, if no hearing is held, prior to the 80th day  
27 of a 90-day review cycle and prior to the 140th  
28 day of a 150-day review cycle;

29 (2) All documentary material reflecting informa-  
30 tion generated by the department prior to termina-  
31 tion of the public comment period or, if no hear-  
32 ing is held, prior to the 80th day of a 90-day  
33 review cycle and prior to the 140th day of a  
34 150-day review cycle;

35 (3) Stenographic or electronic recording of any  
36 public hearing or meeting held during the course  
37 of review, whether or not transcribed;

38 (4) All material submitted or obtained in accor-  
39 dance with the procedures in subsection 2-A, para-  
40 graph F;

41 (5) The staff report of the agency and the pre-  
42 liminary staff report of the department;

1                   (6) Officially noticed facts; and

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

3                   Documentary materials may be incorporated in the record  
4                   by reference, provided that registered affected persons  
5                   are afforded the opportunity to examine the materials.

6                   Sec. 27. 22 MRSA §307, sub-§6, as enacted by PL 1977,  
7                   c. 687, §1, is repealed.

8                   Sec. 28. 22 MRSA §307, sub-§6-A is enacted to read:

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

29                   Sec. 29. 22 MRSA §308, sub-§4 is enacted to read:

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

36                   A. A natural disaster;

37                   B. A major accident; or

38                   C. Equipment failure.

39                   Sec. 30. 22 MRSA §309, sub-§1, ¶D, as enacted by PL  
40                   1977, c. 687, §1, is amended to read:



1       D. That the proposed services are consistent with the  
2       orderly and economic development of health facilities  
3       and health resources for the State and are in accor-  
4       dance with standards, criteria or plans adopted and  
5       approved pursuant to the annual implementation plan,  
6       the health systems plan, and the state health plan and  
7       the state medical facilities plan developed by the  
8       Health Systems Agency and the department.

9       Sec. 31. 22 MRSA §309, sub-§2, ¶A, as enacted by PL  
10      1977, c.687, §1, is amended to read:

11      A. The relationship of the health services being  
12      reviewed to the annual implementation plan, the health  
13      systems plan, and the state health plan and the state  
14      medical facilities plan;

15      Sec. 32. 22 MRSA §309, sub-§§3, 4 and 5 are enacted to  
16      read:

17      3. Health maintenance organizations. Notwithstanding  
18      subsections 1 and 2, if a health maintenance organization or  
19      a health care facility which is controlled, directly or  
20      indirectly, by a health maintenance organization applies for  
21      a certificate of need, the department shall issue a certifi-  
22      cate of need if it finds that:

23      A. Approval of the application is required to meet the  
24      needs of the members of the health maintenance orga-  
25      nization and of the new members which the organization  
26      can reasonably be expected to enroll; and

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

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

41              (2) Would be available and conveniently accessi-  
42              ble to physicians and other health professionals

1 associated with the health maintenance organiza-  
2 tions;

3 (3) Would cost no more than if the services were  
4 provided by the health maintenance organization;  
5 and

6 (4) Would be available in a manner which is  
7 administratively feasible to the health mainte-  
8 nance organization.

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

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

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

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

31 B. Those portions of a proposed project which are not  
32 required to eliminate or prevent safety hazards or to  
33 comply with licensure, certification or accreditation  
34 standards are subject to review in accordance with the  
35 criteria established under section 312.

36 5. Standards applied in certificate of need. The com-  
37 missioner shall, in issuing a certificate of need, make his  
38 decision, to the maximum extent practicable, directly  
39 related to criteria established under federal laws and stan-  
40 dards or criteria prescribed in regulations promulgated by  
41 the department pursuant to subsections 1 to 4 and section  
42 312.

1 The commissioner shall not deny issuance of a certificate of  
2 need, or make his decision subject to fulfillment of a con-  
3 dition on the part of the applicant, except where the denial  
4 or condition directly relates to criteria established under  
5 federal laws and standards or criteria prescribed in regula-  
6 tions promulgated by the department in accordance with sub-  
7 sections 1 to 4 and section 312, which are pertinent to the  
8 application.

9       Sec. 33. 22 MRSA §312, as enacted by PL 1977, c. 687,  
10 §1, is amended by adding after the first sentence a new  
11 sentence to read:

12 The department shall, to the extent applicable, take into  
13 consideration recommendations contained in the state health  
14 plan as approved by the Governor.

15       Sec. 34. 22 MRSA §316, as enacted by PL 1977, c. 687,  
16 §1, is repealed.

17       Sec. 35. 22 MRSA §316-A is enacted to read:

18 §316-A. Exemptions

19       Except as otherwise specifically provided, nothing in  
20 this Act shall be construed to preempt, replace or otherwise  
21 negate the requirements of any other laws or regulations  
22 governing health care facilities. The requirements of this  
23 Act shall not apply with respect to:

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

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

27       B. For which any construction, modification or other  
28 change subject to this Act has been reviewed and has  
29 received approval pursuant to the United States Social  
30 Security Act, Section 1122, from appropriate agencies  
31 prior to the effective date of this Act.

32       2. Activities; acquisitions. Activities or acquisi-  
33 tions by or on behalf of a health maintenance organization  
34 or a health care facility controlled, directly or indi-  
35 rectly, by a health maintenance organization or combination  
36 of health maintenance organizations to the extent mandated  
37 by the National Health Planning and Resources Development  
38 Act of 1974, as amended and its accompanying regulations.

39       Sec. 36. 22 MRSA §317, as enacted by PL 1977, c. 687,  
40 §1, is repealed.

1           Sec. 37. 22 MRSA §317-A is enacted to read:

2   §317-A. Scope of certificate of need

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

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

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

40           Sec. 38. 22 MRSA §323 is enacted to read:

41   §323. Relationship to the United States Social Security  
42   Act, Section 1122



1 Sections 1 to 14 add necessary new definitions or amend  
2 or repeal incorrect definitions.

3 Section 15 clarifies the circumstances under which a  
4 certificate of need is required. The establishment of a new  
5 health care facility, predevelopment activities and acquisition  
6 by lease, donation or transfer are retained from prior  
7 law. The addition of new health services, capital expendi-  
8 tures and changes in bed capacity are retained but new  
9 thresholds for their review are established. New categories  
10 of reviewable activities are added for acquisition of major  
11 medical equipment, except for certain waived acquisitions,  
12 and termination of a health service. Provisions are made  
13 for review of new health services not initially subject to  
14 review which are later expanded to exceed the threshold of  
15 review.

16 Section 16 establishes the criteria and procedures for  
17 subsequent review of a previously approved project if there  
18 are significant changes within one year after the project is  
19 undertaken.

20 Sections 17 and 18 repeal the provisions describing the  
21 application process for a certificate of need, and replaces  
22 them with a newly-organized section, including criteria for  
23 requesting and submitting additional information and review  
24 of incomplete applications.

25 Section 19 expands the notice requirement of the begin-  
26 ning of a review to include situations where commencement of  
27 review is based upon the request of the applicant, although  
28 the department does not consider the application complete,  
29 and commencement of review where the application has been  
30 grouped with other similar pending applications.

31 Sections 20 to 22 require the department to provide  
32 notice of the commencement of a review to all persons who  
33 have requested it, and expands the content of the notice to  
34 include a statement of the time and manner in which persons  
35 may register with the department as affected persons with  
36 respect to the application under review.

37 Sections 23 and 24 repeal and replace the provisions  
38 describing the public hearing to be held during the course  
39 of review.

40 Sections 25 and 26 repeal and replace the procedures  
41 for review and issuance of a decision on the application by  
42 the department.

1 Sections 27 and 28 repeal and replace the provisions  
2 pertaining to the establishment by the department of cycles  
3 for review of applications.

4 Section 29 provides for the waiver of review of major  
5 medical equipment which is to be used in temporary emergency  
6 situations.

7 Section 32 establishes criteria for review of health  
8 maintenance organizations and requires approval for certain  
9 proposed capital expenditures which are required to meet  
10 applicable safety, licensure and certification standards,  
11 and requires the commissioner to base his decision to grant  
12 or deny an application directly on criteria established in  
13 federal or state law.

14 Section 33 provides for the consideration of recom-  
15 mendations contained in the state health plan by the depart-  
16 ment in its promulgation of rules.

17 Sections 34 and 35 exempt certain activities from cov-  
18 erage by this act.

19 Sections 36 and 37 expand the content of the scope of  
20 certificate of need section. Provision is made for the  
21 department to specify, monitor and review the maximum capi-  
22 tal expenditure for a project. Provision is also made for  
23 the establishment of timetables for completion of projects  
24 and for the withdrawal of the certificate when there is an  
25 unjustified failure to meet the specified timetables.

26 Section 38 requires the department to carry out review  
27 under this Act and under the United States Social Security  
28 Act, Section 1122, in a compatible manner.

29 Section 39 provides for review of this Act by the  
30 legislative joint standing committee having jurisdiction  
31 over health and institutional services by December, 1986,  
32 but in any case if the National Health Planning and  
33 Resources Development Act is altered or repealed.

34 Section 40 provides for an effective date for this Act.

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