

# MAINE STATE LEGISLATURE

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L.D. 920  
(Filing No. S-326 )

STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 348, L.D. 920, Bill, "An Act to Implement Recommendations Proposed by the Blue Ribbon Commission on the Regulation of Health Care Expenditures"

Amend the bill by striking out all of the title and inserting in its place the following:

**'An Act to Respond to Recommendations Proposed by the Blue Ribbon Commission on the Regulation of Health Care Expenditures'**

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

**'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and**

**Whereas, this Act authorizes a study of important health finance issues which must be completed by December 15, 1989; and**

**Whereas, the study commission must begin its work as soon as possible to meet the completion date; and**

**Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,**

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

**Sec. 1. 3 MRSA §507. sub-§8, ¶A, as repealed and replaced by PL 1985, c. 763, Pt. A, §4, is amended to read:**

A. Unless continued or modified by law, the following Group D-1 independent agencies shall terminate, not including the grace period, no later than June 30, 1986:

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- (1) Maine Arts Commission; and
- (2) Maine State Museum; and
- (3) Maine Health Care Finance Commission.

Sec. 2. 22 MRSA §304-D, sub-§1, ¶B, as enacted by PL 1985, c. 661, §2, is repealed.

Sec. 3. 22 MRSA §304-D, sub-§4, as enacted by PL 1985, c. 661, §2, is repealed.

Sec. 4. 22 MRSA §382, sub-§1-A is enacted to read:

1-A. Border hospital. "Border hospital" means a hospital located in this State within 10 miles of the New Hampshire border.

Sec. 5. 22 MRSA §382, sub-§16-A is enacted to read:

16-A. Revenue limit. "Revenue limit" means the revenue per case, the rate per unit of outpatient service, the total outpatient revenue or the total revenue approved by the commission under section 396.

Sec. 6. 22 MRSA §388, sub-§1, ¶A, as amended by PL 1987, c. 73, is further amended to read:

A. Prior to January 1st, the commission shall prepare and transmit to the Governor and to the Legislature a report of its operations and activities during the previous year. This report shall include such facts, suggestions and policy recommendations as the commission considers necessary. The report shall include:

- (1) Data citations, to the extent possible, to support the factual statements in the report;
- (2) The administrative requirements for compliance with the system by hospitals to the extent possible;
- (3) The commission's view of the likely future impact on the health care financing system of trends in the use or financing of hospital care, including federal reimbursement policies, demographic changes, technological advances and competition from other providers;
- (4) The commission's view of likely changes in apportionment of revenues among classes of payers and purchasers as a result of trends set out in subparagraph (3);

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(5) The relationship of the advisory committees to the commission;

(6) Comparisons of the impact of the hospital care financing system with relevant regional and national data, to the extent that such data is available; and

(7) To the extent available, information on trends in utilization; and

(8) Demonstration projects considered or approved by the commission.

Sec. 7. 22 MRSA §388, sub-§5 is enacted to read:

5. Review of exception threshold and variable adjustment factor. The basis for, and the commission's experience with, the threshold on exception requests in section 396-D, subsection 12, and the variable adjustment factor in section 396-D, subsection 1-A, shall be reviewed after these provisions have been in operation for 2 years. By October 1, 1993, the commission shall recommend to the Legislature how these factors should be established and what the factors should be in light of the current status of hospital care.

Sec. 8. 22 MRSA §396, as enacted by PL 1983, c. 579, §10, is repealed and the following enacted in its place:

§396. Establishment of revenue limits and apportionment methods

1. Authority. The commission may establish and approve revenue limits and apportionment methods for individual hospitals.

2. Criteria. Subject to more specific provisions contained in this subchapter, the revenue limits and apportionment methods established by the commission shall ensure that:

A. The financial requirements of a hospital are reasonably related to its total services;

B. A hospital's patient service revenues are reasonably related to its financial requirements; and

C. Rates are set equitably among all payors, purchasers or classes of purchasers of health care services without undue discrimination or preference.

3. Average revenue per case payment system. The commission shall establish an average revenue per case payment system.

The per case system shall have 2 components.

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A. The commission shall establish and approve limits on the average revenue per case mix adjusted inpatient admission.

B. For payment years beginning or deemed to begin on or after October 1, 1992, the commission shall regulate outpatient services by setting the rate per unit of service by department. For payment years beginning or deemed to begin before October 1, 1992, the commission shall establish revenue limits for outpatient services using methods consistent with those used in setting gross patient service revenue limits for payment years beginning prior to October 1, 1990. Nothing in this paragraph prohibits the commission from refining or modifying the method of adjusting for outpatient volume.

4. Total revenue system. The commission shall establish a total revenue system, which may be chosen by hospitals that are in relatively self-contained catchment areas, are not in direct competition with other hospitals and that meet certain criteria developed by the commission.

A. Criteria shall include, but not be limited to:

(1) Distance of the hospital in miles and travel time from the nearest other hospital; and

(2) Utilization of existing hospital services by patients within the catchment area.

B. The commission shall establish a procedure by which, and time limits within which, an eligible hospital may initially elect to participate in the total revenue system. The commission shall also establish the procedures and conditions under which an eligible hospital may choose to be regulated under the per case or total revenue system after the period provided for the initial election. These conditions may include, but are not limited to, reasonable limits on the frequency with which an eligible hospital may choose to transfer from one regulatory system to the other.

C. A hospital that is not eligible to choose to participate in the total revenue system may request the commission's approval to participate in the total revenue system for a period of no more than 2 years. The commission may approve the request if it determines that the hospital is experiencing significant financial problems and is in the process of making a transition to a different scope or type of service. The commission shall require the hospital to establish that the approval of its request to participate in the total revenue system would be consistent with the orderly and economic development of the health care system.

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D. The commission shall establish the total gross patient service revenue limit for inpatient and outpatient services for hospitals that apply for this system and meet the established criteria.

5. Excess charges prohibited. No hospital may charge for services at rates that are inconsistent with the revenue limits approved by the commission.

6. Specialty hospitals. The commission shall provide alternative regulatory options for hospitals defined by the commission as being specialty hospitals.

7. Return on investment. The revenue limits established by the commission under this chapter shall, in the case of a proprietary, for-profit hospital, be established in a manner that provides a reasonable opportunity for the hospital to earn an amount that will provide a fair return to owners based on their investment in hospital resources.

Sec. 9. 22 MRSA §396-D, sub-§1, as enacted by PL 1983, c. 579, §10, is amended to read:

1. Economic trend factor. In determining payment year financial requirements, the commission shall include an adjustment for the projected impact of inflation on the prices paid by hospitals for the goods and services required to provide patient care. In order to measure and project the impact of inflation, the commission shall establish and use the following data:

A. Homogeneous classifications of hospital costs for goods and services and of capital costs, which shall be called "cost components;"

B. Estimates or determinations of the proportion of hospital costs in each cost component; and

C. Identification or development of proxies which measure the reasonable increase in prices, by cost component, which the hospitals would be expected to pay for goods and services.

The proxy or proxies chosen by the commission to measure the reasonable increase in employee compensation shall reflect the experience of workers in the Northeast and regions of this State who are reasonably representative of professional medical personnel and other hospital workers.

1 ~~It~~ The commission may also consider the discrepancies, if any,  
2 between the projected and actual inflation experience of  
3 noncompensation proxies in preceding payment years.

5 The commission may, from time to time during the course of a  
6 payment year, in accordance with duly promulgated regulations,  
7 make further adjustments in the event it obtains substantial  
8 evidence that its initial projections for the current payment  
9 year will be in error.

11 **Sec. 10. 22 MRSA §396-D, sub-§1-A** is enacted to read:

13 1-A. Variable adjustment factor. In determining payment  
14 year financial requirements, the commission shall include an  
15 adjustment based upon a factor, fixed by the commission between  
16 0.5% and 2.0%, which shall be added to the percentage adjustment  
17 for inflation determined pursuant to subsection 1. This factor  
18 shall reflect the following:

19 A. Changes in technology not covered by certificate of need  
20 projects, including changes in drugs and supplies;

21 B. Changes in medical practice;

22 C. Increased severity of illness not accounted for by the  
23 case mix system and the aging of the population; and

24 D. Other changes specified by the commission that are  
25 expected to affect a substantial number of Maine hospitals.

26 **Sec. 11. 22 MRSA §396-D, sub-§2, ¶B**, as enacted by PL 1983, c.  
27 579, §10, is amended to read:

28 B. The commission may, for hospitals regulated under the  
29 total revenue system, from time to time during the course of  
30 a payment year, in accordance with duly promulgated  
31 regulations, make further adjustments, on an interim or  
32 final basis, in the event of discrepancies, if any, between  
33 projected and actual case mix changes in the preceding  
34 payment years or in the event it obtains substantial  
35 evidence that its initial projections for the current  
36 payment year will be in error. In making such further  
37 adjustments, the commission shall consider the special needs  
38 and circumstances of small hospitals.

39 **Sec. 12. 22 MRSA §396-D, sub-§2, ¶C** is enacted to read:

40 C. The commission shall consider changes in case mix for  
41 hospitals regulated under the per case system and shall make  
42 prospective adjustments in years subsequent to the first  
43 payment year in which the hospital is subject to the per  
44 case system, using a marginal cost factor in the range of

1           60% to 90%, giving consideration to the characteristics of  
2           inpatient and outpatient services and hospital size. This  
3           paragraph is repealed October 1, 1991.

5           **Sec. 13. 22 MRSA §396-D, sub-§3, ¶A**, as amended by PL 1985, c.  
6           661, §7, is further amended to read:

7  
8           A. An allowance for the cost of facilities and fixed  
9           equipment shall include allowances for straight line  
10           depreciation and interest expense, less interest income on  
11           debt service reserve funds available to the hospital.

13                   ~~(1)---Debt--service--requirements--associated--with--the~~  
14                   ~~hospital's facilities and fixed equipment, and~~

15                   ~~(2)---Annual--contributions--to--a--sinking--fund--sufficient~~  
16                   ~~to--provide--a--down--payment--on--replacement--facilities--and~~  
17                   ~~fixed--equipment.---The--sinking--fund--shall--be--required--to~~  
18                   ~~be--maintained--by--each--hospital--and--the--commission--may~~  
19                   ~~include--in--it--price--level--depreciation--on--fixed~~  
20                   ~~equipment--or--a--portion--of--price--level--depreciation--on~~  
21                   ~~facilities.~~

23  
24           In determining payment year financial requirements, the  
25           commission shall include an adjustment in the allowance for  
26           facilities and fixed equipment to reflect changes in debt  
27           service interest expense and to reflect any new increases or  
28           decreases in capital costs which result from the  
29           acquisition, replacement or disposition of facilities or  
30           fixed equipment and which are not related to projects for  
31           which an adjustment is required to be made under subsection  
32           ~~5 or subsection 9, paragraph D.~~ Any positive adjustments  
33           made to reflect such increases in capital costs shall not be  
34           effective until the facilities or fixed equipment have been  
35           put into use and the associated expenses would be eligible  
36           for reimbursement under the Medicare program.

37  
38           **Sec. 14. 22 MRSA §396-D, sub-§3, ¶B**, as enacted by PL 1983, c.  
39           579, §10, is amended to read:

41           B. An allowance for the cost of movable equipment shall be  
42           calculated on the basis of price--level straight line  
43           depreciation and interest consistent with paragraph A. The  
44           ~~commission shall promulgate rules to define the manner in~~  
45           ~~which--price--level--depreciation--is--to--be--computed--and~~  
46           ~~adjustments--are--to--be--made--to--reflect--changes--from--year--to--~~  
47           ~~year.---Funding--of--this--depreciation--shall--be--required--as~~  
48           ~~specified--by--the--commission.~~



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1           Sec. 15. 22 MRSA §396-D, sub-§3, ¶C is enacted to read:

3           C. Hospitals shall fund depreciation and use their funded  
5           depreciation as a first source of funds for payment for  
7           capital projects, proportional to the ratio between the  
          capital cost of the new project and the gross book value of  
          the hospital assets.

9           Sec. 16. 22 MRSA §396-D, sub-§4, ¶C, as enacted by PL 1983, c.  
11           579, §10, is repealed.

13           Sec. 17. 22 MRSA §396-D, sub-§4, ¶D, as enacted by PL 1983, c.  
          579, §10, is amended is to read:

15           D. The commission may, for hospitals regulated under the  
17           total revenue system, from time to time during the course of  
19           a payment year, in accordance with duly promulgated  
21           regulations, make such further adjustments as may be  
23           necessary in the event of discrepancies, if any, between  
25           projected and actual volume changes in preceding payment  
          years or in the event it obtains substantial evidence that  
          its initial projections for the current payment year will be  
          in error. In making such further adjustments, the  
          commission shall consider the special needs and  
          circumstances of small hospitals.

27           Sec. 18. 22 MRSA §396-D, sub-§4, ¶E is enacted to read:

29           E. The commission shall consider changes in volume of  
31           services for hospitals regulated according to the per case  
33           system and shall make prospective volume adjustments in  
35           years subsequent to the first payment year in which the  
37           hospital is subject to the per case system using a marginal  
          cost factor in the range of 60% to 90%, giving consideration  
          to the characteristics of inpatient and outpatient services  
          and hospital size. This paragraph is repealed October 1,  
          1991.

39           Sec. 19. 22 MRSA §396-D, sub-§6, as repealed and replaced by  
41           PL 1987, c. 440, §2, is repealed.

43           Sec. 20. 22 MRSA §396-D, sub-§6-A is enacted to read:

45           6-A. Standard component. For payment years commencing on  
47           or after October 1, 1990, but no later than October 1, 1991, the  
49           commission shall establish reasonable standards of financial  
51           requirements or costs per case for hospitals. In determining  
          financial requirements for payment years to which the standards  
          apply, the commission shall include an adjustment to incorporate  
          the standards into financial requirements as otherwise determined  
          under this section.

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1        A. The adjustment under this subsection shall apply to  
3        noncapital financial requirements and to the allowance for  
5        capital costs of movable equipment but shall exclude the  
      allowance for the capital costs of facilities and fixed  
      equipment determined under subsection 3.

7        B. The commission may exclude certain categories of  
9        operating costs in order to permit reasonable comparisons  
      among hospitals.

11       C. The commission may exclude financial requirements  
13       associated with outpatient services from the adjustment  
15       under this subsection, either for all payment years or for  
      some portion of the 5-year phase-in period.

17       D. The adjustment under this subsection shall be phased in  
19       over a 5-year period, distributed as equally over the 5  
21       years as is practicable. At the end of the 5-year period,  
      the standard component may not exceed 50% of those financial  
      requirements to which the adjustment is applied.

23       E. The commission may waive or modify the standard  
25       component adjustment for a border hospital or a hospital  
27       regulated under the total revenue system if the commission  
29       finds that including the standard component in the  
      hospital's financial requirements would impair the capacity  
      of the hospital to provide needed services at acceptable  
      levels of quality and the hospital could not avoid this  
      impairment by management action.

31       **Sec. 21. 22 MRSA §396-D, sub-§9, ¶B,** as amended by PL 1987, c.  
33       811, §12, is repealed.

35       **Sec. 22. 22 MRSA §396-D, sub-§9, ¶D,** as repealed and replaced  
      by PL 1987, c. 402, Pt. A, §136, is repealed.

37       **Sec. 23. 22 MRSA §396-D, sub-§9, ¶F,** as amended by PL 1987, c.  
39       542, Pt. H, §2 and as repealed and replaced by PL 1987, c. 777,  
      §§1 and 6, is repealed.

41       **Sec. 24. 22 MRSA §396-D, sub-§9, ¶¶F-1 and F-2** are enacted to  
43       read:

45       F-1. In determining payment year financial requirements,  
47       the commission shall include an adjustment to reflect the  
49       actual costs of the hospital's participation in the Health  
51       Occupations Training Project, Title 26, chapter 31. These  
53       costs shall be limited to actual payments made to lenders  
      under the program. The commission shall make an adjustment  
      under this paragraph only to the extent that the costs found  
      to be reasonable are not otherwise included in financial  
      requirements.

1 F-2. In determining payment year financial requirements,  
2 the commission shall include an adjustment for the  
3 hospital's assessment by the Maine High-risk Insurance  
4 Organization, pursuant to Title 24-A, section 6052,  
5 subsection 2.

7 **Sec. 25. 22 MRSA §396-D, sub-§9, ¶G,** as enacted by PL 1987, c.  
8 769, Pt. A, §65, is repealed.

9 **Sec. 26. 22 MRSA §396-D, sub-§9, ¶H,** as enacted by PL 1987, c.  
11 847, §1, is amended to read:

13 H. In determining payment year financial requirements, the  
14 commission shall include an adjustment for the hospital's  
15 assessment under Title 36, section ~~2800~~ 2801.

17 **Sec. 27. 22 MRSA §396-D, sub-§11, ¶B,** as enacted by PL 1983, c.  
18 579, §10, is amended to read:

19 B. Adjustments made for a payment year for working capital,  
20 management support and those new regulatory costs specified  
21 in subsection 9, paragraph C, subparagraphs (1) and (2),  
22 shall not be considered part of base year or payment year  
23 financial requirements for purposes of computing payment  
24 year financial requirements pursuant to section 396-C for a  
25 subsequent payment year. ~~The commission may determine from~~  
26 ~~the nature of the unforeseen circumstances whether that~~  
27 ~~adjustment is to be included in payment year financial~~  
28 ~~requirements for purposes of computing financial~~  
29 ~~requirements for a subsequent payment year or years to which~~  
30 an adjustment for an exception request applies shall be  
31 determined in accordance with subsection 12, paragraph C.

33 **Sec. 28. 22 MRSA §396-D, sub-§12** is enacted to read:

35 12. Exception requests. The commission shall provide for a  
36 special exception adjustment whereby a hospital may request an  
37 adjustment to its financial requirements to reflect major,  
38 reasonable changes in expenses for which no adequate adjustment  
39 is otherwise provided under this chapter.

41 A. In determining whether and to what extent such an  
42 adjustment should be granted, the commission shall consider  
43 the following in addition to any more specific criteria that  
44 the commission may establish by rule:

45 (1) The nature and reasonableness of the changes in  
46 expenses for which an adjustment is under  
47 consideration, including any offsetting expense changes;

48 (2) The reasonableness and necessity of the hospital's  
49 total acute care operating expenses;

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(3) The hospital's efficiency and its costs in comparison to other hospitals; and

(4) The effects on patients, purchasers and payors of any change in charges that would result from granting the adjustment.

After review of an exception request made pursuant to this subsection, the commission may, on the basis of the facts found, either increase or decrease the total financial requirements of a hospital.

B. A request that meets the requirements of paragraph A, but that would result in a positive adjustment equal to less than 1.5% of a hospital's financial requirements for the previous year or \$1,000,000, whichever is less, shall not be granted, unless the applicant establishes either of the following:

(1) That the applicant's failure to receive the adjustment will immediately, seriously and irreparably impair its financial capacity to continue providing hospital services and that no alternative means of providing those services is available; or

(2) That denial of the adjustment would result in a groundless difference in regulatory treatment of similarly situated hospitals seeking relief under this subsection on the basis of essentially the same facts.

C. Except as provided in subparagraph (1), an adjustment pursuant to this subsection shall be included in a hospital's financial requirements only for periods of operation after the date on which the application for interim adjustment is deemed complete or the commencement of the payment year for which a timely notice of contest, requesting an adjustment under this subsection and containing supporting information specified by the commission, has been filed.

(1) An interim adjustment under this subsection may be applied to all or part of the period between the beginning of the payment year during which an application was filed and the date that the application was deemed complete if the commission finds that:

(a) The hospital would otherwise be unable to meet its cash requirements as a consequence of events beyond its control; or

1                   (b) Such relief is consistent with the public  
2                   interest.

3                   (2) The commission may determine from the nature of  
4                   the expenses for which the adjustment is made whether  
5                   it shall become a part of financial requirements for  
6                   purposes of computing financial requirements for  
7                   subsequent payment years.

8  
9                   **Sec. 29. 22 MRSA §396-F, first ¶,** as enacted by PL 1983, c. 579,  
10                   §10, is amended to read:

11  
12                   In establishing revenue limits for an individual hospitals  
13                   hospital, the commission shall make provision for the revenue  
14                   deductions in-the-following-categories determined in accordance  
15                   with subsections 1 to 3, offset as appropriate by any  
16                   distributions that the hospital will receive in the same payment  
17                   year from the fund established in subsection 4.

18  
19                   **Sec. 30. 22 MRSA §396-F, sub-§4.** as enacted by PL 1987, c.  
20                   847, §2, is repealed and the following enacted in its place:

21  
22                   4. Hospital payments fund. There is established the  
23                   Hospital Uncompensated Care and Governmental Payment Shortfall  
24                   Fund, which may be referred to as the "hospital payments fund,"  
25                   administered by the commission. The assets of this fund shall be  
26                   derived from any appropriation that the Legislature may make or  
27                   from any portion of the approved gross patient service revenue of  
28                   each hospital designated as hospital payments fund revenue  
29                   pursuant to section 396-I, subsection 1, or from both of these  
30                   sources.

31  
32                   A. The hospital payments fund shall be administered as  
33                   follows.

34  
35                   (1) Except as otherwise provided, the Treasurer of  
36                   State shall be the custodian of the hospital payments  
37                   fund. Upon receipt of vouchers signed by a person or  
38                   persons designated by the commission, the State  
39                   Controller shall draw a warrant on the Treasurer of  
40                   State for the amount authorized. A duly attested copy  
41                   of the resolution of the commission designating these  
42                   persons and bearing on its face specimen signatures of  
43                   these persons shall be filed with the State Controller  
44                   as authority for making payments upon these vouchers.

45  
46                   (2) The commission may cause funds to be invested and  
47                   reinvested subject to its periodic approval of the  
48                   investment program.

49  
50                   (3) The commission shall publish annually, for each  
51                   fiscal year, a report showing fiscal transactions of

1           funds for the fiscal year and the assets and  
2           liabilities of the funds at the end of the fiscal year.

3  
4           B. The commission shall disburse amounts from the hospital  
5           payments fund to those hospitals most affected by bad debts,  
6           charity care and shortfalls in governmental payments. The  
7           commission shall develop standards for the distribution of  
8           the funds to individual hospitals. The standards shall  
9           address the following factors:

11           (1) The impact of the proportion of Medicare and  
12           Medicaid payments;

13  
14           (2) The special disadvantages of the Medicare payment  
15           system for rural hospitals;

16  
17           (3) The proportion of charges to nonpaying patients;

18  
19           (4) The efficiency of the hospital; and

20  
21           (5) The financial distress of the hospital and the  
22           plan of the hospital to relieve that distress.

23  
24           Sec. 31. 22 MRSA §396-H, as enacted by PL 1983, c. 579, §10,  
25           is repealed and the following enacted in its place:

26  
27           §396-H. Establishment and adjustment of gross patient service  
28           revenue limits

29  
30           The commission shall establish a gross patient service  
31           revenue limit or limits for each hospital for each payment year  
32           commencing on or after October 1, 1984. This limit shall be  
33           established as follows.

34  
35           1. General computation. The gross patient service revenue  
36           limit or limits shall be computed to allow the hospital to charge  
37           an amount calculated to recover its payment year financial  
38           requirements, offset by its available resources pursuant to  
39           section 396-E, taking into consideration the revenue deductions  
40           determined pursuant to section 396-F and the payment system  
41           applicable to the hospital.

42  
43           2. Hospital payments fund adjustment. For payment years or  
44           partial payment years on or after October 1, 1990, the commission  
45           may include in the gross patient service revenue limit an  
46           adjustment, based on a uniform percentage to be applied to all  
47           hospitals, to provide revenue to be transmitted to the hospital  
48           payments fund in accordance with section 396-I, subsections 1 and  
49           6. The adjustment shall not exceed .75% of net patient service  
50           revenues annually.

H. of S.

1           Sec. 32. 22 MRSA §396-I. as enacted by PL 1983, c. 579, §10,  
is repealed and the following enacted in its place:

3           §396-I. Payments to hospitals

5           1. Components of revenue limits. The commission shall, for  
7           each payment year, apportion each hospital's approved revenue  
9           limit or limits into the following components, as applicable.

11           A. One component shall be designated "management fund  
13           revenue" and shall be equal to the adjustment, if any, for  
          management support services determined under section 396-D,  
          subsection 9, paragraph A.

15           B. One component shall be designated "hospital retained  
17           revenue" and shall be equal to the approved gross patient  
          service revenue limit less the "management fund revenue" and  
19           "hospital payments fund revenue."

21           C. One component shall be designated "hospital payments  
23           fund revenue" and shall be equal to the adjustment, if any,  
          determined under section 396-H, subsection 2, for the  
          support of the hospital payments fund.

25           2. Apportionment among payors and purchasers. Based on  
27           historical or projected utilization data, the commission shall  
29           apportion, for each revenue center specified by the hospital  
31           subject to subsection 7, and for the hospital as a whole, the  
          hospital's approved gross patient service revenue among the  
          following categories:

33           A. Major 3rd-party payors, each of whom shall be a separate  
          category; and

35           B. All purchasers and payors, other than major 3rd-party  
37           payors, which shall together constitute one category.

39           3. Payments by payors and purchasers. Payments by payors  
          and purchasers shall be determined as follows.

41           A. Payments made by major 3rd-party payors shall be made in  
43           accordance with the following procedures.

45           (1) The commission shall require major 3rd-party  
47           payors to make biweekly periodic interim payments to  
          hospitals, provided that any such payor may, on its own  
          initiative, make more frequent payments.

49           (2) After the close of each payment year, the  
51           commission shall adjust the apportionment of payments  
          among major 3rd-party payors based on actual

1           utilization data for that year. Final settlement shall  
2           be made within 30 days of that determination.

3  
4           B. For hospitals regulated according to the total revenue  
5           system, payments made by payors, other than major 3rd-party  
6           payors, and by purchasers shall be made in accordance with  
7           the following procedures.

8                   (1) Payors, other than major 3rd-party payors, and  
9                   purchasers shall pay on the basis of charges  
10                   established by hospitals, to which approved  
11                   differentials are applied. Hospitals shall establish  
12                   these charges at levels which will reasonably ensure  
13                   that its total charges, for each revenue center, or, at  
14                   the discretion of the commission for groups of revenue  
15                   centers and for the hospital as a whole, are equal to  
16                   the portion of the gross patient service revenue  
17                   apportioned to persons other than major 3rd-party  
18                   payors.

19                   (2) Except as otherwise provided in this subparagraph,  
20                   subsequent to the close of a payment year, the  
21                   commission shall determine the amount of overcharges or  
22                   undercharges, if any, made to payors, other than major  
23                   3rd-party payors, and to purchasers and shall adjust,  
24                   by the percentage amount of the overcharges or  
25                   undercharges, the portion of the succeeding year's  
26                   gross patient service revenue limit that would  
27                   otherwise have been allocated to purchasers and payors  
28                   other than major 3rd-party payors. Adjustments to the  
29                   succeeding year's gross patient service revenue limit  
30                   shall not be made for undercharges if the undercharges  
31                   resulted from an affirmative decision by the hospital's  
32                   governing body to undercharge. Any such decision to  
33                   undercharge must be disclosed to the commission in  
34                   order that it may be taken into account in the  
35                   apportionment of the hospital's approved gross patient  
36                   service revenue among all payors and purchasers,  
37                   including major 3rd-party payors.

38  
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40  
41           C. Payments to hospitals on the per case system shall be  
42           made on the basis of charges established consistent with  
43           limits set by the commission under that system. The  
44           commission shall establish by rule the necessary adjustments  
45           to approved revenues in subsequent payment years for  
46           hospitals determined to have overcharged or undercharged  
47           purchasers and payors other than major 3rd-party payors.

48  
49           D. In addition to any reductions in payments to hospitals  
50           under paragraphs A, B and C, if a hospital exceeds any  
51           revenue limit by an amount in excess of a margin equal to 5%  
          for small hospitals and 3% for all other hospitals, the



COMMITTEE AMENDMENT "A" to S.P. 348, L.D. 920

1 commission may impose a penalty equal to 120% of the amount  
2 in excess of the margin times the rate of inflation. The  
3 amount of any penalty imposed shall be applied  
4 prospectively, and in accordance with methods prescribed by  
5 the commission, to reduce charges applicable to the class or  
6 classes of payors or purchasers which were overcharged. In  
7 determining whether to impose a penalty on a hospital  
8 regulated according to the total revenue system, the  
9 commission shall consider whether the revenues received by a  
10 hospital met its approved financial requirements.

11 4. Negotiated discounts. As of March 1, 1991, any hospital  
12 that is participating, or has chosen to participate or must  
13 participate, in the rate per case system, may negotiate discounts  
14 to charges with payors. Between March 1, 1991 and September 30,  
15 1991, negotiated discounts may not exceed 5% of the hospital's  
16 established charges for inpatient services or 7% of its  
17 established charges for outpatient services. There shall be no  
18 limit on the magnitude of negotiated discounts after September  
19 30, 1991. Hospitals in the total revenue system may negotiate  
20 discounts with the approval of the commission according to  
21 standards adopted by rule of the commission. The revenue losses  
22 resulting from negotiated discounts shall not be reflected in the  
23 computation of a hospital's revenue limit.

24 5. Transmittal of management fund revenue. No later than 30  
25 days after receipt of each payment, each hospital shall transmit  
26 to the Management Support Fund, established pursuant to section  
27 396-J, the portion, if any, of the payment which corresponds to  
28 the management fund revenue.

29 6. Review of allocations. Notwithstanding the provisions of  
30 subsection 2, the commission shall review the allocation of  
31 revenues to revenue centers specified by each hospital and shall  
32 ensure that such allocation, to the extent it results in internal  
33 departmental subsidies, is reasonable and does not result in  
34 undue price discrimination.

35 7. Transmittal of hospital payments fund revenue. No later  
36 than 30 days following the close of each quarter of each fiscal  
37 year, each hospital shall transmit to the hospital payments fund,  
38 established in section 396-F, that portion of its revenues which  
39 corresponds to the hospital payments fund revenue determined  
40 under subsection 1.

41 Sec. 33. 22 MRSA §396-K, sub-§3, ¶B, as repealed and replaced  
42 by PL 1985, c. 661, §10, is repealed.

43 Sec. 34. 22 MRSA §396-K. sub-§3. ¶B-1 is enacted to read:

44 B-1. On the basis of additional information received after  
45 an annual credit is established pursuant to paragraph A,

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1 including information provided by the department concerning  
2 the State Health Plan or projects then under review, the  
3 commission may by rule increase or decrease the amount of  
4 the annual credit during the course of the payment year  
5 cycle to which it applies. The commission may not act under  
6 this paragraph to decrease the credit below the amount that  
7 would, in combination with any amounts carried over from  
8 prior years, equal the total of any debits associated with  
9 projects approved on or before the date that the commission  
10 notifies the department of a proposed rule that would  
11 decrease the credit. For any payment year cycle in which  
12 the annual credit is apportioned to "statewide" and  
13 "individual hospital" components, the increase or decrease  
14 authorized by this paragraph shall apply solely to the  
15 "statewide" component of the credit.

16 **Sec. 35. 22 MRSA §396-K, sub-§3, ¶C**, as repealed and replaced  
17 by PL 1985, c. 661, §10, is amended to read:

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

21 (1) The project was approved by the department under  
22 the Maine Certificate of Need Act; and

23 (2) The associated incremental annual capital and  
24 operating costs do not exceed the amount remaining in  
25 the ~~statewide--component--of--the~~ Hospital Development  
26 Account as of the date of approval of the project by  
27 the department, after accounting for previously  
28 approved projects.

29 **Sec. 36. 22 MRSA §396-K, sub-§3, ¶D**, as repealed and replaced  
30 by PL 1985, c. 661, §10, is repealed.

31 **Sec. 37. 22 MRSA §396-K, sub-§3, ¶E**, as enacted by PL 1985, c.  
32 661, §10, is repealed.

33 **Sec. 38. 22 MRSA §396-K, sub-§3, ¶F**, as enacted by PL 1985, c.  
34 661, §10, is amended to read:

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

36 (1) Except as provided in subparagraph (2), the  
37 commission shall debit against the ~~statewide--component~~  
38 ~~of--the~~ Hospital Development Account the full amount of  
39 the incremental annual capital and operating costs  
40 associated with each project for which an adjustment is  
41 approved under paragraph C. Incremental annual capital  
42 and operating costs shall be determined in the same  
43 manner as adjustments to financial requirements are

COMMITTEE AMENDMENT "A" to S.P. 348, L.D. 920

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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 under paragraph C and which involves extraordinary incremental annual capital and operating costs, the commission may, in accordance with duly promulgated rules, defer the debiting of a portion of the annual costs associated with the project until a subsequent payment year cycle or cycles.

~~(3) The commission shall debit against a hospital's individual development account the full amount of the incremental annual capital and operating costs associated with each proposal of the hospital for which an adjustment is approved under paragraph E. 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 9, paragraph D, for the 3rd fiscal year of implementation of the proposal.~~

(4) Amounts credited to the statewide component of the Hospital Development Account for which there are no debits shall be carried forward to subsequent payment year cycles as a credit to the statewide component. ~~Amounts credited to an individual hospital account for which there are no debits shall be carried forward to subsequent payment year cycles as a credit to that account.~~

Sec. 39. 22 MRSA §396-K, sub-§4, as repealed and replaced by PL 1985, c. 661, §10, is repealed.

Sec. 40. 22 MRSA §396-O, as enacted by PL 1983, c. 579, §10, is amended by inserting at the end a new paragraph to read:

The commission may waive any statutory requirements for hospital demonstration projects which further the goals described in section 381. The commission shall review hospitals with approved demonstration projects and may collect data to monitor performance, and require compliance adjustments if the conditions of the demonstration are contravened. The commission may terminate a demonstration if it determines that the hospital has not substantially complied with the terms of the demonstration project.

Sec. 41. 22 MRSA §400, as enacted by PL 1987, c. 440, §4, is repealed.

1           **Sec. 42. Study.** The Commission to Study the Certificate of  
2 Need Law and the Impact of Competitive Market Forces on  
3 Ambulatory Health Services is established.

5           1. **Scope.** The study commission shall study the following  
6 subjects.

7  
8           A. The study commission shall review the provisions of  
9 Maine law relating to health services planning, including  
10 the certificate of need law and provisions of the health  
11 care finance law relating to the hospital development  
12 account and to affiliated interests. The study commission  
13 shall submit its report, including any necessary legislation  
14 to implement its recommendations, to the Joint Standing  
15 Committee on Human Resources by December 15, 1989.

17           B. The study commission shall study the current and  
18 potential impact of competitive market forces on outpatient  
19 volumes and the cost, quality and accessibility of  
20 ambulatory health services. Its study shall include an  
21 evaluation of the advisability of deregulating various  
22 outpatient services. The study commission shall submit its  
23 recommendations, including any necessary legislation to  
24 implement its recommendations, to the Joint Standing  
25 Committee on Human Resources by December 15, 1990. In the  
26 course of this study, the commission shall consider the  
27 likely impact of deregulating the charges made by hospitals  
28 for outpatient services and the elimination of any  
29 continuing restrictions on the establishment of preferred  
30 provider arrangements.

31  
32           2. **Composition.** The study commission shall be composed of  
33 13 members. The President of the Senate shall appoint one member  
34 of the Senate. The Speaker of the House of Representatives shall  
35 appoint 2 members of the House of Representatives. The Governor  
36 shall appoint one representative of the Department of Human  
37 Services. The President of the Senate and the Speaker of the  
38 House of Representatives shall jointly appoint 2 hospital  
39 officials, one physician, one representative of a 3rd-party payor  
40 other than the Department of Human Services, one representative  
41 of the Maine Health Care Finance Commission, one representative  
42 of the Maine Health Policy Advisory Council, and 3 consumer  
43 members including at least one representative of business and one  
44 representative of labor. All appointments shall be made within 30  
45 days of the effective date of this Act. The chair of the  
46 Legislative Council shall call the first meeting of the  
47 commission. The President of the Senate and the Speaker of the  
48 House of Representatives shall jointly designate a chair from  
49 among the members of the study commission.

51           3. **Staff.** The Maine Health Care Finance Commission shall  
provide staff to the commission for the duration of the study.

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2  
3 4. **Expenses.** The members of the commission who are  
4 Legislators shall receive the legislative per diem as defined in  
5 the Maine Revised Statutes, Title 3, section 2, for each day's  
6 attendance at commission meetings. All members who do not  
7 represent state agencies shall receive expenses for attending  
8 meetings upon application to the Executive Director of the  
9 Legislative Council.

10 5. **Sunset.** This section is repealed December 15, 1990.

11 **Sec. 43. Commission study and rule revisions.** The Maine Health  
12 Care Finance Commission is directed to conduct studies and  
13 propose rules as follows.

14 1. **Outpatient services.** The commission shall conduct a  
15 study for the purpose of improving the method that it currently  
16 employs to adjust the financial requirements of hospitals for  
17 changes in the volume of outpatient services provided and  
18 developing a method of regulating outpatient revenues on the  
19 basis of rate per unit of service. On or before March 1, 1992,  
20 the commission shall release to the Joint Standing Committee on  
21 Human Resources, to hospitals subject to its jurisdiction and to  
22 the general public a report of the results of its study and an  
23 outline of the changes that it proposes to make. The commission  
24 shall propose new rules or amendments to its existing rules, in  
25 accordance with the requirements of the Maine Revised Statutes,  
26 the Maine Administrative Procedure Act, Title 5, chapter 375, for  
27 the purpose of implementing the results of its study for payment  
28 years beginning on and after October 1, 1992.

29 2. **Marginal cost rates and volume corridors.** The  
30 commission shall conduct a study to determine whether changes in  
31 the marginal cost percentages and volume corridors specified in  
32 its existing rules to implement adjustments for volume and case  
33 mix are reasonable and appropriate, taking into account the  
34 effects of those rules on hospitals with increasing, decreasing  
35 and stable volume, as well as the effects of those rules upon  
36 those who pay for hospital services. The commission shall  
37 release a report of the results of its study to the Joint  
38 Standing Committee on Human Resources, to all hospitals subject  
39 to its jurisdiction and to the general public on or before March  
40 1, 1991. To the extent that the study concludes that changes in  
41 the marginal cost percentages or the volume corridors, or both,  
42 should be made, the commission shall propose amendments to its  
43 existing rules or new rules for the purpose of implementing those  
44 changes for payment years beginning on and after October 1, 1991.

45 3. **Participation.** In conducting the studies required by  
46 subsections 1 and 2, the commission shall seek comments and  
47 active participation from the advisory committees established by  
48 the Maine Revised Statutes, Title 22, section 396-P, and from  
49

1 other interested and affected hospitals, payors and members of  
2 the general public.

3  
4 **Sec. 44. Level of licensure review.** The Department of Human  
5 Services shall review systems of licensure for health care  
6 facilities to determine what additional levels of licensure might  
7 be created to ease the problems of hospitals which are  
8 experiencing financial difficulty operating at the current level  
9 of licensure and which could continue to provide selected  
10 community health care services at a lower level of licensure.  
11 The department shall develop standards of licensure at lower  
12 levels and submit any legislation necessary to implement them to  
13 the Joint Standing Committee on Human Resources by February 1,  
14 1990.

15  
16 **Sec. 45. Transition.** The hospital care financing system, as  
17 amended by this Act, shall apply to hospital payment years  
18 beginning on or after October 1, 1990, except that section 34  
19 shall apply to payment year cycles beginning on or after October  
20 1, 1989.

21  
22 The commission shall administer the hospital care financing  
23 system established by the Maine Revised Statutes, Title 22,  
24 chapter 107, as those provisions of law existed prior to the  
25 effective date of this Act, with respect to all hospital payment  
26 years beginning before October 1, 1990. The continuing authority  
27 provided by this section shall extend to the determination and  
28 enforcement of compliance with revenue limits for those earlier  
29 payment years and to the settlement of payments and adjustments  
30 of overcharges and undercharges for those years, in proceedings  
31 that may be commenced after the close of those years. Nothing in  
32 this Act may be construed to limit the authority of the  
33 commission to enforce compliance with or seek penalties for  
34 violation of any provision of Title 22, chapter 107, that was in  
35 effect at the time of the act, event or failure to act with  
36 respect to which enforcement action is taken or penalties are  
37 sought.

38  
39 **Sec. 46. Appropriation.** The following funds are appropriated  
40 from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
<b>MAINE HEALTH CARE FINANCE</b>		
<b>COMMISSION</b>		
<b>Hospital Uncompensated Care</b>		
<b>and Governmental Payment</b>		
<b>Shortfall Fund</b>		
All Other	\$30,000,000	\$30,000,000

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Provides funds to distribute to hospitals most affected by bad debts, charity care and shortfalls in governmental payments relative to the financial requirements of hospitals.

**Commission to Study the Certificate of Need Law and the Impact of Competitive Market Forces on Ambulatory Health Services**

Personal Services	\$1,485	\$825
All Other	4,950	1,250
<b>TOTAL</b>	<u>\$6,435</u>	<u>\$2,075</u>

Provides funds for per diem for legislative members and expenses for other members of the study commission.

**MAINE HEALTH CARE FINANCE COMMISSION TOTAL**

<u>\$30,006,435</u>	<u>\$30,002,075</u>
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**Sec. 47. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

**1989-90                      1990-91**

**MAINE HEALTH CARE FINANCE COMMISSION**

**Health Care Finance Commission**

Positions	(5)	(5)
Personal Services	\$97,562	\$188,620
All Other	150,000	

Allocates funds for 2 Health Care Financial Analysts, one Planning and Research Associate II, one Programmer Analyst and one Staff Attorney and funds to carry out the required study.

1 MAINE HEALTH CARE FINANCE  
2 COMMISSION  
3 TOTAL

\$247,562

\$188,620

5 **Emergency clause.** In view of the emergency cited in the  
7 preamble, this Act shall take effect when approved, except that  
9 sections 2, 3 and 39 shall take effect on October 1, 1990.

11 FISCAL NOTE

13 Costs associated with the Department of Human Services'  
15 review of systems of licensure for health care facilities will be  
17 absorbed within existing resources.'

19 STATEMENT OF FACT

21 This amendment makes the following principal changes from  
23 current law.

25 1. The amendment provides for greater flexibility in the  
27 current system of hospital regulation by providing a 2-tier  
29 system of hospital regulation within the current structure of the  
31 Maine Health Care Finance Commission. Most hospitals would be  
33 regulated on a rate per case basis for inpatient services.  
35 Hospitals in relatively self-contained catchment areas, which are  
37 not in competition with other hospitals, could choose to be  
39 regulated on a total revenue system. Outpatient services will be  
41 regulated essentially as they have been prior to the enactment of  
43 this bill pending the outcome of a study by the commission to  
45 determine the appropriate methods of regulation and the  
advisability of deregulation. The amendment also requires the  
commission to provide alternative regulatory options for  
specialty hospitals.

41 2. The amendment provides a variable adjustment factor in  
43 the range of 0.5% to 2.0% to account for changes in technology,  
45 medical practice and case mix which are not accounted for in the  
normal adjustments currently provided by law and eliminates the  
current adjustments for unforeseen circumstances, health  
professionals and the individual development account.

47 3. The amendment provides for a 60% to 90% marginal cost  
49 adjustment for changes in volume and case mix. These factors, as  
well as outpatient volumes, will be studied by the commission.

51 4. The amendment makes changes in the method of allowing  
for capital costs.



COMMITTEE AMENDMENT " A " to S.P. 348, L.D. 920

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5. The amendment requires the implementation over a 5-year period of a standard component in hospital rates to encourage efficiency and reward lower-than-average-cost hospitals.

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6. The amendment allows rate per case hospitals to negotiate discounts. Total revenue hospitals may negotiate discounts with the approval of the commission. In either case, the cost of the discounts may not be passed on to other payors.

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7. The amendment provides for an exception request to permit hospitals to seek adjustments for certain costs over a threshold of 1.5% of financial requirements or \$1,000,000, whichever is lower, which are not reasonably accounted for by other adjustments. The commission is given authority to waive the financial threshold for requests.

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8. The amendment provides for an annual appropriation of \$30,000,000 to a fund administered by the commission to provide relief to hospitals for uncompensated care and governmental payments shortfalls.

19

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9. The amendment provides for a study of laws relating to health planning and certificate of need and the advisability of deregulating ambulatory health services. It also provides for a review by the Department of Human Services of alternative forms of licensure for hospitals which desire to continue to provide community services at a licensure level which is lower than that of hospitals and to report any necessary legislation to the Legislature by February 1, 1990.

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10. The amendment changes the original appropriation section and adds an allocation section and fiscal note.

Reported by Senator Gauvreau for the Committee on Human Resources. Reproduced and Distributed Pursuant to Senate Rule 12.

(6/16/89)

(Filing No. S-326)