

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1944

7 H.P. 1481

House of Representatives, January 12, 1984

8 Referred to the Committee on Health and Institutional Services. Ordered
9 printed and sent up for concurrence.

10 Approved for introduction by the Legislative Council pursuant to Joint
Rule 26.

EDWIN H. PERT, Clerk

Presented by Representative Rolde of York.

11 Cosponsors: Representative Pouliot of Lewiston, Senator Charette of
Androscoggin and Representative Matthews of Waterville.

12 STATE OF MAINE
13

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

17 AN ACT to Assure Greater Independence
18 to the Certificate of Need Advisory Committee
19 and for Other Purposes.
20

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

23 22 MRSA §307, sub-§§2-A and 2-B, as enacted by PL
24 1981, c. 705, Pt. V, §25, are amended to read:

25 2-A. Certificate of Need Advisory Committee.
26 There is established ~~within the Department of Human~~
27 ~~Services~~ a Certificate of Need Advisory Committee,
28 which shall participate with the department in the
29 public hearing process.

30 A. The committee shall be composed of ~~10~~ 9 mem-
31 bers, 9 of whom ~~who~~ shall be appointed by the
32 Governor. ~~The Commissioner of Human Services~~
33 ~~shall name his designee to serve as an ex officio~~
34 ~~nonvoting chairman of the committee.~~ The 9 mem-

1 bers appointed by the Governor shall be selected
2 in accordance with the following requirements.

3 (1) Four members shall be appointed to
4 represent the following.

5 (a) One member shall represent the
6 hospitals.

7 (b) One member shall represent the
8 nursing home industry.

9 (c) One member shall represent major
10 3rd-party payors.

11 (d) One member shall represent physi-
12 cians.

13 In appointing these representatives, the
14 Governor shall consider recommendations made
15 by the Maine Hospital Association, the Maine
16 Health Care Association, the Maine Medical
17 Association, the Maine Osteopathic Associa-
18 tion and other representative organizations;
19 and

20 (2) Five public members shall be appointed
21 as consumers of health care. One of these
22 members shall be designated on an annual ba-
23 sis by the Governor as chairman of the com-
24 mittee. Neither the public members nor their
25 spouses or children may, within 12 months
26 preceding the appointment, have been affili-
27 ated with, employed by, or have had any pro-
28 fessional affiliation with any health care
29 facility or institution, health product man-
30 ufacturer or corporation or insurer provid-
31 ing coverage for hospital or medical care,
32 and provided that neither membership in or
33 subscription to a service plan maintained by
34 a nonprofit hospital and medical service or-
35 ganization, nor enrollment in a health main-
36 tenance organization, nor membership as a
37 policyholder in a mutual insurer or coverage
38 under such a policy, nor the purchase of or
39 coverage under a policy issued by a stock
40 insurer may disqualify a person from serving
41 as a public member.

1 B. Appointed members of the committee shall
2 serve for terms of 4 years. Members shall hold
3 office until the appointment and confirmation of
4 their successors. Of the members first appointed
5 by the Governor, the member representing hospi-
6 tals and 2 public members shall hold office for 4
7 years, the member from the nursing home industry
8 and one public member shall hold office for 3
9 years, the member from the insurance field and
10 one public member shall hold office for 2 years
11 and the physician and one public member shall
12 hold office for one year.

13 C. Vacancies among appointed members shall be
14 filled by appointment by the Governor for the un-
15 expired term. The Governor may remove any ap-
16 pointed member who becomes disqualified by virtue
17 of the requirements of paragraph A, or for ne-
18 glect of any duty required by law, or for incom-
19 petency or dishonorable conduct.

20 D. Each appointed member of the committee shall
21 receive a per diem allowance of \$25 for each day
22 that he is actively engaged in performing the
23 work of the committee and each member shall be
24 reimbursed for the actual and necessary traveling
25 and other expenses incurred in the discharge of
26 his duties.

27 E. Five members of the committee shall consti-
28 tute a quorum. Actions of the committee shall be
29 by majority vote.

30 F. The committee may employ, subject to the per-
31 sonnel law, up to 2 staff members to carry out
32 its objectives.

33 2-B. Public hearing. A public hearing shall be
34 held during the course of a review by ~~either~~ the Cer-
35 tificate of Need Advisory Committee ~~or the Health~~
36 ~~Systems Agency, or both,~~ if requested by persons di-
37 rectly affected by the review pursuant to subsection
38 1. Nothing in this section may be construed to pre-
39 vent the department from holding informational meet-
40 ings with applicants and interested and affected per-
41 sons prior to the conduct of the hearing. In the
42 event no hearing has been requested prior to an in-

1 formational meeting or receipt of the preliminary
2 staff report, the applicant or any directly affected
3 persons may request a hearing within 10 days of ei-
4 ther circumstance, provided that the review period
5 shall be extended by 60 days if such a hearing is re-
6 quested. In the case of grouped applications, the
7 extension shall apply to all competing applications.

8 A. The committee or agency shall provide notice
9 of its hearings in accordance with the procedure
10 described in subsection 1 .

11 B. Findings, recommendations, reports, analyses
12 and related documents prepared by the staff of
13 the agency shall be in final form and be made
14 available to affected persons at least 5 business
15 days prior to its hearings. The department shall
16 make its preliminary staff report available to
17 the committee and affected persons at least 5
18 business days prior to a public hearing conducted
19 by the committee.

20 C. In a hearing conducted by the committee, any
21 person shall have the right to be represented by
22 counsel or to present oral or written arguments
23 and evidence relevant to the matter which is the
24 subject of the hearing. Any person directly af-
25 fected by the matter may conduct reasonable ques-
26 tioning of persons who make relevant factual al-
27 legations.

28 D. The ~~designated representative of the depart-~~
29 ~~ment on the Certificate of Need Advisory~~
30 ~~Committee chairman~~ shall serve ~~ex-officio~~ as a
31 ~~nonvoting~~ presiding officer and, in consultation
32 with the ~~appointed~~ members of the committee,
33 shall rule on the relevance of argument and evi-
34 dence and make determinations as to reasonable
35 questioning. ~~Appointed members~~ Members of the
36 committee may conduct reasonable questioning in
37 the course of a hearing.

38 E. The department or agency shall record all
39 hearings and any subsequent proceedings of the
40 committee with respect to the application in a
41 form susceptible to transcription. The depart-
42 ment shall transcribe the recording when neces-
43 sary for the prosecution of an appeal.

1 F. During the first 7 business days following
2 the close of a public hearing conducted by the
3 committee interested or affected persons may sub-
4 mit written comments concerning the review under
5 consideration. The department shall provide
6 copies of comments submitted in that manner to
7 all persons registered as affected persons and to
8 appointed members of the committee. In reviews
9 where no hearing is held, interested or affected
10 persons may submit comments 10 days after the
11 submission of the preliminary staff report, but
12 no later than the 70th day of a 90-day review cy-
13 cle or the 130th day of a 150-day review cycle.

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

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

25 (2) Convene a public meeting with reason-
26 able notice with participation of the com-
27 mittee at its discretion and affording di-
28 rectly affected persons the opportunity to
29 conduct reasonable questioning.

30 In either event, notwithstanding any other provi-
31 sion of this chapter, the time period in which a
32 decision is required shall be extended 20 days.
33 Any written comments shall be forwarded to the
34 committee.

35 H. At its next meeting following the receipt of
36 comments pursuant to paragraph F or G, or in the
37 case of a public hearing pursuant to paragraph G,
38 the committee shall make a recommendation of ap-
39 proval or disapproval with respect to the appli-
40 cation or applications under consideration. The
41 recommendation shall be determined by majority
42 vote of the appointed members present and voting.

1 Members of the committee may make additional oral
2 comments or submit written comments, as they deem
3 appropriate, with respect to the basis for their
4 recommendations or their individual views. The
5 committee recommendation and any accompanying
6 comments shall be forwarded to the commissioner.

7 I. At the time the staff submits its final re-
8 port to the commissioner, a copy of the report
9 shall be sent to the applicant and a notification
10 shall be sent to all registered affected persons.
11 No further comments may be accepted.

12 J. There shall be no contact with respect to the
13 application after a hearing commences between
14 members of the committee or the department and
15 affected parties or anyone acting on their be-
16 half, except in accordance with the procedures
17 set forth in this section.

18 STATEMENT OF FACT

19 This bill amends several aspects of the organiza-
20 tional provisions of the Certificate of Need Advisory
21 Committee, recently established pursuant to 1982
22 amendments to the Certificate of Need law. The bill
23 establishes the committee as being independent of the
24 Department of Human Services. The Department of Hu-
25 man Services designated representative is eliminated
26 from the committee. In initial hearings before the
27 committee, the Director of the Bureau of Health Plan-
28 ning and Development has served as chairman of the
29 committee. Under the bill, the committee gives the
30 authority to hire up to 2 staff members to assist it
31 in making its recommendations to the Commissioner of
32 Human Services.

33 These changes are intended to foster both the
34 substance and appearance of impartiality on the part
35 of this Certificate of Need Advisory Committee.

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