

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2500

H.P. 1825 House of Representatives, March 10, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Human Resources suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative BOUTILIER of Lewiston.
Cosponsored by Senators BUSTIN of Kennebec, GILL of
Cumberland and Representative KIMBALL of Buxton.

STATE OF MAINE

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

1 **AN ACT to Revise the Certificate of Need**
2 **Process Dealing with the Purchasing and**
3 **Delivery of New Medical Services.**
4

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

7 **Sec. 1. 5 MRSa §12004, sub-§10, ¶A, sub-¶(28-C)**
8 is enacted to read:

1 (28-C) Health Committee on \$75/Day 22 MRSA §483
2 Planning and
3 Placement of New
4 Medical Technology

5 **Sec. 2. 22 MRSA c. 152 is enacted to read:**

6 CHAPTER 152

7 NEW MEDICAL TECHNOLOGY

8 §481. Findings and declarations of purpose.

9 1. Findings. The Legislature makes the following
10 findings.

11 A. The accessibility of new health care
12 technology and treatment to citizens of this State
13 is threatened by the existing certificate of need
14 program and the limits upon it imposed by the law
15 creating the Maine Health Care Finance Commission.

16 B. The access to new kinds of health care
17 technology and treatment may reduce health care
18 costs by replacing current processes and
19 procedures and reducing the need for expensive
20 inpatient hospitalization.

21 C. By requiring health care facilities to obtain
22 a certificate of need for new types of technology
23 and treatment and establishing a cap on the amount
24 of funds that may be committed by a facility to a
25 new project, current state law freezes the
26 existing level of medical technology and
27 treatment available to citizens of this State,
28 creating a danger to the public health.

29 2. Declaration of purpose. The purposes of this
30 chapter are as follows.

31 A. It is the intent of the Legislature to protect
32 and promote the public health by exempting from
33 the State's certificate of need program and the
34 State's hospital financing program, new health

1 care technology or treatment which replaces
2 existing procedures or which contributes to the
3 health and comfort of citizens of this State.

4 B. It is further the intent of the Legislature to
5 establish a positive program of promoting and
6 advancing new medical technology and treatment by
7 establishing a committee of experts to advise in
8 determining the health care needs of citizens of
9 this State, and to plan for the orderly
10 implementation of that technology or treatment.

11 §482. Definitions

12 As used in this chapter, unless the context
13 otherwise indicates, the following terms have the
14 following meanings.

15 1. Commission. "Commission" means the Maine
16 Health Care Finance Commission as set out in chapter
17 107.

18 2. Committee. "Committee" means the Committee on
19 Planning and Placement of New Medical Technology
20 established by this chapter.

21 3. Council. "Council" means the Maine Health
22 Policy Advisory Council as set out in Title 5, chapter
23 435.

24 4. Department. "Department" means the Department
25 of Human Services.

26 5. Health care facility. "Health care facility"
27 means any health care facility required to be licensed
28 under chapter 405 or its successor, with the exception
29 of the Cutler Health Center and the Dudley Coe
30 Infirmary.

31 6. Hospital. "Hospital" means any acute care
32 institution required to be licensed pursuant to
33 chapter 405 or its successor.

34 7. New medical technology or treatment. "new
35 medical technology" or "treatment" means any medical

1 technology or treatment not previously available in
2 the State or any technology or treatment determined by
3 the committee to be necessary to meet the health care
4 needs of citizens of this State.

5 §483. Committee on Planning and Placement of New
6 Medical Technology

7 1. Establishment. The Committee on Planning and
8 Placement of New Medical Technology, as established by
9 Title 5, chapter 379, is defined as follows.

10 A. The committee shall be comprised of 7 members,
11 who shall be appointed by the Governor, subject to
12 review by the joint standing committee of the
13 Legislature having jurisdiction over human
14 resources and confirmation by the Legislature. In
15 making the appointments, the Governor shall
16 attempt to achieve a broad regional
17 representation. Persons eligible for appointment
18 to, or to serve on the committee, shall be
19 selected as follows.

20 (1) Three members shall be licensed
21 physicians from various specialties and
22 subspecialties. Each physician shall
23 represent one of the following areas:
24 surgical; medical; and imaging. No more than
25 one physician member may be from any one
26 county.

27 (2) One member shall be a biomedical
28 engineer.

29 (3) One member shall be a hospital
30 administrator.

31 (4) One member shall be a consumer. For
32 purposes of this section, "consumer" means a
33 person who is neither affiliated with nor
34 employed by a 3rd-party payor, any provider
35 of health care, as defined in section 382,
36 subsection 14, or any association
37 representing these providers, provided that
38 neither membership in, nor subscription to, a

1 service plan maintained by a nonprofit
2 hospital and medical service organization,
3 enrollment in a health maintenance
4 organization, membership as a policy holder
5 in a mutual insurer or coverage under a
6 policy issued by a stock insurer, service on
7 a governmental advisory committee, nor
8 employment by, or affiliation with, a
9 municipality may disqualify a person from
10 serving as a consumer member of the panel.

11 (5) One member shall represent major
12 3rd-party payors.

13 B. The terms of the members shall be staggered.
14 Of the initial appointees, 3 shall be appointed
15 for terms of 3 years, 2 for terms of 2 years and 2
16 for terms of one year. Thereafter, all
17 appointments shall be for a term of 3 years each,
18 except that a member appointed to fill a vacancy
19 in an unexpired term shall serve only for the
20 remainder of that term. Members shall hold office
21 until the appointment and confirmation of their
22 successors.

23 C. The Governor may remove any member who would
24 no longer be eligible to serve on the committee by
25 virtue of the requirements of paragraph A, who
26 violates paragraph E or who becomes disqualified
27 for neglect of any duty required by law.

28 D. The Governor shall appoint a chairman who
29 shall serve in these capacities at the Governor's
30 pleasure.

31 E. A member shall not participate in any
32 proceeding of the committee if that participation
33 would result in a conflict of interest.

34 2. Meetings. The committee shall meet as
35 required, but at least twice annually, to fulfill its
36 responsibilities. Meetings shall be called by the
37 chairman or by any 4 members and, except in the event
38 of an emergency meeting, shall be called by written
39 notice. One meeting shall occur at such a time to

1 allow input and interaction with the major projects
2 cycle in the Certificate of Need Act. Four members of
3 the committee shall constitute a quorum.

4 3. Compensation. Each member of the committee
5 shall be compensated according to the provisions of
6 Title 5, chapter 379.

7 §484. Duties and powers of committee

8 The committee shall review new medical technology
9 and treatment and shall determine its accessibility,
10 efficacy, quality, cost and the extent to which the
11 technology or treatment has the ability to replace
12 current technology, treatment and procedures or to add
13 to the patient's convenience and comfort. The
14 committee shall consult with the Maine Health Policy
15 Advisory Council and advise the council with respect
16 to issues involving medical technology and treatment.

17 If the committee determines that a new medical
18 technology or treatment should be accessible to
19 citizens of the State and determines that the
20 technology or treatment is affordable to the citizens
21 of the State, the committee shall:

22 1. Availability of technology or treatment.
23 Determine the number of sites where the technology or
24 treatment shall be available; and

25 2. Request proposals. Instruct the Department of
26 Human Services to issue requests for proposals to or
27 receive from health care facilities, hospitals and
28 health professionals, asking for proposals to be
29 submitted regarding the establishment of the new
30 technology or treatment in this State. The proposals
31 shall be submitted in forms similar to that used for,
32 and shall meet the same criteria as, a certificate of
33 need. The department shall give all necessary and
34 appropriate assistance to applicants.

35 §485. Notice

36 A health care facility or any other provider which
37 desires to introduce new medical technology or
38 treatment which has not been reviewed by the committee
39 may purchase or introduce that technology or treatment

1 only after providing at least 120 days' notice to the
2 department. If the cost of the service, technology or
3 treatment is \$1,000,000 or less, the committee may
4 choose to review the purchase or not. If the
5 committee chooses not to review or, upon review,
6 recommends against introduction of the technology or
7 treatment, the hospital's gross patient service
8 revenue limit will not be automatically increased by
9 the commission to cover the cost of the purchase. The
10 committee must complete any review undertaken of the
11 technology or treatment within the 120-day notice
12 period. If the committee recommends the introduction
13 of the technology or treatment, the facility shall be
14 entitled to an adjustment in its gross patient service
15 revenue limit, established pursuant to sections 396-H
16 and 398, by an amount required to establish the
17 service, technology or treatment. If the committee
18 recommends against the introduction of the technology,
19 no automatic increase in the revenue limit may be
20 established. There may be no 3rd-party reimbursement
21 for any new medical technology or treatment during the
22 120-day period unless the committee approves that
23 technology or treatment during that time.

24 §486. Appeal

25 In cases where the committee has determined that a
26 technology or treatment should not be introduced or
27 determined a particular number of sites for the
28 technology or treatment, any hospital, health care
29 provider or other person may appeal the decisions to
30 the Superior Court under the Maine Rules of Civil
31 Procedure, Rule 80B.

32 §487. Certificate of need exemption

33 When a health care facility or hospital implements
34 new equipment constituting new medical technology or
35 treatment, approved pursuant to this chapter, for the
36 purpose of offering new medical technology or
37 treatment recommended by the committee, the commission
38 shall adjust the hospital's gross patient service
39 revenue limit, established pursuant to sections 396-H
40 and 398, by the amount necessary to establish

1 the service or purchase the equipment. Nothing in
2 this chapter prevents a health care facility or
3 hospital from utilizing the certificate of need
4 process. The amount of the adjustment shall be
5 determined by the commission based on the cost of the
6 approved technology or treatment, less the documented
7 acute care hospital savings of that technology or
8 treatment to the health care system.

9 STATEMENT OF FACT

10 The purpose of this bill is to establish a
11 proactive, positive approach to the introduction of
12 new medical technology and treatment. Under the
13 State's current regulatory framework, consisting of
14 the certificate of need law and the Maine Health Care
15 Finance Commission, the focus is primarily on cost,
16 rather than on the availability, accessibility and
17 efficacy of health care services. Because the
18 certificate of need program is now subject to an
19 annual cap through the commission's development
20 account, services found to be necessary are routinely
21 denied to the State's citizens because the development
22 account is exhausted.

23 The bill establishes a 7-member committee of
24 experts which would examine medical technologies and
25 treatments not yet offered in Maine and make
26 recommendations regarding its introduction into
27 Maine. The committee will determine specifically how
28 many locations in the State should offer the
29 technology or treatment and would advise where the
30 technology should be located. The Maine Health Care
31 Finance Commission would be required to increase the
32 hospital's gross patient revenue limit to account for
33 the increased costs attributable to the new technology
34 or treatment where placement is consistent with
35 committee decisions. No certificate of need would be
36 required in such an instance, thus leveling the
37 "playing field" between hospitals and health
38 professionals. However, once the desired number of
39 locations is reached, no automatic adjustments to a
40 hospital's revenue limit would take place.

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