

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1901

6  
7 H.P. 1357 House of Representatives, January 17, 1986  
8 Approved for introduction by a majority of the Legislative Council  
pursuant to Joint Rule 26.

9 Reference to the Committee on Human Resources suggested and ordered  
printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Murray of Bangor.

Cosponsored by Representative Foster of Ellsworth, Representative Rolde  
of York and Senator Violette of Aroostook.

11  
12 STATE OF MAINE  
13

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

17 AN ACT to Revise the Certificate of Need Act  
18 as it Affects Hospitals, to Simplify  
19 the Section 1122 Program and to  
20 Require the Establishment of a  
21 Methodology for Imposing Reasonable  
22 Limitations on Additional Capital and  
23 Operating Costs Associated with new  
24 Projects.  
25

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

28 Sec. 1. 22 MRSA §303, sub-§7, as amended by PL  
29 1981, c. 705, Pt. V, §5, is repealed and the follow-  
30 ing enacted in its place:

31 7. Health care facility. "Health care facility"  
32 means any skilled nursing facility, kidney disease  
33 treatment center including any free standing  
34 hemodialysis unit, intermediate care facility, reha-  
35 ilitation facility, ambulatory surgical facility,  
36 home health care provider or health maintenance orga-

1 nization. The term does not apply to any facility op-  
2 erated by a religious group relying solely on spiri-  
3 tual means through prayer for healing.

4       Sec. 2. 22 MRSA §323-A is enacted to read:

5 §323-A. Review of hospital projects pursuant to Sec-  
6 tion 1122 of the United States Social Secu-  
7 rity Act.

8       1. Legislative intent. It is the intention of  
9 the Legislature that following repeal of the Maine  
10 Certificate of Need Act review requirements affecting  
11 hospitals, hospitals shall continue to be subject to  
12 review pursuant to the United States Social Security  
13 Act, Section 1122 for so long as the State of Maine  
14 has a binding and enforceable agreement with the  
15 United States Secretary of Health and Human Services  
16 to carry out that program. At the same time, the  
17 Legislature intends that hospitals be afforded maxi-  
18 mum flexibility to respond to a rapidly changing en-  
19 vironment.

20       2. Review thresholds. In carrying out reviews  
21 under the United States Social Security Act, Section  
22 1122, the department shall utilize the maximum per-  
23 missible review thresholds set forth in federal regu-  
24 lations which are applicable to capital expenditures,  
25 major medical equipment, operating expenses and new  
26 services. Section 1122 thresholds shall be adjusted  
27 annually consistent with the provisions of applicable  
28 federal regulations.

29       3. New services. To the maximum extent permit-  
30 ted under applicable federal regulations, a new ser-  
31 vice shall be limited to services which involve sig-  
32 nificant capital expenditures and which substantially  
33 and materially change the clinical services previous-  
34 ly provided by the hospital. The addition of a phy-  
35 sician specialist or the hospital's hiring or associ-  
36 ation with any individual health care practitioner  
37 does not ordinarily constitute a new service unless  
38 that activity also substantially and materially  
39 changes the clinical services provided by the hospi-  
40 tal.

1           4. Review procedures. The department shall de-  
2 fine by rule review procedures for carrying out the  
3 Section 1122 program consistent with the requirements  
4 of this section which promote to the maximum extent  
5 practicable expeditious and most effective reviews.

6           5. Recognition of capital and operating costs by  
7 Maine Health Care Finance Commission. Subject to ap-  
8 propriate limitations set forth in subsection 6, the  
9 Maine Health Care Finance Commission shall recognize  
10 and incorporate into a hospital's financial require-  
11 ments and gross patient service revenue limit:

12           A. The capital and operating costs associated  
13 with any project which has received Section 1122  
14 approval; and

15           B. The capital and operating costs associated  
16 with projects falling below Section 1122  
17 thresholds.

18           6. Limitation on recognition and reimbursement  
19 of hospital capital and operating costs. The joint  
20 standing committee of the Legislature having juris-  
21 isdiction over human resources shall develop an appro-  
22 priate limitation on the extent to which the Maine  
23 Health Care Finance Commission shall be required to  
24 recognize and provide reimbursement for capital and  
25 operating costs associated with projects both above  
26 and below Section 1122 thresholds. In establishing  
27 such a limitation, the committee shall take into ac-  
28 count the following factors:

29           A. The special needs of small hospitals;

30           B. The historic needs and experience of hospi-  
31 tals over the past 5 years;

32           C. The amount of the Certificate of Need Devel-  
33 opment Account utilized by hospitals during the  
34 first 2 payment year cycles;

35           D. The extent to which the account was suffi-  
36 cient or insufficient to fulfill the capital and  
37 operating costs associated with approved or  
38 approvable hospital certificate of need applica-  
39 tions;

1        E. The costs associated with regulatory delay in  
2        implementing projects;

3        F. The potential need for hospitals to implement  
4        technological developments, management services  
5        or other improvements in quality of care;

6        G. The state health plan;

7        H. The ability of citizens of the state to un-  
8        derwrite the additional costs; and

9        I. The limitation imposed on these payments by  
10       the Federal Government pursuant to the United  
11       States Social Security Act, Titles XVII and XIX.

12       In developing that methodology and limitation, the  
13       committee shall consult with the Maine Health Care  
14       Finance Commission, the department, representatives  
15       of hospitals and major 3rd-party payors. The commit-  
16       tee may develop specific legislation or may require  
17       the commission to promulgate rules specifying the  
18       methodology and limitation. In either event, the  
19       commission shall promulgate final rules implementing  
20       the limitation on or before October 1, 1986.

21       7. Termination or repeal of Section 1122 pro-  
22       gram. In the event that the existing Section 1122  
23       agreement between the State of Maine and the United  
24       States Secretary of Health and Human Services is ter-  
25       minated or the Section 1122 program is repealed, the  
26       joint standing committee of the Legislature having  
27       jurisdiction over human resources shall review the  
28       provisions of this section and shall make a report to  
29       the Legislature, the Governor and the commission re-  
30       garding appropriate modifications, together with ap-  
31       propriate legislation.

32       Sec. 3. 22 MRSA §396-K, as amended by PL 1985,  
33       c. 347, §§1 to 3, is repealed.

1

STATEMENT OF FACT

2           This bill contains significant changes to the  
3 Maine Certificate of Need Act and the Maine Health  
4 Care Finance Commission enabling legislation which  
5 are considered necessary in order to provide hospi-  
6 tals with the flexibility to respond to changes in  
7 the delivery of health care services.

8           This bill repeals that section of the Maine Cer-  
9 tificate of Need Act requiring hospitals to process  
10 applications for approval prior to implementing new  
11 services and technology. There are also provisions  
12 calling for the repeal of that section of the Maine  
13 Health Care Finance Commission enabling legislation  
14 which established the Certificate of Need Development  
15 Account. Accompanying this is a requirement that the  
16 Maine Health Care Finance Commission maintain a sys-  
17 tem for permitting hospitals to acquire new capital  
18 which is deemed to be reasonable and fair to all par-  
19 ties.

20           These amendments are intended to provide adequate  
21 controls over the future costs of health care, while  
22 at the same time relieving hospitals of some of the  
23 inequity brought about because of the certificate of  
24 need law, that does not affect other health care  
25 providers who are now actively competing with hospi-  
26 tals.

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