

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1965

6 S.P. 781

In Senate, February 3, 1986

7 Approved for introduction by a majority of the Legislative Council  
8 pursuant to Joint Rule 26.

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

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

Presented by Senator Twitchell of Oxford.

Cosponsored by Representative Crowley of Stockton Springs,  
Representative Taylor of Camden and Senator Perkins of Hancock.

11  
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 Health Care Finance  
18 Commission Laws with Respect to the  
19 Certificate of Need Development  
20 Account, Recognition of Certain  
21 Operating Costs, Repeal of Provisions  
22 Governing Reorganizations and  
23 Affiliated Interests, Streamlining of  
24 Procedure and for Other Purposes.  
25

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

28 Sec. 1. 22 MRSA §396-D, sub-§5-A is enacted to  
29 read:

30 5-A. Reasonable costs of facilities, equipment  
31 or services not subject to certificate of need re-  
32 view. In determining payment year financial require-  
33 ments, the commission shall include any adjustment to  
34 reflect reasonable costs associated with the addition  
35 of new facilities, equipment or services which are  
36 not subject to approval under the Maine Certificate

1 of Need Act. The commission shall promulgate rules  
2 setting forth the requirements for this approval pro-  
3 cess. These rules may include reasonable limitations  
4 on the adjustment available to individual hospitals,  
5 taking into account the following factors, among oth-  
6 ers:

7 A. The special needs of small hospitals;

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

10 C. The amount of the Certificate of Need Devel-  
11 opment Account utilized by hospitals during the  
12 first 2 payment year cycles;

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

18 E. The costs associated with regulatory delay in  
19 implementing projects;

20 F. The potential need for hospitals to implement  
21 technological developments, management services  
22 or other improvements in quality of care;

23 G. The state health plan;

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

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

29 Sec. 2. 22 MRSA §396-D, sub-§9, as enacted by PL  
30 1983, c. 579, §10, is amended to read:

31 9. Other adjustments. Other adjustments are de-  
32 termined as follows.

33 A. In determining payment year financial re-  
34 quirements, the commission may include a positive  
35 adjustment for the support of improvements in

1 medical care management and information systems.

2 B. In determining payment year financial re-  
3 quirements, the commission shall include an ad-  
4 justment for the reasonable impact on a  
5 hospital's costs of events, including events af-  
6 fecting all or a group of hospitals, which were  
7 reasonably unforeseen by the hospital and or  
8 which were beyond the control of the hospital.  
9 The reasonable impact shall include all reason-  
10 able costs associated with unforeseen or  
11 uncontrollable events to the full extent that  
12 those costs are not otherwise specifically in-  
13 cluded in an adjustment made under this section.  
14 This adjustment may be made subsequent to the  
15 commencement of a fiscal year.

16 C. New regulatory costs are determined as fol-  
17 lows.

18 (1) In determining payment year financial  
19 requirements, the commission shall include  
20 an adjustment to reflect the difference be-  
21 tween the assessment for the fiscal year im-  
22 posed pursuant to section 391 and the total  
23 amount of dues and fees paid to a voluntary  
24 budget review organization in the hospital's  
25 base year.

26 (2) In determining financial requirements,  
27 the commission may include a positive ad-  
28 justment to reflect the reasonable impact,  
29 if any, on a hospital's costs which is  
30 proven to have resulted from a hospital's  
31 conversion to a different fiscal year which  
32 has been approved pursuant to section 395,  
33 provided that, in the case of a conversion  
34 to an October 1st fiscal year which the com-  
35 mission is required to approve pursuant to  
36 section 395, subsection 1, the commission  
37 shall include an appropriate adjustment.

38 (3) In determining payment year financial  
39 requirements, the commission shall include  
40 an adjustment to reflect the impact, if any,  
41 on a hospital's costs of changes in hospital  
42 reporting requirements imposed by the com-  
43 mission.

1           (4) In determining payment year financial  
2           requirements, the commission shall include  
3           an adjustment to reflect the impact, if any,  
4           on a hospital's costs of regulatory require-  
5           ments imposed by local, state and federal  
6           governments and reasonable costs associated  
7           with the hospital's compliance with the com-  
8           mission's requirements, including, but not  
9           limited to, costs of consultants and attor-  
10           neys directly incurred in complying with the  
11           commission's requirements and pursuing for-  
12           mal and informal matters before the commis-  
13           sion and subsequent judicial appeals.

14           (5) In determining payment year financial  
15           requirements, the commission shall include  
16           an adjustment to reflect the costs associ-  
17           ated with medical malpractice insurance pre-  
18           miums and related expenses, to the extent  
19           that those costs exceed the proxies for in-  
20           surance costs developed by the commission  
21           under subsection 1.

22           (6) In determining payment year financial  
23           requirements, the commission shall include  
24           an adjustment to reflect reasonable and le-  
25           gitimate operating costs not specifically  
26           included in the commission's economic trend  
27           factors established under subsection 1 or in  
28           any other adjustments required by this sec-  
29           tion.

30           The adjustments set forth in this subsection may be  
31           requested by a hospital or group of hospitals by uti-  
32           lizing procedures applicable to interim adjustments,  
33           notices of contests or other mechanisms as set forth  
34           in rules promulgated by the commission without having  
35           to show financial hardship. A hospital may request  
36           adjustments reflecting temporary or permanent impacts  
37           of the preceding factors and may, in its discretion,  
38           file such a request prior to or within 2 years fol-  
39           lowing the impact.

40           Sec. 3. 22 MRSA §396-E, sub-§1, ¶D, as amended  
41           by PL 1985, c. 339, §3, is repealed.

42           Sec. 4. 22 MRSA §396-K, sub-§1, as enacted by PL  
43           1985, c. 347, §1, is amended to read:

1           1. Amount established. Subject to the require-  
2           ments of paragraphs A and B, for each payment year  
3           cycle, as defined in subsection 4, the commission  
4           shall credit the Certificate of Need Development Ac-  
5           count with, an amount to support the development and  
6           undertaking of projects which are subject to review  
7           pursuant to the Maine Certificate of Need Act. This  
8           amount shall be established annually by rule after  
9           consideration of the State Health Plan, the ability  
10          of the citizens of the State to underwrite the addi-  
11          tional costs and, the limitations imposed on these  
12          payments by the Federal Government pursuant to the  
13          United States Social Security Act, Titles XVIII and  
14          XIX, the special needs of small hospitals, the his-  
15          toric needs and experience of hospitals over the past  
16          5 years, the amount in the account for the previous  
17          years and the level of utilization by hospitals in  
18          those years, technological developments and manage-  
19          ment services or other improvements in the quality of  
20          care. For the first 2 payment year cycles, the com-  
21          mission shall establish the amounts to be credited to  
22          the first day of that payment year cycle as follows:

23           A. For the first payment year cycle, 1% of the  
24           sum of:

25                   (1) The total budgeted expenses, including  
26                   capital costs, of all hospitals, for their  
27                   most recent fiscal year ending prior to July  
28                   1, 1984, which were submitted to and ap-  
29                   proved by a voluntary budget review organi-  
30                   zation prior to July 1, 1983; and

31                   (2) The total actual expenses, including  
32                   capital costs, which were incurred, in its  
33                   most recent fiscal year ending prior to July  
34                   1, 1983, by any hospital which did not se-  
35                   cure approval, prior to July 1, 1983, of its  
36                   budget for its most recent fiscal year end-  
37                   ing prior to July 1, 1984; and

38           B. For the 2nd payment year cycle, 1% of the  
39           first payment year financial requirements deter-  
40           mined for all hospitals in the State. For each  
41           payment year following the 2nd payment year cy-  
42           cle, the commission shall establish the amount by  
43           rule pursuant to the criteria established in this

1 subsection, subject to the limitation that such  
2 amount shall not be less than 1% nor more than 3%  
3 of the preceding year's financial requirements.  
4 The commission shall present the amount to be  
5 proposed for the Certificate of Need Development  
6 Account for the subsequent payment year cycle to  
7 the joint standing committee of the Legislature  
8 having jurisdiction over human resources on or  
9 before February 1st of each year. The legisla-  
10 tive committee, affected persons and members of  
11 the public may file further comments with the  
12 commission on or before March 1st of each year.  
13 The final rule shall be promulgated on or before  
14 April 1st of each year.

15 Sec. 5. 22 MRSA §396-L, as enacted by PL 1983,  
16 c. 579, §10, is repealed.

17 Sec. 6. 22 MRSA §396-P, sub-§5 is enacted to  
18 read:

19 5. Participation in rulemaking. The chairman of  
20 each of the 3 advisory committees or another commit-  
21 tee member designated by the chairman shall be enti-  
22 tled to participate, as an ex officio nonvoting mem-  
23 ber, solely with respect to deliberations and actions  
24 of the commission directly related to the formulation  
25 and adoption of rules, but not including delibera-  
26 tions and actions which are properly conducted in ex-  
27 ecutive session. This section may not be construed  
28 to authorize participation in deliberations and ac-  
29 tions of the commission related to the application or  
30 enforcement of rules.

31 Sec. 7. 22 MRSA §398, sub-§§4 to 7 are enacted  
32 to read:

33 4. Expeditious and cost effective resolution of  
34 contested matters and interim adjustments. To the  
35 maximum extent practicable, the commission shall uti-  
36 lize procedures which encourage expeditious and cost  
37 effective resolution of contests and applications for  
38 interim adjustments or other relief.

39 5. Informal resolution of applications and con-  
40 tests; informal meetings directly with commissioners.  
41 In the case of revenue limits, the commission shall

1 establish a mechanism whereby hospitals and major 3rd  
2 party payors may seek modifications or adjustments to  
3 the gross patient service revenue limit or apportion-  
4 ment proposed under subsection 1 prior to the time in  
5 which a notice of contest is required to be filed.  
6 The executive director and commission staff shall  
7 work cooperatively with affected parties to seek an  
8 informal resolution of these issues and shall amend  
9 or modify revenue limits or apportionments as appro-  
10 priate in these circumstances. This informal mecha-  
11 nism shall include provisions which authorize hospi-  
12 tals or major 3rd party payors to meet directly with  
13 the commission to discuss informally the matters at  
14 issue and seek a determination from the commission of  
15 its policy with respect to these matters. Upon re-  
16 quest, hospitals, major 3rd party payors and commis-  
17 sion staff shall be permitted to attend these meet-  
18 ings. These meetings may be held notwithstanding any  
19 requirements imposed by the freedom of access laws,  
20 Title 1, chapter 13, or the Maine Administrative Pro-  
21 cedure Act, Title 5, chapter 375.

22 6. Availability of commission documents prior to  
23 commission meetings. Commission staff shall make  
24 available to the commission, affected parties and  
25 members of the public all proposed decisions, examin-  
26 ers' reports, rules, comments on rules and other re-  
27 lated policy statements or documents at least 5 busi-  
28 ness days prior to any commission meeting.

29 7. Informal participation in commission deliber-  
30 ations on rulemaking. The commission, in its discre-  
31 tion, may permit informal participation of members of  
32 the public and representatives of affected groups in  
33 its deliberations relating to rulemaking.

34 STATEMENT OF FACT

35 This bill provides several changes in the Maine  
36 Health Care Finance Commission laws that respond to  
37 problems identified by hospitals during the commis-  
38 sion's first year of operation. The bill:

39 1. Allows the commission to make adequate ad-  
40 justments for unforeseen or uncontrollable events to



1 the full extent that these costs are not otherwise  
2 specifically included in the commission's regula-  
3 tions;

4 2. Allows for recognition of total financial re-  
5 quirements related to the costs of regulatory re-  
6 quirements, including appeals of commission deci-  
7 sions, medical malpractice insurance premiums and  
8 other reasonable and legitimate operating costs not  
9 adequately included in the commission's economic  
10 trend factors;

11 3. Establishes parameters of 1% to 3% of total  
12 hospital revenues for the value of the Certificate of  
13 Need Development Account;

14 4. Repeals provisions of the law requiring the  
15 commission to offset the depreciation of donor re-  
16 stricted gifts for movable equipment;

17 5. Repeals the section of the law which requires  
18 the commission to approve hospital reorganizations  
19 and monitor the financial reports which are deemed by  
20 the commission to be affiliated interests;

21 6. Establishes the chairman of each of the 3 ad-  
22 visory committees or the chairman's designee as an ex  
23 officio nonvoting member of the commission;

24 7. Establishes standards for less formal envi-  
25 ronment for commission proceedings; and

26 8. Allows for the recognition of reasonable  
27 costs associated with the addition of new facilities,  
28 equipment or services which are not subject to ap-  
29 proval under the Maine Certificate of Need Act.

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