

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 791

S.P. 281

In Senate, March 17, 1987

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

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BERUBE of Androscoggin.

Cosponsored by Senator GILL of Cumberland, Representative
NADEAU of Saco, Representative PINES of Limestone.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Repeal the Certificate of Need Act
2 of 1978.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 22 MRSA §303, sub-§4, as enacted by PL
7 1977, c. 687, §1, is amended to read:

8 4. Construction. "Construction," when used in
9 connection with "health care facility," means the
10 establishment, erection, building, purchase or other
11 acquisition of a health care facility, hospital or
12 psychiatric hospital acute care beds.

13 Sec. 2. 22 MRSA §303, sub-§7, as amended by PL
14 1981, c. 705, Pt. V, §5, is further amended to read:

1 7. Health care facility. "Health care facility"
2 means any facility, whether public or private, pro-
3 prietary or not for profit, required to obtain a cer-
4 tificate of need in accordance with federal laws and
5 regulations under the National Health Planning and
6 Resources Development Act of 1974, or any amendment,
7 under this Act and shall include hospitals, psychiat-
8 ric hospitals, tuberculosis hospitals, skilled nurs-
9 ing facilities, kidney disease treatment centers in-
10 cluding free standing hemodialysis units, intermedi-
11 ate care facilities, rehabilitation facilities, ambu-
12 latory surgical facilities, home health care
13 providers and health maintenance organizations. The
14 term shall not apply to any facility operated by re-
15 ligious groups relying solely on spiritual means
16 through prayer for healing.

17 Sec. 3. 22 MRSA §303, sub-§13-A, as enacted by
18 PL 1981, c. 705, Pt. V, §9, is amended to read:

19 13-A. Obligation. An "obligation" for a capital
20 expenditure is considered to be incurred by or on be-
21 half of a health care facility, hospital or psychiat-
22 ric hospital:

23 A. When a contract, enforceable under Maine law,
24 is entered into by or on behalf of the health
25 care facility, hospital or psychiatric hospital
26 for the construction, acquisition, lease or fi-
27 nancing of a capital asset;

28 B. When the governing board of the health care
29 facility, hospital or psychiatric hospital takes
30 formal action to commit its own funds for a con-
31 struction project undertaken by the health care
32 facility, hospital or psychiatric hospital as its
33 own contractor; or

34 C. In the case of donated property, on the date
35 on which the gift is completed under applicable
36 Maine law.

37 Sec. 4. 22 MRSA §303, sub-§16, as amended by PL
38 1981, c. 705, Pt. V, §11, is further amended to
39 read:

1 16. Predevelopment activities. "Predevelopment
2 activities" means any appropriately capitalized ex-
3 penditure by or on behalf of a health care facility,
4 hospital or psychiatric hospital made in preparation
5 for the offering or development of a new health ser-
6 vice for which a certificate of need would be re-
7 quired and arrangements or commitments made for fi-
8 nancing the offering or development of the new health
9 service; and ~~shall include~~ includes site acquisi-
10 tions, surveys, studies, expenditures for architec-
11 tural designs, plans, working drawings and specifica-
12 tions.

13 Sec. 5. 22 MRSA §304-A, sub-§§1, 3, 6 and 8, as
14 enacted by PL 1981, c. 705, Pt. V, §16, are amended
15 to read:

16 1. Acquisition by lease, donation, transfer.
17 Any acquisition by or on behalf of a health care fa-
18 cility, hospital or psychiatric hospital under lease
19 or comparable arrangement or through donation, which
20 would have required review if the acquisition had
21 been by purchase;

22 3. Capital expenditures. The obligation by or
23 on behalf of a health care facility, hospital or psy-
24 chiatric hospital of any capital expenditure of
25 \$350,000 or more;

26 6. Changes in bed complement. Any change in the
27 existing acute care bed complement of a ~~health care~~
28 ~~facility~~ hospital or psychiatric hospital, in any
29 2-year period, which:

30 A. ~~Increases or decreases~~ the licensed or certi-
31 fied acute care bed capacity ~~of the health care~~
32 ~~facility~~ by more than 10% or more than 5 beds,
33 whichever is less;

34 B. ~~Increases or decreases~~ the number of acute
35 care beds licensed or certified by the department
36 to provide a particular level of care by more
37 than 10% of that number or more than 5 beds,
38 whichever is less; or

39 C. Relocates more than 10% of the health care
40 facility's licensed or certified beds or more

1 than 5 beds, whichever is less, from one physical
2 plant to another;

3 8. New health care facilities. The construction,
4 development or other establishment of a new
5 health care facility, hospital or psychiatric
6 hospital; and

7 Sec. 6. 22 MRSA §304-A, sub-§9, as amended by PL
8 1985, c. 418, §4, is repealed.

9 Sec. 7. 22 MRSA §304-D, sub-§1, as enacted by PL
10 1985, c. 661, §2, is repealed and the following enacted
11 in its place:

12 1. Categories of projects eligible for waiver.
13 A hospital may apply for a waiver of the certificate
14 of need review requirements otherwise imposed by this
15 chapter with respect to the following projects:

16 A. Any project that is a minor project, as de-
17 defined in section 396-K, subsection 1, paragraph
18 B, and that meets the requirements of section
19 396-K, subsection 3, paragraph E, subparagraph
20 (2).

21 Sec. 8. 22 MRSA §304-D, sub-§3, as enacted by PL
22 1985, c. 661, §2, is repealed.

23 Sec. 9. 22 MRSA §304-D, sub-§4, as enacted by PL
24 1985, c. 661, §2, is amended to read:

25 4. Waiver process for certain minor projects.
26 Any hospital may file a request for waiver under sub-
27 section 1, paragraph B A, with the department de-
28 scribing the proposed project and its associated cap-
29 ital and operating costs. Within 15 days following
30 receipt of the commission's determination under sec-
31 tion 396-K, subsection 3, paragraph E, the department
32 shall issue its waiver determination. The department
33 shall waive certificate of need review in all cases
34 where the request demonstrates that the project meets
35 the criteria of subsection 1, paragraph B A.

36 Sec. 10. 22 MRSA §304-D, sub-§5, as enacted by
37 PL 1985, c. 661, §2, is repealed.

1 same activity. The state policy has proven to be un-
2 fair and anomalous.

3 Sections 1 to 4 of the bill amends certain provi-
4 sions of the definition section of the Certificate of
5 Need Act. The definition of "construction" is
6 amended to limit the Certificate of Need Act to acute
7 care beds for hospitals or psychiatric hospitals. In
8 addition, the definition of health care facility is
9 amended to exclude "hospitals" or "psychiatric hospi-
10 tals" because of how that term is used throughout the
11 Act.

12 Section 5 of the bill amends that provision of
13 the Certificate of Need Act which provides for
14 projects requiring a certificate of need. The intent
15 of this section is to provide for jurisdiction over
16 hospitals whenever they seek to increase their acute
17 care bed capacity or there is an acquisition of a
18 hospital or psychiatric hospital.

19 Sections 6 to 9 of this bill make conforming
20 changes to that section of the Certificate of Need
21 Act which provides waiver of certificate of need re-
22 view.

23 Sections 10 and 11 provide for repeal of the Cer-
24 tificate of Need Act effective October 1, 1992.

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