

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1319

H.P. 951

House of Representatives, April 24, 1989

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative BOUTILIER of Lewiston.

Cosponsored by Representative ROLDE of York, Representative PENDLETON of Scarborough and Senator RANDALL of Washington.

STATE OF MAINE

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

**An Act to Institute the Orderly Development of New Medical
Technology and Services.**



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

3 Sec. 1. 5 MRSA §12004-G, sub-§14-A is enacted to read:

5 14-A. Health Medical Techno- \$200/Day 22 MRSA §482
7 logy Advisory
9 Panel

9 Sec. 2. 22 MRSA c. 154 is enacted to read:

11 CHAPTER 154

13 NEW MEDICAL TECHNOLOGY

15 §481. Definitions

17 As used in this chapter, unless the context otherwise
19 indicates, the following terms have the following meanings.

21 1. Commission. "Commission" means the Maine Health Care
23 Finance Commission established in Title 5, section 12004-E,
25 subsection 1, or any successor agency with rate-setting authority
27 over Maine's hospitals.

29 2. Council. "Council" means the Maine Health Policy
31 Advisory Council established in Title 5, section 12004-L,
33 subsection 30.

35 3. Department. "Department" means the Department of Human
37 Services.

39 4. Health care facility. "Health care facility" means any
41 health care facility required to be licensed under chapter 405 or
43 its successor, with the exception of the Cutler Health Center and
45 the Dudley Coe Infirmary.

47 5. Hospital. "Hospital" means any acute care institution
49 required to be licensed pursuant to chapter 405 or its successor.

51 6. New medical services. "New medical services" means any
medical service costing in excess of \$1,000, including the
introduction of a new drug, not previously available in the State.

7. New medical technology. "New medical technology" means
any medical technology equipment costing in excess of \$1,000,000
not previously available in the State.

8. Panel. "Panel" means the Medical Technology Advisory
Panel established in this chapter.

9. Third-party payor. "Third-party payor" means any person
or organization paying for the cost of a person's health care.

1 directly or indirectly, whether through health insurance or any
3 other vehicle, including, but not limited to, any nonprofit
5 service organization under Title 24, the State Government and
7 Federal Government and commercial insurers.

9 §482. Medical Technology Advisory Panel

11 1. Establishment; membership. The Medical Technology
13 Advisory Panel, established by Title 5, section 12004-G,
15 subsection 14-A, shall be composed of 11 members who shall be
17 appointed by the Governor, subject to review by the joint
19 standing committee of the Legislature having jurisdiction over
21 human resource matters and subject to confirmation by the
23 Legislature. Persons eligible for appointment to or to serve on
25 the panel shall be selected as follows.

27 A. Three members of the panel shall be licensed physicians
29 from various specialties and subspecialties, one physician
31 representing each of the following areas: surgical, medical
33 and imaging. No more than one physician member may be from
35 any one county.

37 B. One member shall be a biomedical engineer.

39 C. Two members shall be nonphysicians who have a background
41 in medical technology or health planning.

43 D. One member shall be a nurse familiar with health
45 planning.

47 E. One member shall be of the department involved in health
49 care planning.

51 F. One member shall be the Director of the Department of
Economic and Community Development.

G. One member shall be a 3rd-party payor.

H. One member shall be a consumer.

The panel membership shall reflect all the regions of the State.

2. Terms. The terms of the members of the panel shall be
staggered. Of the initial appointees, 5 shall be appointed for
terms of 3 years, 3 for terms of 2 years and 3 for terms of one
year. Thereafter, all appointments shall be for a term of 3
years each, except that a member appointed to fill a vacancy in
an unexpired term shall serve only for the remainder of that
term. No member may serve for more than 6 consecutive years.
Members shall hold office until the appointment and confirmation
of their successors.

1 3. Removal. The Governor may remove any member no longer
2 eligible to serve on the panel under the requirements of
3 subsection 1 or who becomes disqualified for neglect of any duty
4 required by law.

5 4. Chair. The Governor shall appoint a chair who shall
6 serve in these capacities at the Governor's pleasure.

7 5. Meetings; quorum. The panel shall meet at least 4 times
8 each year, including once before the department submits its
9 budget to the joint committee of the Legislature having
10 jurisdiction over appropriation and fiscal affairs. Meetings
11 shall be called by the chair or by any 6 members and, except in
12 the event of an emergency meeting, shall be called by written
13 notice. Six members of the panel shall constitute a quorum.

14 6. Compensation. Each member of the panel shall be
15 compensated according to the provisions of Title 5, chapter 379.

16 §483. Staff

17 The panel shall employ an executive director and a person in
18 a clerical II position. This staff shall be independent of the
19 department.

20 §484. Duties and powers of panel

21 The panel, when requested by the council, a provider, the
22 Governor, the Legislature or on its own motion, shall review any
23 new medical technology and new medical services proposed to be
24 offered in the State and shall determine its efficacy, economic
25 impact and cost savings for the State and consumers, and the
26 extent to which that technology or those services have the
27 ability to replace or enhance current technology or services or
28 to add to the patient's convenience and comfort. The panel shall
29 consult with the Maine Health Policy Advisory Council and advise
30 the council with respect to issues involving medical technology
31 and new medical services. If the panel determines that a new
32 medical technology or new medical services should be accessible
33 to Maine citizens, it shall:

34 1. Number of sites. Determine the number of sites in which
35 the technology or services should be available, based on the
36 population served, regional distribution and infrastructure
37 access; and

38 2. Proposals. Instruct the Department of Human Services to
39 issue requests for proposals or receive proposals from health
40 care facilities, hospitals and health professionals regarding the
41 establishment of that technology or those services in the State.
42 The department shall give all necessary and appropriate
43 assistance to applicants.

1
3 3. Rule-making authority. Establish, by rule, procedures
5 and policies pursuant to the Maine Administrative Procedure Act,
7 Title 5, chapter 375, health care facilities or any other
9 provider of new medical technology or new medical services, to
11 meet the following requirements that, at a minimum, shall:

13 A. Ensure the safety and proper performance of equipment;

15 B. Require the existence of a fire plan;

17 C. Require the existence of an emergency plan for a patient
19 upon whom the new medical technology is used or to whom
21 medical services are provided who stops breathing;

23 D. Require cardiac pulmonary resuscitation certification of
25 personnel;

27 E. Require the use of consent forms for invasive medical or
29 surgical procedures or the use of imaging pharmaceuticals;

31 F. Require the monitoring of a patient upon whom new
33 technology is used or to whom new medical services are
35 provided for any adverse reaction and require the immediate
37 availability of a physician to that patient;

39 G. Provide for competency examinations and licensing; and

41 H. Require training of staff on the new technology or
43 services.

45 4. Grants. The panel shall administer a grant program to
47 assist health care facilities and other providers to develop new
49 medical technologies and new medical services. The panel shall
51 promulgate rules in accordance with the Maine Administrative
Procedure Act, Title 5, chapter 375, to administer the grant.

5. Reports. The panel shall make annual reports of its
operations to the joint standing committee of the Legislature
having jurisdiction over health care matters.

§485. Third-party payors

The results of the panel's deliberations under section 484
shall be made available to all 3rd-party payors, employers paying
directly for the cost of health services for their employees, the
Maine Health Policy Advisory Council, the Governor and the
Legislature. The payors of health care services may rely upon
this information in contracting for the provision of health care
services. Once proposals are formally received by the
department, 3rd-party payors shall recognize the new medical
technology or new medical services for full reimbursement.

1
3 **§486. Notice**

5 A health care facility or any other provider which desires
7 to introduce new medical technology which has not been reviewed
9 by the panel or which desires to provide new medical services may
11 purchase or introduce that technology or those services only
13 after providing at least 90 days' notice to the department.

15 **§487. Emergency review**

17 In the case of an emergency, a health care facility or any
19 other provider may submit a written request to the department for
21 a waiver of the 90-day notice required in section 486. The
23 request must contain the reason for and nature of the emergency
25 and an explanation of any harm that would result from the
27 implementation of the 90-day notice requirement. Upon receiving
29 a request under this section, the department must make its
31 decision within 7 days.

33 If the department determines that an emergency review
35 request is frivolous, the department may bar the health care
37 facility or any other provider from giving notice to the
39 department under section 486 for 120 days.

41 **§488. Prohibition**

43 If the technology or services have not been recommended by
45 the panel, no 3rd-party payor may pay directly or indirectly for
47 the cost of those services for a period of one year from the date
49 of the notice required by section 486. Nothing in this chapter
51 shall be construed as requiring 3rd-party payors to pay for new
medical technology or services after the one-year prohibitory
period expires.

53 **§489. Appeal**

55 In cases where the panel has determined that a technology or
57 services should not be introduced or determined that a particular
59 site should be excluded, any person affected adversely by that
61 determination may appeal the decision to the Superior Court under
63 the provisions of the Maine Rules of Civil Procedure, Rule 80B.

65 **§490. Limitation**

67 Nothing in this chapter may be construed to prohibit the
69 establishment of new medical technology or new medical services
71 in a health care facility or outside of a facility as long as the
73 notice required by section 486 is given. The exclusive penalty
75 for providing those services shall be the provision in section
77 488 prohibiting payment for any such services by any 3rd-party
79 payor for a period of one year. Persons or organizations

1 purchasing the technology or providing services may request a
2 determination by the panel pursuant to section 484.

3 **§491. Sunset provision**

4
5 Unless continued or modified by law, the Medical Technology
6 Advisory Panel is terminated 6 years from the effective date of
7 this chapter. The panel shall have a grace period, not to extend
8 beyond one year of the termination date, in which to complete its
9 duties. During the grace period, termination shall not reduce or
10 otherwise limit the powers of authority of the panel.

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14 **STATEMENT OF FACT**

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17 The purpose of this bill is to establish a proactive,
18 positive and orderly approach to the introduction of new medical
19 technology and services. A panel of experts is utilized to
20 examine new medical technology costing over \$1,000,000 and
21 services costing over \$1,000 not yet offered in Maine. The panel
22 makes recommendations to the Maine Health Policy Advisory
23 Council, 3rd-party payors, the Governor and the Legislature. The
24 panel will determine not only the efficacy, cost, economic impact
25 and benefit to patients of the new technology or services, but
26 will also recommend how many applications of the technology or
27 services should be available in the State. If providers
28 establish new technology or services without the recommendation
29 of the panel, 3rd-party payors are prohibited from paying for the
30 technology or services for at least one year. Under this
31 approach, the payors are required to pay for the services or
32 technology when the proposals are accepted and implemented.
33 Payors are also given state authority to rely on the
34 recommendations of the panel. The bill also allows the panel to
35 promulgate rules and administer a grant program.

36
37 In addition, the bill authorizes the Department of Human
38 Services to institute a Request for Proposals process in order to
39 encourage the establishment of a new technology or new services
40 where the panel has determined that it is needed and not yet
41 available.