

MAINE STATE LEGISLATURE

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1

(EMERGENCY)

2

FIRST REGULAR SESSION

3

4

ONE HUNDRED AND ELEVENTH LEGISLATURE

5

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Legislative Document

No. 1174

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S.P. 382

In Senate, March 14, 1983

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Referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

11

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Twitchell of Oxford.

12

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STATE OF MAINE

14

15

IN THE YEAR OF OUR LORD

16

NINETEEN HUNDRED AND EIGHTY-THREE

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18

AN ACT to Increase Public Disclosure and Accountability with Respect to Review of Hospital Budgets, to Initiate a Prospective Payment System for Medicaid, to Analyze and Approve Appropriate Payor Differentials, and to Extend the Sunset Provisions of the Health Facilities Information Disclosure Act and for Other Purposes.

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

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Whereas, the currently existing law calls for "sunset repeal" of the Health Facilities Information Disclosure Act on July 1, 1983; and

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Whereas, the Health Facilities Cost Review Board has rendered to the Governor a comprehensive report

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1 on potential causes behind hospital cost increases in
2 the State and has made several suggestions to amend
3 the current Act; and

4 Whereas, certain suggested amendments to the Act,
5 as contained in proposed legislation drafted by the
6 board, raise several questions regarding the manner
7 in which to review and potentially to regulate hospi-
8 tal budgets; and

9 Whereas, current cost-based reimbursement mecha-
10 nisms for 3rd-party payments to hospitals lack suffi-
11 cient incentives and predictability with respect to
12 hospital payments; and

13 Whereas, the United States Congress has made
14 several significant changes in Medicare reimbursement
15 received by hospitals, through enactment of the
16 United States Tax Equity and Fiscal Responsibility
17 Act of 1982, these changes have adversely affected a
18 significant source of payment for Maine hospitals,
19 and further planned federal reimbursement
20 initiatives, such as prospective Medicaid reimburse-
21 ment, are likely to affect dramatically any indi-
22 vidual state's reimbursement program; and

23 Whereas, in the judgment of the Legislature,
24 these facts create an emergency within the meaning of
25 the Constitution of Maine and require the following
26 legislation as immediately necessary for the preser-
27 vation of the public peace, health and safety; now,
28 therefore,

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

31 **Sec. 1. 22 MRSA §352, sub-§9, as enacted by PL**
32 **1977, c. 691, §1, is amended to read:**

33 **9. Performance standards.** "Performance stan-
34 **dards" means the numerical measures of the costs of**
35 **health care services rendered, as calculated accord-**
36 **ing to methods used by the board to define these mea-**
37 **sures, which address the following factors with due**
38 **regard for hospital size and geographic location:**

- 1 A. Inflation, based upon appropriate independ-
2 ently determined proxies for goods and services
3 utilized by hospitals;
- 4 B. Costs associated with projects which have
5 been approved under the certificate of need pro-
6 gram;
- 7 C. Volume and intensity of services;
- 8 D. Replacement costs of facilities and equip-
9 ment;
- 10 E. Population and its age composition; and
- 11 F. Regulatory requirements affecting hospital
12 costs.

13 Sec. 2. 22 MRSA §353, sub-§1, as amended by PL
14 1981, c. 470, Pt. A, §60, is repealed and the follow-
15 ing enacted in its place:

16 1. Health Facilities Cost Review Board; estab-
17 lished. There is established a Health Facilities
18 Cost Review Board which shall function as an inde-
19 pendent board. The board shall be composed of 16 mem-
20 bers. Fourteen members shall be appointed by the Gov-
21 ernor, subject to review by the joint standing com-
22 mittee of the Legislature having jurisdiction over
23 health and institutional services and confirmation by
24 the Legislature. The Commissioner of Human Services
25 or his designee shall serve as an ex officio voting
26 member of the board; and the Superintendent of Insur-
27 ance or his designee shall serve as an ex officio
28 voting member of the board. The 14 members appointed
29 by the Governor shall be selected in accordance with
30 the following requirements:

31 A. One member shall be appointed from a list of
32 3 names submitted by the Maine Hospital Associa-
33 tion;

34 B. One member shall be appointed from a list of
35 3 names submitted by the Maine Health Care Asso-
36 ciation;

1 C. One member shall be appointed from lists of 3
2 names, each submitted by any nonprofit hospital
3 and medical corporation under Title 24;

4 D. One member shall be appointed from lists of 3
5 names, each submitted by any company authorized
6 to sell accident and health insurance under Title
7 24-A;

8 E. One member shall be appointed from lists of 3
9 names submitted by the Maine Medical Association;

10 F. One member shall be appointed from lists of 3
11 names, each submitted by the Maine Osteopathic
12 Association; and

13 G. Eight public members shall be appointed as
14 consumers of health care. Neither the public
15 members nor their spouses or children shall,
16 within the 12 months preceding appointment, have
17 been affiliated with, employed by or have had any
18 professional affiliation with any health care
19 facility or institution, health product manufac-
20 turer or corporation or insurer providing cover-
21 age for hospital or medical care; provided that
22 neither membership in nor subscription to a ser-
23 vice plan maintained by a nonprofit hospital and
24 medical service organization, nor enrollment in a
25 health maintenance organization, nor membership
26 as a policyholder in a mutual insurer or coverage
27 under such a policy, nor the purchase of or cov-
28 erage under a policy issued by a stock insurer
29 shall disqualify a person from serving as a
30 public member.

31 Sec. 3. 22 MRSA §357, sub-§8, as repealed and
32 replaced by PL 1979, c. 662, §3, is amended to read:

33 8. Performance standards. Have the power to
34 establish performance standards prospectively in
35 order to evaluate the effects of any approved volun-
36 tary budget review organization on the costs of
37 health care services rendered by hospitals partici-
38 ating in the organization and, in accordance with
39 section 366, subsection 1, to establish the methods
40 of and the criteria for calculating these performance
41 standards-, which shall address the following factors

1 with due regard for hospital size and geographic
2 location:

3 A. Inflation, based upon appropriate independ-
4 ently determined proxies for goods and services
5 utilized by hospitals;

6 B. Costs associated with projects which have
7 been approved under the certificate of need pro-
8 gram;

9 C. Volume and intensity of services;

10 D. Replacement costs of facilities and equip-
11 ment;

12 E. Population and its age composition; and

13 F. Regulatory requirements.

14 The board shall publish on or before July 1st and
15 January 1st of each calendar year currently effective
16 performance standards, except that any proposed
17 modifications in the criteria or methodology for
18 calculating those performance standards shall be sub-
19 ject to the notice and hearing procedures of section
20 366.

21 Sec. 4. 22 MRSA §359, sub-§3, as amended by PL
22 1979, c. 662, §6, is repealed and the following
23 enacted in its place:

24 3. Review and findings. In accordance with sub-
25 section 1, the board may conduct reviews of hospital
26 budgets to determine that prospectively determined
27 overall rates and charges:

28 A. Are reasonably just;

29 B. Are reasonably related to reasonable finan-
30 cial requirements to maintain the financial
31 stability of the health facility for the level
32 and amount of services provided to patients;

33 C. Reasonably account for variances from previ-
34 ously approved budgets; and

1 D. Are allocated equitably among all purchasers
2 of health services without undue discrimination,
3 except as required by federal and state statutes
4 or regulations.

5 For purposes of determinations made under paragraph C
6 as to variances from previously approved budgets, the
7 board may consider budgets for fiscal years beginning
8 on and after July 1, 1982.

9 Upon completion of its review, the board shall make a
10 written report of its findings, a copy of which shall
11 be sent to the hospital whose budget has been
12 reviewed. The board shall provide this copy of its
13 findings of the hospital at least 15 days prior to
14 public disclosure of the findings, and shall afford
15 an opportunity for reconsideration of those findings
16 prior to disclosure. Public disclosure shall be car-
17 ried out through publication of findings in a news-
18 paper of general circulation in the area served by
19 the hospital and such other means as the board deems
20 appropriate.

21 Sec. 5. 22 MRSA §361, as enacted by PL 1977, c.
22 691, §1, is amended to read:

23 §361. Annual report

24 Annually, prior to January 1st, the board shall
25 present a report to the Legislature and the Governor.
26 This report shall include, but not be limited to, a
27 description of its activities and the activities of
28 any voluntary budget review organization during the
29 previous year, a summary of the costs of services
30 rendered by health facilities and any findings and
31 recommendations which the board deems necessary,
32 including recommendations for controlling health
33 facilities' costs and for containing the costs of
34 obtaining services from health facilities. This
35 report shall also contain, in summary fashion, or in
36 such detail as the board deems appropriate, findings
37 of the board or of a voluntary budget review orga-
38 nization with respect to individual hospitals'
39 prospectively determined overall rates and charges,
40 except that the board may disclose those findings on
41 a more frequent basis in its discretion, subject to
42 the provisions of section 360, subsection 2.

1 Sec. 6. 22 MRSA §364, sub-§2, ¶A, as amended by
2 PL 1979, c. 662, §8, is repealed and the following
3 enacted in its place:

4 A. The budget review procedures are likely to
5 permit the voluntary budget review organization
6 to determine whether prospectively determined
7 overall rates and charges:

8 (1) Are reasonably just;

9 (2) Are reasonably related to reasonable
10 financial requirements to maintain the
11 financial stability of the health facility
12 for the level and amount of services pro-
13 vided to patients;

14 (3) Reasonably account for variances from
15 previously approved budgets; and

16 (4) Are allocated equitably among all pur-
17 chasers of health services without undue
18 discrimination, except as required by fed-
19 eral or state statutes or regulations.

20 Sec. 7. 22 MRSA §364, sub-§2, ¶C, as amended by
21 PL 1979, c. 662, §8, is repealed and the following
22 enacted in its place:

23 C. The procedures of the organization with
24 respect to the filing of appropriate financial
25 information and the analysis and verification of
26 that information are sufficient to permit the
27 organization to determine whether prospectively
28 determined overall rates and charges:

29 (1) Are reasonably just;

30 (2) Are reasonably related to reasonable
31 financial requirements to maintain the
32 financial stability of the health facility
33 for the level and amount of services pro-
34 vided to patients;

35 (3) Reasonably account for variances from
36 previously approved budgets; and

1 (4) Are allocated equitably among all pur-
2 chasers of health services without undue
3 discrimination, except as required by fed-
4 eral and state statutes or regulations.

5 For purposes of determinations made under
6 subparagraph (3) and paragraph A, as to variances
7 from previously approved budgets, the procedures
8 of the organization shall consider budgets for
9 fiscal years beginning on and after July 1, 1982.

10 Sec. 8. 22 MRSA §364, sub-§2, ¶D, as enacted by
11 PL 1977, c. 691, §1, is amended to read:

12 D. The procedures of the organization provide
13 for public hearings on individual hospital bud-
14 gets and, following an opportunity for recon-
15 sideration, for the public disclosure of its
16 findings and comments prior to the effective date
17 of the budget, and provide further that the
18 public disclosure be carried out through publi-
19 cation of findings through a newspaper of general
20 circulation in the area served by the hospital.

21 Sec. 9. 22 MRSA §§365-A and 365-B are enacted to
22 read:

23 §365-A. Prospective payment system for Medicaid

24 1. Legislative intent. It is the intent of the
25 Legislature that for fiscal years beginning on and
26 after July 1, 1984, or as soon thereafter as practi-
27 cable in the event that statutory changes are neces-
28 sary, payments to hospitals for inpatient services
29 under the United States Social Security Act, Title V
30 and Title XIX, shall be made pursuant to a prospec-
31 tive reimbursement system in accordance with this
32 section and subject to the provisions of pertinent
33 federal laws and regulations.

34 2. Purpose and methodology. It is further the
35 intent of the Legislature that this system provide a
36 reimbursement methodology which, to the maximum
37 extent practicable, shall require that payments be
38 made in behalf of recipients of the United States
39 Social Security Act, Title V and Title XIX assistance
40 on a prospectively determined basis, in an amount

1 equal to the recipients' proportionate share in
2 prospectively determined overall rates and charges
3 and other elements of hospital budgets, taking into
4 account differentials are justified pursuant to the
5 study undertaken under section 365-B, except as re-
6 quired by federal and state statutes or regulations.

7 3. Penalties provisions. The Legislature fur-
8 ther directs that this system set forth appropriate
9 penalties to be applied to payments to individual
10 hospitals which, in the course of reviews pursuant to
11 section 359 or 364, are unable to reasonably account
12 for variances from previously approved budgets.

13 4. Time table for recommendation. On or before
14 October 1, 1983, the Commissioner of Human Services
15 shall report to the board and to the joint standing
16 committee of the Legislature have jurisdiction over
17 health and institutional services its recommendations
18 in fulfillment of the requirements of this section,
19 together with any proposed statutory changes neces-
20 sary to implement this system. In formulating these
21 recommendations, the department shall solicit the
22 views of appropriate provider, payor and consumer
23 groups.

24 5. Legislative consideration. The joint stand-
25 ing committee of the Legislature having jurisdiction
26 over health and institutional services shall report
27 to the Legislature any proposed legislative changes
28 implementing such a system on or before March 1,
29 1984, and otherwise advise the Commissioner of Human
30 Services as to its views on an appropriate prospec-
31 tive payment system for Medicaid.

32 §365-B. Payor differential study

33 1. Purpose of study. The board shall, through a
34 task force established pursuant to this section,
35 carry out a study of objective methods of computing
36 appropriate percentage differentials as to the dif-
37 ferent classes of payors of hospital charges. The
38 study shall include a review and determination of the
39 relevant and justifiable economic factors among the
40 payors. With respect to each payor, the study shall
41 determine an allowable differential based solely upon
42 a determination and quantification of those activi-

1 ties and programs provided or conducted by the payor
2 which result in quantifiable savings to the hospitals
3 or reductions in the payments of other payors. The
4 allowable differential shall reflect only the cost
5 savings to hospitals, rather than the cost to the
6 payors of implementing those activities and programs.
7 Each component utilized in determining the differen-
8 tial shall be individually quantified so that the
9 differential shall equal the total of the values
10 assigned to each component.

11 2. Establishment of task force. The board shall
12 establish a task force, consisting of 5 members to be
13 appointed by the Governor. One member shall repre-
14 sent nonprofit hospital and medical service corpora-
15 tions under Title 24; one shall represent companies
16 authorized to sell accident and health insurance
17 under Title 24-A; one shall represent hospitals; one
18 shall represent consumers; and the chairman of the
19 board shall serve as an ex officio voting member.
20 Resolutions of the task force may be adopted only
21 upon affirmative vote of 3 of its members. The task
22 force shall adopt operating procedures governing the
23 conduct of its activities within 60 days after the
24 effective date of this section. The task force may
25 conduct such hearings as it may deem appropriate and,
26 at a minimum, shall hold at least one public hearing
27 to solicit the views of all interested and affected
28 parties, and one public hearing to review its pro-
29 posed findings.

30 3. Contract for services. The task force may
31 contract with any person or entity to assist in the
32 discharge of its duties under this subsection.

33 4. Additional studies for benefit of task force.
34 The nonprofit hospital and medical service corpora-
35 tions, hospitals and companies authorized to sell ac-
36 cident and health insurance under Title 24-A may, at
37 their option, each collectively conduct a study of
38 the differential issue or of contracting with a
39 person or entity to conduct such a study. The cost
40 of any such study shall be funded directly by the
41 party conducting or contracting for it. All such
42 studies shall be completed by September 1, 1984.
43 During the course of the studies, each hospital sub-
44 ject to this chapter, each nonprofit hospital and

1 medical service corporation and each company author-
2 ized to sell accident and health insurance shall pro-
3 vide data or other information requested by those
4 persons or entities.

5 5. Assessments to fund work of task force. The
6 costs incurred by the task force in determining
7 appropriate differential factors shall be funded by
8 assessments against all insurance companies author-
9 ized to sell accident and health insurance under
10 Title 24-A, all nonprofit hospital and medical ser-
11 vice corporations and any organization approved pur-
12 suant to section 364. The share in the total assess-
13 ment of each such insurance company or nonprofit
14 hospital and medical service corporation shall be
15 determined as follows: The total net premiums
16 received by the insurance company on accident and
17 health insurance policies in force in the State
18 during the calendar year immediately preceding the
19 assessment date or the total payments from subscri-
20 bers received by the nonprofit hospital and medical
21 service corporations on subscriber contracts in the
22 State during the calendar year, as the case may be,
23 divided by the sum of the total net premiums received
24 by all the insurance companies on accident and insur-
25 ance policies in force in the State during the calen-
26 dar year and the total payments from subscribers
27 received by all nonprofit hospital and medical ser-
28 vice corporations on subscriber contracts in force in
29 the State during that calendar year. As used in this
30 section, the term "net premiums" refers to net pre-
31 miums after deducting therefrom all dividends paid,
32 credited or applied. The share in the total assess-
33 ment of the organization approved pursuant to section
34 364 shall be equal to 1/2 of the total shares of the
35 insurance companies and nonprofit hospital and medi-
36 cal corporations so that the organization funds 1/3
37 of the estimated costs. The total assessment shall
38 be computed by the board on the basis of estimated
39 costs for the period of November 1, 1983, through
40 December 31, 1984. If that estimate proves to be
41 insufficient, the board shall require such suppl-
42 emental assessments, computed in the same manner as
43 described in this subsection, as it deems necessary.
44 Any such assessments shall be paid into the General
45 Fund, but shall be allocated to the board or to the
46 task force for its operating costs.

1 6. Recommendations of task force. The task
2 force shall make a recommendation of the factors and
3 methods to be used in computing payor differentials
4 on or before September 1, 1984, and shall file that
5 recommendation with the board. The task force shall
6 include its recommendations with respect to appropri-
7 ate mechanisms for review and approval of payor dif-
8 ferentials, and propose any statutory amendments or
9 proposals it deems necessary to carry out those
10 recommendations.

11 7. Board report to Legislature. The board shall
12 report to the Legislature and the joint standing com-
13 mittee of the Legislature have jurisdiction over
14 health and institutional services, on or before Janu-
15 ary 1, 1985, its findings with respect to appropriate
16 mechanisms for review and approval of payor differen-
17 tials and any statutory amendments or proposals it
18 deems necessary to carry out those recommendations.

19 8. Required legislative coordination. The joint
20 standing committee of the Legislature have jurisdic-
21 tion over health and institutional services shall
22 consider these recommendations and thereafter report
23 to the Legislature any proposed statutory changes it
24 deems necessary to implement appropriate mechanisms
25 for review and approval of payor differentials,
26 including, but not limited to, amendments to this
27 Act, Title 24 and Title 24-A. The committee shall
28 consult with the board and the Superintendent of
29 Insurance on any proposed statutory changes.

30 Sec. 10. 22 MRSA §370, as amended by PL 1981, c.
31 705, Pt. U, §2, is further amended to read:

32 §370. Repeal

33 This chapter shall be repealed on July 1, 1983
34 October 1, 1986.

35 Emergency clause. This Act shall take effect on
36 October 1, 1983, except that sections 2, 5 and 9
37 shall take effect on the 91st day following the date
38 of enactment, and section 10 shall take effect on
39 June 30, 1983.

1

STATEMENT OF FACT

2 This bill incorporates several provisions to
3 increase public disclosure and accountability in the
4 review of hospital budgets under the Health Facili-
5 ties Information Disclosure Act. Under the current
6 Act, hospital budgets are reviewed with respect to
7 whether their "prospectively determined overall rates
8 and charges are reasonably just, are reasonably
9 related to reasonable financial requirements...and
10 allocated equitably among all purchasers of health
11 services..."

12 Hospitals may submit their budgets either to the
13 Health Facilities Cost Review Board or to the Volun-
14 tary Budget Review Organization, with the latter
15 funded by hospital dues. For the current year, the
16 Voluntary Budget Review Organization's budget is
17 \$330,000 and Health Facilities Cost Review Board's
18 budget is \$127,550.

19 The Health Facilities Cost Review Board maintains
20 scrutiny and oversight over the Voluntary Budget
21 Review Organization through promulgation of "perfor-
22 mance standards" and may withdraw approval of the
23 Voluntary Budget Review Organization if the Health
24 Facilities Cost Review Board determines that the
25 Voluntary Budget Review Organization's review proce-
26 dures are contrary to statutory criteria or that
27 individual hospitals are not meeting the Health
28 Facilities Cost Review Board's performance standards.

29 For the 1980-81 fiscal year, the annual rate of
30 increase in cost for Maine's hospitals was 15.9%,
31 ranking it 8th lowest among the states nationally ac-
32 cording to the American Hospital Association. For
33 1982, the Voluntary Budget Review Organization found
34 that Maine's rate of increase had declined to 13.2%
35 compared to a 15.8% national average. For 1983, the
36 Voluntary Budget Review Organization projects a rate
37 of increase of 12.7% for Maine, against 13.5% nation-
38 ally.

39 This bill makes several changes to strengthen the
40 current system by:

1 1. Requiring that the performance standards specifically address inflation, certificate of need
2 approvals, volume and intensity of services, replacement costs of facilities and equipment, population
3 and its age composition and regulatory requirements
4 affecting hospitals;
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7 2. Modifying makeup of the 10-member
8 Governor-appointed Health Facilities Cost Review
9 Board, which now includes one representative each of
10 the Department of Human Services, Superintendent of
11 Insurance, hospitals, nursing homes, insurance companies, along with 5 consumers. The reconstituted
12 Health Facilities Cost Review Board would include 16
13 members, adding 3 consumers, one insurance representative and 2 physicians;
14
15

16 3. Requiring Health Facilities Cost Review Board and Voluntary Budget Review Organization in their
17 review of budgets to determine whether each year's
18 prospective budget "reasonably accounts for variances
19 from previously approved budgets." This change will
20 require determination of the hospital's compliance
21 with prior approved budgets, and the withholding of
22 approval in the case of an unjustified variance;
23

24 4. Requiring establishment of prospective payment system for reimbursement of hospitals under
25 Medicaid, with penalties imposed on hospitals which
26 are unable to account for variances from prior budgets. This prospective system would place a prior
27 determined limit on state expenditures for the
28 Medicaid program, create incentives to comply with
29 prospectively determined budgets, and impose penalties on hospitals which failed to comply;
30
31
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33 5. Requiring the Health Facilities Cost Review
34 Board to determine justifiable differentials among
35 the different classes of payors for hospital services. Currently, certain payors pay the entirety of
36 hospital charges, while others pay only 80%-84%. A
37 task force comprised of representatives of consumers, hospitals, commercial and nonprofit insurers would be
38 established by the Health Facilities Cost Review
39 Board to determine proper differentials based on
40 quantifiable savings to hospitals and reductions in
41 payments to other payors arising from each payor's
42 practices;
43
44

1 6. Requiring Health Facilities Cost Review Board
2 and Voluntary Budget Review Organization to publish
3 findings on reasonableness in a newspaper of general
4 circulation in an area served by the hospitals;

5 7. Requiring Voluntary Budget Review Organiza-
6 tion hearings on individual hospital budgets to be
7 open to the public; and
8

9 8. Extending sunset provisions of the current
10 Act to October 1, 1986.

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