

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2018
6

7 H.P. 1428

House of Representatives, February 13, 1986

8 Reported by Representative Nelson from the Committee on Human
9 Resources. Sent up for concurrence and ordered printed. Approved by the
Legislative Council on June 18, 1985.

10 EDWIN H. PERT, Clerk

Reported from the Joint Standing Committee on Human Resources under
Joint Rule 19.

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
18 Process.
19

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

22 Sec. 1. 22 MRSA §304-C, as enacted by PL 1985,
23 §338, §2, is repealed.

24 Sec. 2. 22 MRSA §304-D is enacted to read:

25 §304-D. Waiver of certificate of need review for
26 certain minor projects and for projects for
27 which hospitals do not seek positive adjust-
28 ment to financial requirements established
29 by the Maine Health Care Finance Commission

30 1. Categories of projects eligible for waiver.
31 A hospital may apply for a waiver of the certificate
32 of need review requirements otherwise imposed by this
33 chapter with respect to the following projects:

1 A. The offering or development of any new health
2 services involving:

3 (1) No capital expenditure or a capital ex-
4 penditure of less than \$300,000; and

5 (2) Third-year annual operating costs of at
6 least the expenditure minimum for operating
7 costs, but less than \$250,000; or

8 B. Any project that is a minor project, as de-
9 defined in section 396-K, subsection 1, paragraph
10 B, and that meets the requirements of section
11 396-K, subsection 3, paragraph E, subparagraph
12 (2).

13 2. Conditions of waiver. As a condition of re-
14 ceipt of a waiver of certificate of need review under
15 subsection 1, paragraph A, the hospital shall not be
16 subject to any adjustments to its financial require-
17 ments pursuant to section 396-D.

18 3. Waiver process for certain new health ser-
19 vices. Any hospital may file a request for waiver
20 under subsection 1, paragraph A, with the department
21 describing the proposed project and its projected as-
22 sociated capital costs and projected operating costs,
23 as appropriate. Within 15 days following receipt of
24 the hospital's waiver request and other information,
25 if requested, the department shall issue its waiver
26 determination.

27 The department shall waive certificate of need review
28 in all cases where the request demonstrates that:

29 A. The project meets the criteria of subsection
30 1, paragraph A; and

31 B. The hospital agrees to be bound by the condi-
32 tions of subsection 2.

33 4. Waiver process for certain minor projects.
34 Any hospital may file a request for waiver under sub-
35 section 1, paragraph B, with the department describ-
36 ing the proposed project and its associated capital
37 and operating costs. Within 15 days following re-
38 ceipt of the commission's determination under section

1 396-K, subsection 3, paragraph E, the department
2 shall issue its waiver determination. The department
3 shall waive certificate of need review in all cases
4 where the request demonstrates that the project meets
5 the criteria of subsection 1, paragraph B.

6 5. Treatment of project by the Maine Health Care
7 Finance Commission. The total capital costs and op-
8 erating costs associated with a project described in
9 subsection 1, paragraph A, shall not be debited
10 against the Certificate of Need Development Account
11 or the Hospital Development Account pursuant to sec-
12 tion 396-K.

13 **Sec. 3. 22 MRSA §307, sub-§5-A, as amended by PL**
14 **1985, c. 418, §9, is further amended to read:**

15 **5-A. Decision by the department.** Decisions by
16 the commissioner shall be made in accordance with the
17 following procedures.

18 A. The department shall prepare its final staff
19 report based solely on the record developed to
20 date, as defined in paragraph C, subparagraphs
21 (1) to (6).

22 B. After reviewing each application, the commis-
23 sioner shall make a decision either to issue a
24 certificate of need or to deny the application
25 for a certificate of need. The decision of the
26 commissioner shall be based on the informational
27 record developed in the course of review as spec-
28 ified in paragraph C. Notice of the decision
29 shall be sent to the applicant and the committee.
30 This notice shall incorporate written findings
31 which state the basis of the decision, including
32 the findings required by section 309, subsection
33 1. If the decision is not consistent with the
34 recommendations of the Certificate of Need Advis-
35 ory Committee, the commissioner shall provide a
36 detailed statement of the reasons for the incon-
37 sistency.

38 C. For purposes of this subsection, "informa-
39 tional record developed in the course of review"
40 includes the following:

1 (1) All applications, filings, correspon-
2 dence and documentary material submitted by
3 applicants and interested or affected per-
4 sons prior to the termination of the public
5 comment period under subsection 2-B, para-
6 graph F or, if no hearing is held, prior to
7 the 80th day of a 90-day review cycle and
8 prior to the 140th day of a 150-day review
9 cycle;

10 (2) All documentary material reflecting in-
11 formation generated by the department prior
12 to termination of the public comment period
13 or, if no hearing is held, prior to the 80th
14 day of a 90-day review cycle and prior to
15 the 140th day of a 150-day review cycle;

16 (3) Stenographic or electronic recording of
17 any public hearing or meeting held during
18 the course of review, whether or not tran-
19 scribed;

20 (4) All material submitted or obtained in
21 accordance with the procedures in subsection
22 2-B, paragraph G;

23 (5) The staff report of the agency, the
24 preliminary staff report of the department
25 and the recommendations of the committee;

26 (6) Officially noticed facts; and

27 (7) The final staff report of the depart-
28 ment.

29 Documentary materials may be incorporated in the
30 record by reference, provided that registered af-
31 fected persons are afforded the opportunity to
32 examine the materials.

33 In making a determination on any pending application
34 under the certificate of need program, the department
35 may not rely on the contents of any documents relat-
36 ing to the application when those documents are sub-
37 mitted to the department anonymously, unless the de-
38 partment can establish on its own initiative the va-
39 lidity of the contents of those documents.

1 Sec. 4. 22 MRSA §309, sub-§6, as amended by PL
2 1985, c. 338, §3, is further amended to read:

3 6. Hospital projects. Notwithstanding subsec-
4 tions 1, 4 and 5, the department may not issue a cer-
5 tificate of need for a project which is subject to
6 the provisions of section 396-D, subsection 5, and
7 section 396-K, if the associated costs exceed the
8 amount which the commission has determined will have
9 been credited to the Certificate of Need Development
10 Account or Hospital Development Account pursuant to
11 section 396-K, after accounting for previously ap-
12 proved projects. A project shall not be denied sole-
13 ly on the basis of exceeding the amount remaining in
14 the Certificate of Need Development Account or Hos-
15 pital Development Account in a particular payment
16 year and shall be held for further consideration by
17 the department in the first appropriate review cycle
18 beginning after the Certificate of Need Development
19 Account or Hospital Development Account is credited
20 with additional amounts. For the purposes of this
21 subsection, a project may be held for a final deci-
22 sion beyond the time frames set forth in section 307,
23 subsections 3 and 4.

24 Sec. 5. 22 MRSA §396-D, sub-§3, ¶A, as enacted
25 by PL 1983, c. 579, §10, is amended to read:

26 A. An allowance for the cost of facilities and
27 fixed equipment shall include:

28 (1) Debt service requirements associated
29 with the hospital's facilities and fixed
30 equipment; and

31 (2) Annual contributions to a sinking fund
32 sufficient to provide a down payment on re-
33 placement facilities and fixed equipment.
34 The sinking fund shall be required to be
35 maintained by each hospital and the commis-
36 sion may include in its price level deprecia-
37 tion on fixed equipment or a portion of
38 price level depreciation on facilities.

39 In determining payment year financial require-
40 ments, the commission shall include an adjustment
41 in the allowance for facilities and fixed equip-

1 ment to reflect changes in debt service and to
2 reflect any new increases or decreases in capital
3 costs which result from the acquisition, replace-
4 ment or disposition of facilities or fixed equip-
5 ment and which are not related to projects sub-
6 ject to review under the Maine Certificate of
7 Need Act for which an adjustment is required to
8 be made under subsection 5 or subsection 9, para-
9 graph D. Any positive adjustments made to re-
10 flect such increases in capital costs shall not
11 be effective until the facilities or fixed equip-
12 ment have been put into use and the associated
13 expenses would be eligible for reimbursement un-
14 der the Medicare program.

15 Sec. 6. 22 MRSA §396-D, sub-§5, ¶A, as amended
16 by PL 1985, c. 339, §1, is further amended to read:

17 A. Except as provided in paragraph C, in deter-
18 mining payment year financial requirements, the
19 commission shall include an adjustment to reflect
20 any net increases or decreases in the hospital's
21 costs resulting from projects that have been ap-
22 proved by the department in accordance with the
23 Maine Certificate of Need Act and that otherwise
24 meet the requirements of section 396-K, subsec-
25 tion 2, paragraph B, or subsection 3, paragraph
26 C. These adjustments may be made subsequent to
27 the commencement of a fiscal year and shall take
28 effect on the date that expenses associated with
29 the project would be eligible for reimbursement
30 under the Medicare program.

31 Sec. 7. 22 MRSA §396-D, sub-§9, ¶D is enacted to
32 read:

33 D. In determining payment year financial re-
34 quirements, the commission shall include an ad-
35 justment to reflect any net increases or de-
36 creases in the hospital's costs resulting from
37 projects that meet the requirements of section
38 396-K, subsection 3, paragraph E. This adjust-
39 ment shall only be made as part of the annual
40 revenue limit determination and not as an interim
41 adjustment.

1 Sec. 8. 22 MRSA §396-K, as amended by PL 1985,
2 c. 347, §§1 to 3, is repealed and the following en-
3 acted in its place:

4 §396-K. Establishment of Hospital Development Ac-
5 count

6 1. Definitions. As used in this section, unless
7 the context otherwise indicates, the following terms
8 have the following meanings.

9 A. "Major project" means a hospital project sub-
10 ject to review under the Maine Certificate of
11 Need Act that has incremental annual capital and
12 operating costs in its 3rd year of implementa-
13 tion, including a partial first fiscal year, of
14 \$150,000 or more.

15 B. "Minor project" means a hospital project sub-
16 ject to review under the Maine Certificate of
17 Need Act that has incremental annual capital and
18 operating costs in its 3rd fiscal year of imple-
19 mentation, including a partial first fiscal year,
20 of less than \$150,000.

21 C. "Payment year cycle" means each annual period
22 of October 1st to September 30th beginning with
23 the first payment year cycle of October 1, 1984,
24 to September 30, 1985.

25 2. Certificate of Need Development Account.
26 For the first and 2nd payment year cycles, as defined
27 in subsection 1, the commission shall establish a
28 statewide Certificate of Need Development Account to
29 support the development and undertaking of projects
30 which are subject to review pursuant to the Maine
31 Certificate of Need Act. This account shall be ad-
32 ministered as follows.

33 A. The commission shall credit the Certificate
34 of Need Account with the following amounts:

35 (1) For the first payment year cycle, 1% of
36 the sum of:

37 (a) The total budgeted expenses, in-
38 cluding capital costs, of all hospi-

1 tals, for their most recent fiscal year
2 ending prior to July 1, 1984, which
3 were submitted to and approved by a
4 voluntary budget review organization
5 prior to July 1, 1983; and

6 (b) The total actual expenses, includ-
7 ing capital costs, which were incurred,
8 in its most recent fiscal year ending
9 prior to July 1, 1983, by any hospital
10 which did not secure approval, prior to
11 July 1, 1983, of its budget for its
12 most recent fiscal year ending prior to
13 July 1, 1984; and

14 (2) For the 2nd payment year cycle, 1% of
15 the first payment year financial require-
16 ments determined for all hospitals in the
17 State.

18 The amount to be credited in a particular payment
19 year cycle will be deemed credited to the Certif-
20 icate of Need Account as of the first day of that
21 payment year cycle.

22 B. The commission shall approve an adjustment to
23 a hospital's financial requirements under section
24 396-D, subsection 5, paragraph A, for a project
25 if:

26 (1) The project was subject to review and
27 was approved by the department under the
28 Maine Certificate of Need Act; and

29 (2) The associated incremental annual capi-
30 tal and operating costs do not exceed the
31 amount remaining in the Certificate of Need
32 Development Account as of the date of ap-
33 proval of the project by the department, af-
34 ter accounting for previously approved
35 projects.

36 C. Debits and carry-overs shall be determined as
37 follows.

38 (1) Except as provided in subparagraph (2),
39 the commission shall debit against the Cer-

1
2
3
4
5
6
7
8
9
10

11
12
13
14
15
16

17
18
19
20
21

22
23
24
25
26
27
28
29
30
31
32
33
34
35

36
37
38
39
40
41
42
43

tificate of Need Development Account the full amount of the incremental annual capital and operating costs associated with each project for which an adjustment is approved under paragraph B. Incremental annual capital and operating costs shall be determined in the same manner as adjustments to financial requirements are determined under section 396-D, subsection 5, for the 3rd fiscal year of implementation of the project.

(2) In the case of a project which is approved in the first or 2nd payment year cycle and whose associated incremental annual capital and operating costs are determined to exceed \$2,000,000, debits shall be made as follows:

(a) In the payment year cycle in which the project is approved, the commission shall debit against the Certificate of Need Development Account an amount equal to \$2,000,000; and

(b) In the payment year cycle immediately following the cycle in which the project is approved, the commission shall debit against the Certificate of Need Development Account established under this subsection or the statewide component of the Hospital Development Account established under subsection 3 an amount equal to the difference between the incremental annual capital and operating costs associated with the project and the amount debited under division (a) in the previous payment year cycle.

(3) Amounts credited to the Certificate of Need Development Account for the first payment year cycle for which there are no debits shall be carried forward to the 2nd payment year cycle. Amounts credited to the Certificate of Need Development Account for the 2nd payment year cycle for which there are no debits shall be carried forward to

1 the 3rd payment cycle as a credit to the
2 statewide component of the Hospital Develop-
3 ment Account established in accordance with
4 subsection 3.

5 3. Hospital Development Account. For the 3rd
6 and subsequent payment year cycles, the commission
7 shall establish a Hospital Development Account to
8 support the development of hospital facilities and
9 services. This account shall be administered as fol-
10 lows.

11 A. The commission shall annually establish, by
12 rule, the amount to be credited to the Hospital
13 Development Account. In establishing the amount
14 of the credit, the commission shall, at a mini-
15 mum, consider:

16 (1) The State Health Plan;

17 (2) The ability of the citizens of the
18 State to underwrite the additional costs;
19 and

20 (3) The limitations imposed on payments for
21 new facilities and services by the Federal
22 Government pursuant to the United States So-
23 cial Security Act, Titles XVIII and XIX.

24 The amount to be credited in a particular payment
25 year cycle will be deemed credited to the Hospi-
26 tal Development Account as of the first day of
27 that payment year cycle.

28 B. The annual credit to the Hospital Development
29 Account shall be apportioned into the following 2
30 components.

31 (1) One component, equal to 80% of the an-
32 annual credit, shall be designated as the
33 "statewide component" and shall be used on a
34 statewide basis for the support of major
35 projects and those minor projects that meet
36 the requirements of paragraph C.

37 (2) One component, equal to 20% of the an-
38 annual credit, shall be designated as the "in-

1 dividual hospital component" and shall be
2 further allocated and administered in ac-
3 cordance with paragraphs D and E.

4 C. The commission shall approve an adjustment to
5 a hospital's financial requirements under section
6 396-D, subsection 5, paragraph A, for a major or
7 minor project if:

8 (1) The project was approved by the depart-
9 ment under the Maine Certificate of Need
10 Act; and

11 (2) The associated incremental annual capi-
12 tal and operating costs do not exceed the
13 amount remaining in the statewide component
14 of the Hospital Development Account as of
15 the date of approval of the project by the
16 department, after accounting for previously
17 approved projects.

18 D. The component specified in paragraph B, sub-
19 paragraph (2), shall be allocated to individual
20 hospitals. The amount allocated to each hospital
21 shall be considered the hospital's individual de-
22 velopment account and shall be determined by di-
23 viding its payment year financial requirements by
24 the total payment year financial requirements of
25 all hospitals and multiplying that quotient by
26 the amount to be allocated. For purposes of this
27 calculation, the payment year financial require-
28 ments of a hospital are the most recent payment
29 year financial requirements determined as of the
30 first day of each payment year cycle, regardless
31 of whether these financial requirements are de-
32 termined pursuant to a proposed revenue limit, a
33 provisional revenue limit or a final revenue lim-
34 it as of that date.

35 E. The commission shall approve an adjustment to
36 a hospital's financial requirements under section
37 396-D, subsection 9, paragraph D, for a proposal
38 if:

39 (1) The proposal is either:

1 (a) A minor project that has not been
2 approved by the department under the
3 Maine Certificate of Need Act; or

4 (b) A proposal that is not subject to
5 review under the Maine Certificate of
6 Need Act; and

7 (2) The associated incremental annual capital
8 and operating costs as determined by the
9 commission do not exceed the amount remain-
10 ing in the hospital's individual development
11 account, after accounting for previous
12 projects debited against the account. The
13 commission need not make a determination un-
14 der this subparagraph nor an adjustment un-
15 der this paragraph unless the person seeking
16 the adjustment has submitted all information
17 reasonably required by the commission to
18 calculate these costs.

19 F. Debits and carry-overs shall be determined as
20 follows.

21 (1) Except as provided in subparagraph (2),
22 the commission shall debit against the
23 statewide component of the Hospital Develop-
24 ment Account the full amount of the incre-
25 mental annual capital and operating costs
26 associated with each project for which an
27 adjustment is approved under paragraph C.
28 Incremental annual capital and operating
29 costs shall be determined in the same manner
30 as adjustments to financial requirements are
31 determined under section 396-D, subsection
32 5, for the 3rd fiscal year of implementation
33 of the project.

34 (2) In the case of a project which is ap-
35 proved under paragraph C and which involves
36 extraordinary incremental annual capital and
37 operating costs, the commission may, in ac-
38 cordance with duly promulgated rules, defer
39 the debiting of a portion of the annual
40 costs associated with the project until a
41 subsequent payment year cycle or cycles.

1 (3) The commission shall debit against
2 a hospital's individual development ac-
3 count the full amount of the incremen-
4 tal annual capital and operating costs
5 associated with each proposal of the
6 hospital for which an adjustment is ap-
7 proved under paragraph E. Incremental
8 annual capital and operating costs
9 shall be determined in the same manner
10 as adjustments to financial require-
11 ments are determined under section
12 396-D, subsection 9, paragraph D, for
13 the 3rd fiscal year of implementation
14 of the proposal.

15 (4) Amounts credited to the statewide
16 component of the Hospital Development
17 Account for which there are no debits
18 shall be carried forward to subsequent
19 payment year cycles as a credit to the
20 statewide component. Amounts credited
21 to an individual hospital account for
22 which there are no debits shall be car-
23 ried forward to subsequent payment year
24 cycles as a credit to that account.

25 4. Determinations by department. For purposes
26 of implementing, subsection 3, paragraph E, the de-
27 partment shall determine whether a project is subject
28 to review under the Maine Certificate of Need Act
29 and, if so, whether it is a minor or major project.

1 STATEMENT OF FACT

2 Under these amendments, the Certificate of Need
3 Development Account administered by the Maine Health
4 Care Finance Commission is retained for the first and
5 2nd payment year cycles. In the 3rd payment year
6 cycle, beginning October 1, 1986, the Certificate of
7 Need Development Account would be superseded by the
8 Hospital Development Account. Also administered by
9 the commission, the Hospital Development Account
10 would have 2 components. One component, composed of
11 80% of the total amount credited in a particular
12 year, will be the amount available to support
13 projects subject to review under the Maine Certifi-
14 cate of Need Act. The remaining 20% will be an annu-
15 al amount that will be allocated on a proportionate
16 basis to each hospital and will be available on a
17 hospital specific basis to support either minor
18 projects that a hospital may choose not to submit for
19 review under certificate of need or initiatives that
20 are not subject to review under the Maine Certificate
21 of Need Act. The amounts in all such accounts are
22 paper credits and no adjustments will be made to a
23 hospital's financial requirements until a proposal is
24 actually implemented. A debit will then be made to
25 the applicable account in an amount equal to the fi-
26 nancial requirement associated with the proposal.
27 Unused credits are carried forward to subsequent
28 years.

29 This bill also prohibits the use of anonymous
30 letters in reviewing certificate of need applica-
31 tions.

32 5853021186