

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
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5 Legislative Document

No. 631

6  
7 S.P. 210

In Senate, February 7, 1983

8 Received by the Secretary of the Senate on February 7, 1983. Referred to  
9 the Committee on Health and Institutional Services, and ordered printed  
pursuant to Joint Rule 14.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Dow of Kennebec.

Cosponsor: Representative Conary of Oakland.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Prohibit Hospital Services  
18 Price Discrimination.  
19

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

22 Sec. 1. 22 MRSA c. 405-A is enacted to read:

23 CHAPTER 405-A

24 HOSPITAL SERVICES PRICE DISCRIMINATION ACT

25 §1851. Short title

26 This chapter may be cited as the "Hospital Ser-  
27 vices Price Discrimination Act."

28 §1852. Purposes

1           The Legislature finds that the welfare of Maine  
2 citizens will be enhanced by increased competition in  
3 the pricing of hospital services. This competition  
4 will be furthered by prohibiting hospitals from  
5 granting, and 3rd-party payors from receiving,  
6 unjustified price differentials and by requiring that  
7 similarly situated 3rd-party payors be similarly  
8 treated with respect to their purchases of hospital  
9 services. It is the intent of the Legislature, that  
10 this Act promote competition, both in the pricing for  
11 hospital services and between 3rd-party payors  
12 through facilitation of arms-length negotiations  
13 between hospitals and 3rd-party payors.

14       §1853. Definitions

15           As used in this chapter, unless the context  
16 otherwise indicates, the following terms have the  
17 following meanings.

18           1. Act. "Act" means the Hospital Services Price  
19 Discrimination Act.

20           2. Continue any contract. "Continue any contract"  
21 means to keep any contract in effect after a date on  
22 which it may be terminated by any party to it without  
23 breach.

24           3. Discount. "Discount" means any direct or indi-  
25 rect reduction in a hospital's charge or rate of pay-  
26 ment for hospital services to a payor.

27           4. Hospital services. "Hospital services" means  
28 all services and items or use thereof regularly pro-  
29 vided by a hospital as a part of its inpatient ser-  
30 vices and health-related community service programs  
31 and includes salaries paid to physicians, but does  
32 not include physicians' fees for service.

33           5. Patient. "Patient" means a natural person  
34 receiving services in or from a hospital.

35           6. Person. "Person" means a natural person; cor-  
36 poration, including associations, joint stock compa-  
37 nies, insurance companies and nonprofit corporations;  
38 or association.

1           7. Third-party payor. "Third-party payor" means a  
2 person who makes payments on behalf of a patient  
3 under compulsion of law or contract or who is engaged  
4 in insuring any policy or contract of individual or  
5 group insurance or of hospital or medical service  
6 benefits, but does not include the federal, state or  
7 any local government unit, authority or agency  
8 thereof.

9           §1854. Discrimination in price

10           It is unlawful for any hospital or group or asso-  
11 ciation of hospitals to enter into, renew or continue  
12 any contract which, directly or indirectly, discrimi-  
13 nates in the price of hospital services between dif-  
14 ferent 3rd-party payors where the intent or the  
15 effect of that discrimination may be to lessen compe-  
16 tition or to restrain trade or to tend to create a  
17 monopoly in any line of commerce, or to injure,  
18 destroy present competition with any 3rd-party payor  
19 of hospital services who receives the benefit of that  
20 discrimination, provided that nothing contained in  
21 this section may prevent price differentials which  
22 make only due allowance for differences in the cost  
23 of hospital services resulting from differing payment  
24 methods used or services provided to the hospital, or  
25 hospitals, by those 3rd-party payors.

26           §1855. Equity among 3rd-party payors

27           It is unlawful for any hospital or group or asso-  
28 ciation of hospitals to discriminate in price, as  
29 provided in section 1854, with respect to any  
30 3rd-party payor or hospital services because of the  
31 payment method, or methods, used or the services pro-  
32 vided by the 3rd-party payor, unless all 3rd-party  
33 payors ready, willing and able to provide the same or  
34 similar payment methods or services are permitted to  
35 pay for the same hospital services at the same or  
36 similar reduced rate or price differential.

37           §1856. Knowingly inducing or receiving a price dis-  
38 crimination

39           It is unlawful for any 3rd-party payor of hospi-  
40 tal services knowingly to induce or receive a dis-  
41 crimination in price which is prohibited by this Act.

1 §1857. Remedies

2 The Superior Courts of this State are invested  
3 with jurisdiction to prevent, restrain or enjoin  
4 violations of this Act, and any 3rd-party payor for  
5 hospital services shall be entitled to sue for and  
6 have injunctive relief in any court of competent  
7 jurisdiction to prevent any violation of this Act.  
8 The court in such an action may enjoin any violations  
9 of this Act and may grant any other relief it finds  
10 appropriate, including, but not limited to, mandatory  
11 injunction, and may assess the costs of suit, includ-  
12 ing attorneys' fees, against the defendant if it  
13 finds for the plaintiff. In such an action, it is  
14 not necessary that actual damages to the plaintiff be  
15 alleged or proved, but where alleged and proved, the  
16 plaintiff, in addition to the injunctive or other  
17 relief and costs of suit, may recover from the defen-  
18 dant the amount of actual damages sustained by the  
19 plaintiff.

20 Sec. 2. Effective date. This Act shall take  
21 effect January 1, 1984.

22 STATEMENT OF FACT

23 The Health Facilities Costs Review Board in its  
24 study and recommendations on hospital costs contain-  
25 ment in Maine, considered the problem of "cost shift-  
26 ing." In its report the board said: "The cost shift-  
27 ing caused by the short falls from one or more pay-  
28 ment sources, then, force hospital charges to rise,  
29 independent of any change in the rate of increase of  
30 hospital costs." Absent major changes in the method  
31 of hospital financing in the State, at the very  
32 least, it is vital that this cost shifting be termi-  
33 nated. While this cannot be accomplished with this  
34 bill as far as Medicare and Medicaid is concerned,  
35 substantial equity will be achieved by prohibiting  
36 price discrimination among nongovernmental payors.

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