

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1920

6  
7 S.P. 756

In Senate, January 21, 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  
10 printed.

JOY J. O'BRIEN, Secretary of the Senate

11 Presented by Senator Berube of Androscoggin.

12 STATE OF MAINE  
13

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

17 AN ACT to Amend the Maine Certificate of Need  
18 Act to Further Simplify its  
19 Procedures.  
20

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

23 Sec. 1. 22 MRSA §303, sub-§6-A, ¶D, as enacted  
24 by PL 1981, c. 705, Pt. V, §4, is amended to read:

25 D. For services commenced after December 31,  
26 1985, \$155,000 for the 3rd fiscal year, including  
27 a partial first year, equal to the expenditure  
28 minimum for annual operating costs established by  
29 the United States Code of Federal Regulations,  
30 Title 42, Part 123, Subpart E and subsequent  
31 amendments.

32 Sec. 2. 22 MRSA §303, sub-§6-C is enacted to  
33 read:

1 6-C. Expenditure minimum for capital expendi-  
2 tures. The expenditure minimum for capital expendi-  
3 tures shall be an amount equal to the expenditure  
4 minimum for capital expenditures established by the  
5 United States Code of Federal Regulations, Title 42,  
6 Part 123, Subpart E and subsequent amendments.

7 Sec. 3. 22 MRSA §303, sub-§12-A, as enacted by  
8 PL 1981, c. 705, Pt. V, §7, is amended to read:

9 12-A. Major medical equipment. "Major medical  
10 equipment" means a single unit of medical equipment  
11 or a single system of components with related func-  
12 tions which is used to provide medical and other  
13 health services and which costs ~~\$300,000 or more~~ ex-  
14 ceed the cost minimum for major medical equipment es-  
15 tablished by the Code of Federal Regulations, Title  
16 42, Part 123, Subpart E and subsequent amendments.  
17 This term does not include medical equipment acquired  
18 by or on behalf of a clinical laboratory to provide  
19 clinical laboratory services, if the clinical labora-  
20 tory is independent of a physician's office and a  
21 hospital and has been determined under the United  
22 States Social Security Act, Title XVIII, to meet the  
23 requirements of Section 1861 (s), paragraphs 10 and  
24 11 of that Act. In determining whether medical  
25 equipment ~~costs more than \$300,000 exceeds the cost~~  
26 minimum, the cost of studies, surveys, designs,  
27 plans, working drawings, specifications and other ac-  
28 tivities essential to acquiring the equipment shall  
29 be included. If the equipment is acquired for less  
30 than fair market value, the term "cost" includes the  
31 fair market value.

32 Sec 4. 22 MRSA §304-A, sub-§§3 and 4, as enacted  
33 by PL 1981, c. 705, Pt. V, §16, are amended to read:

34 3. Capital expenditures. The obligation by or  
35 on behalf of a health care facility of any capital  
36 expenditure ~~of \$350,000 or more~~ which exceeds the ex-  
37 penditure minimum for capital expenditures;

38 4. New health services. The offering or devel-  
39 opment of any new health service. For purposes of  
40 this section, "new health services" shall include on-  
41 ly the following:

1 A. The obligation of any capital expenditures by  
2 or on behalf of a health care facility which is  
3 associated with the addition of a health service  
4 which was not offered on a regular basis by or on  
5 behalf of the facility within the 12-month period  
6 prior to the time the services would be offered;  
7 or

8 B. The addition of a health service which is to  
9 be offered by or on behalf of a health care fa-  
10 cility which was not offered on a regular basis  
11 by or on behalf of the facility within the  
12 12-month period prior to the time the services  
13 would be offered, and which, for the 3rd fiscal  
14 year of operation, including a partial first  
15 year, following addition of that service, absent  
16 any adjustment for inflation, is projected to en-  
17 tail annual operating costs of at least the ex-  
18 penditure minimum for annual operating costs; ~~or~~

19 C. The addition of a health service which falls  
20 within a category of health services which are  
21 subject to review regardless of capital expendi-  
22 ture or operating cost and which category the de-  
23 partment has defined through regulations promul-  
24 gated pursuant to section 312, based on recommen-  
25 dations from the State Health Coordinating Coun-  
26 cil;

27 Sec 5. 22 MRSA §307, sub-§1, ¶C, as amended by  
28 PL 1981, c. 705, Pt. V, §22, is further amended to  
29 read:

30 C. A statement that a public hearing will be  
31 held during the course of a review if requested  
32 by persons directly affected by the review and  
33 the date by which the requests must be received  
34 by the department. In the case of an expedited  
35 review process under section 307-A, the statement  
36 shall reflect that a public hearing will be held  
37 during the course of a review if requested by the  
38 applicant or by at least 10 persons directly af-  
39 ected by the review;

40 Sec 6. 22 MRSA §307, sub-§2-B, ¶G, as enacted by  
41 PL 1981, c. 705, Pt. V, §25, is amended to read:

1           2. Public hearing.

2           G. In the event that circumstances require the  
3 department to obtain further information from any  
4 source or to otherwise contact registered af-  
5 fected persons following the public hearing and  
6 submission of comments under paragraph F or sec-  
7 tion 307-A, subsection 3 or, when no hearing is  
8 held, following the 50th day of a 60-day review  
9 cycle, the 80th day of a 90-day review cycle or  
10 the 140th day of a 150-day review cycle, the de-  
11 partment shall:

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

15                   (2) Convene a public meeting with reason-  
16 able notice with participation of the com-  
17 mittee at its discretion and affording di-  
18 rectly affected persons the opportunity to  
19 conduct reasonable questioning.

20           In either event, notwithstanding any other provi-  
21 sion of this chapter, the time period in which a  
22 decision is required shall be extended 20 days.  
23 Any written comments shall be forwarded to the  
24 committee.

25           Sec 7. 22 MRS-A §307-A is enacted to read:

26           §307-A. Expedited review process for minor projects

27           Upon determination that an application is com-  
28 plete, or upon receipt of a notice under section  
29 306-A, subsection 4, paragraph B, or upon grouping of  
30 the application with other pending applications under  
31 this section and upon determination that the annual  
32 operating cost associated with the proposed project  
33 in the 3rd fiscal year of operation, including a par-  
34 tial first year, will be less than \$200,000, the re-  
35 view process established by section 307 shall apply  
36 with the following modifications.

37           1. Public hearing. A public hearing shall be  
38 held during the course of the review by the Certifi-  
39 cate of Need Advisory Committee only if requested by

1 the applicant or by at least 10 persons directly af-  
2 ected by the review. The review period shall be ex-  
3 ended by 30 days if a hearing is requested.

4 2. Review; decision. A review of these applica-  
5 tions shall be completed and the department shall  
6 make its decision within 60 days after the date of  
7 notification under section 307, subsection 1. This  
8 review period shall be extended upon written request  
9 of the applicant. The department shall acknowledge  
10 the extension of the review period in writing.

11 3. Comments. In reviews where no hearing is  
12 held, interested or affected persons may submit com-  
13 ments 5 days after the submission of the preliminary  
14 staff report, but no later than the 45th day of a  
15 60-day review cycle. In reviews where a hearing is  
16 held, no comments may be submitted after the hearing  
17 without the permission of the chairman, stated on the  
18 record at the hearing.

19 4. Vote. The Certificate of Need Advisory Com-  
20 mittee may choose to vote on these applications at  
21 the close of the public hearing, if permission to  
22 submit written comments has not been given.

23 5. Review cycles. These applications shall be  
24 entered into review cycles at intervals not greater  
25 than 3 months.

26 Sec 8. 22 MRSA §396-D, sub-§5-A is enacted to  
27 read:

28 5-A. Reasonable costs of facilities equipment or  
29 services not subject to certificate of need review.  
30 In determining payment year financial requirements,  
31 the commission shall include any adjustment to re-  
32 fect reasonable costs associated with the addition  
33 of new facilities, equipment or services which are  
34 not subject to approval under the Maine Certificate  
35 of Need Act. The commission shall promulgate rules  
36 setting forth the requirements for this approval pro-  
37 cess. These rules shall also take into account any  
38 increases in the amount of the Certificate of Need  
39 Development Account made necessary to adjust for in-  
40 creases in review thresholds.

1 These rules may include reasonable limitations on the  
2 adjustment available to individual hospitals taking  
3 into account the following factors, among others:

4 A. The special needs of small hospitals;

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

7 C. The amount of the Certificate of Need Devel-  
8 opment Account utilized by hospitals during the  
9 first 2-payment year cycles;

10 D. The extent to which the Certificate of Need  
11 Development Account was sufficient or insuffi-  
12 cient to fulfill the capital and operating costs  
13 associated with approved or approvable hospital  
14 certificate of need applications;

15 E. The costs associated with regulatory delay in  
16 implementing projects;

17 F. The potential need for hospitals to implement  
18 technological developments, management services  
19 or other improvements in quality of care;

20 G. The State Health Plan;

21 H. The ability of citizens of the State to un-  
22 derwrite the additional costs; and

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

26 STATEMENT OF FACT

27 This bill amends the certificate of need law to:

28 1. Amend the minimum thresholds for annual oper-  
29 ating costs, capital expenditures and the cost of ma-  
30 jor medical equipment to require a higher minimum be-  
31 fore an expenditure or cost is subject to review;

1           2. Delete from review the category of new health  
2 services as defined by department rules based on the  
3 recommendation of the State Health Coordinating Council;  
4

5           3. Create an expedited review process for minor  
6 projects; and

7           4. Provide a procedure for those expenditures  
8 which are not subject to Certificate of Need review  
9 to be added to a hospital's financial requirements  
10 for purposes of the Maine Health Care Finance Commis-  
11 sion.

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