

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1708

S.P. 613

In Senate, May 26, 1989

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GILL of Cumberland.

Cosponsored by Senator DUTREMBLE of York and Representative PINES of Limestone.

STATE OF MAINE

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

An Act Relating to the Certificate of Need Act.



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

3 Sec. 1. 5 MRSA §12004-I, sub-§38, as enacted by PL 1987, c.
786, §5, is amended to read:

5 38. Human Certificate \$25/Day 22 MRSA
7 Services: Health of Need Advisory \$50/Day §307
9 Facilities Committee and Expenses

11 Sec. 2. 22 MRSA §302, sub-§2, ¶¶E and F, as enacted by PL
1977, c. 687, §1, is amended to read:

13 E. Provide an orderly method of resolving questions
15 concerning the need for health care facilities and health
services which are proposed to be developed; and

17 F. Permit consumers of health services to participate in
19 the process of determining the distribution, quantity,
quality and cost of these services; and.

21 Sec. 3. 22 MRSA §302, sub-§2, ¶G, as enacted by PL 1977, c.
687, §1, is repealed.

23 Sec. 4. 22 MRSA §303, as amended by PL 1987, c. 486, §1, is
25 further amended to read:

27 **§303. Definitions**

29 As used in this chapter, unless the context otherwise
31 indicates, the following words and phrases shall have the
following meanings.

33 ~~1. Ambulatory surgical facility. "Ambulatory surgical~~
35 ~~facility" means a facility, not part of a hospital, which~~
37 ~~provides surgical treatment to patients not requiring~~
39 ~~hospitalization. This term does not include the offices of~~
private physicians or dentists, whether in individual or group
practice.

41 2-A. Annual operating costs. For purposes of section
304-A, subsection 4, paragraph B, "annual operating costs" means
43 the total incremental costs to the institution which are directly
attributable to the addition of a new health service.

45 2-B. Appropriately capitalized expenditures.
47 "Appropriately capitalized expenditures" means those expenditures
which would be capitalized if the project were implemented.

49 2-C. By or on behalf of a health care facility. A
51 proposed project shall be considered to be "by or on behalf of a
health care facility" if the facility has any significant
involvement in the planning, financing or management of the

1 project, or if the facility or its patients are to receive a
2 significant benefit from the project.

3

4 3. **Capital expenditure.** "Capital expenditure" means an
5 expenditure, including a force account expenditure or
6 predevelopment activities, which under generally accepted
7 accounting principles is not properly chargeable as an expense of
8 operation and maintenance and, for the purposes of this chapter,
9 shall include capitalized interest on borrowed funds and the fair
10 market value of any property or equipment which is acquired under
11 lease or comparable arrangement or by donation.

12 3-A. **Commission.** "Commission" means the Maine Health Care
13 Finance Commission established pursuant to chapter 107.

14

15 4. **Construction.** "Construction," when used in connection
16 with "health care facility," means the establishment, erection,
17 building, purchase or other acquisition of a health care facility.

18

19 4-A. **Continuing care retirement community.** "Continuing
20 care retirement community" or "CCRC," for the purposes of this
21 chapter, means a residential facility providing continuing care
22 as defined in Title 24-A, section 6201.

23

24 5. **Department.** "Department" means the Department of Human
25 Services, but does not include the Certificate of Need Advisory
26 Committee within the department.

27

28 5-A. **Department health plan.** "Department health plan"
29 means the plan or planning documents prepared by the Department
30 of Human Services.

31

32 6. **Development.** "Development," when used in connection
33 with "health service," means the undertaking of those activities
34 which on their completion will result in the offering of a new
35 health service to the public.

36

37 6-A. **Expenditure minimum for annual operating costs.** The
38 "expenditure minimum for annual operating costs" is:

39

40 A. For services commenced between ~~January 1 and~~ December
41 ~~31, 1983, 1985, and July 1, 1989,~~ \$125,000 \$155,000 for the
42 project's 3rd fiscal year, including a partial first year;

43

44 B. For services commenced ~~between January 1 and December~~
45 ~~31, 1984,~~ \$135,000 on or after July 1, 1989, \$250,000 for
46 the project's 3rd fiscal year, including a partial first
47 year; and

48

49 C. ~~For services commenced between January 1 and December~~
50 ~~31, 1985,~~ \$145,000 for the 3rd fiscal year, including a
51 partial first year; and

52

1
3 C-1. For each succeeding year after June 30, 1990,
5 increased on July 1st by a percentage equal to the increase
7 in the Data Resources, Inc. Index of the preceding year.

9
11 ~~D. For services commenced after December 31, 1985,~~
13 ~~\$155,000 for the 3rd fiscal year, including a partial first~~
15 ~~year.~~

17
19 6-B. Generally accepted accounting principles. "Generally
21 accepted accounting principles" means accounting principles
23 approved by the American Institute of Certified Public
25 Accountants.

27
29 7. Health care facility. "Health care facility" means any
31 facility, whether public or private, proprietary or not for
33 profit, ~~required to obtain a certificate of need in accordance~~
35 ~~with federal laws and regulations under the National Health~~
37 ~~Planning and Resources Development Act of 1974, or any amendment,~~
39 ~~and shall include hospitals, hospital; psychiatric hospitals,~~
41 ~~hospital; tuberculosis hospitals, hospital; skilled nursing~~
43 ~~facilities facility, whether a skilled nursing facility or an~~
45 ~~intermediate care facility; intermediate care facility for the~~
47 ~~mentally retarded; kidney disease treatment centers center,~~
49 ~~including any free standing hemodialysis units, unit;~~
51 ~~intermediate care facilities, rehabilitation facilities,~~
~~facility; ambulatory surgical facilities home health care~~
~~providers and or health maintenance organizations organization.~~
The term shall not apply to any facility operated by religious
groups relying solely on spiritual means through prayer for
healing. This term shall not apply to federally operated
facilities.

53
55 8. Health maintenance organization. "Health maintenance
57 organization" means a public or private organization which:

59 A. Provides or otherwise makes available to enrolled
61 participants health care services, including at least the
63 following basic health services: Usual physician services,
65 hospitalization, laboratory, x-ray, emergency and
67 preventive health services and out-of-area coverage;

69 B. Is compensated, except for copayments, for the
71 provision of the basic health services to enrolled
73 participants on a predetermined periodic rate basis; and

75 C. Provides physicians' services primarily through
77 physicians who are either employees or partners of the
79 organization or through arrangements with individual
81 physicians or one or more groups of physicians.

1 9. Health services. "Health services" means clinically
2 related, that is, diagnostic, treatment or rehabilitative
3 services, and includes alcohol, drug abuse and mental health
4 services.

5 11-A. ~~Home health care provider.~~ ~~"Home health care~~
6 ~~provider"~~ means any business entity or subdivision thereof,
7 whether public or private, proprietary or not for profit, which
8 is engaged in providing acute, restorative, rehabilitative,
9 maintenance, preventive or health promotion services through
10 professional nursing and at least one other therapeutic service,
11 such as physical therapy, occupational therapy, speech pathology,
12 home health aides, nurse assistants, medical social work and
13 nutritionist services, either directly or through contractual
14 agreement, in a client's place of residence. This term does not
15 apply to any sole practitioner providing private duty nursing
16 services or other restorative, rehabilitative, maintenance,
17 preventive or health promotion services in a client's place of
18 residence. In addition, this term does not apply to hospitals,
19 skilled nursing facilities or intermediate care facilities
20 providing in-home services exempt from licensure under section
21 2147, subsection 10.

22 11-B. Hospital. "Hospital" means an institution which
23 primarily provides to inpatients by or under the supervision of
24 physicians, diagnostic services and therapeutic services for
25 medical diagnosis, treatment and care of injured, disabled or
26 sick persons or rehabilitation services for the rehabilitation of
27 injured, disabled or sick persons. This term also includes
28 psychiatric and tuberculosis hospitals.

29 12. Intermediate care facility. "Intermediate care
30 facility" means an institution a nursing facility or a distinct
31 part of a facility which provides, on a regular basis,
32 health-related care and services to individuals who do not
33 require the degree of care and treatment which a hospital or
34 skilled nursing facility is designed to provide, but who because
35 of their mental or physical conditions require health related
36 care and services above the level of room and board.

37 12-A. Major medical equipment. "Major medical equipment"
38 means a single unit of medical equipment or a single system of
39 components with related functions which is used to provide
40 medical and other health services and which costs \$300,000
41 \$1,000,000 or more. This term does not include medical equipment
42 acquired by or on behalf of a clinical laboratory to provide
43 clinical laboratory services, if the clinical laboratory is
44 independent of a physician's office and a hospital and has been
45 determined under the United States Social Security Act, Title
46 XVIII, to meet the requirements of Section 1861 (s), paragraphs
47 10 and 11 of that Act. In determining whether medical equipment
48 costs more than \$300,000 \$1,000,000, the cost of studies,
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1 surveys, designs, plans, working drawings, specifications and
3 other activities essential to acquiring the equipment shall be
included. If the equipment is acquired for less than fair market
value, the term "cost" includes the fair market value.

5
7 **13. Modification.** "Modification" means the alteration,
improvement, expansion, extension, renovation or replacement of a
9 health care facility or health maintenance organization or
portion thereof, including initial equipment thereof and the
replacement of equipment or existing buildings.

11 13-A. Nursing facility. The term "nursing facility,"
13 which includes any intermediate care facility or skilled nursing
15 facility, but does not include any intermediate care facility for
17 the mentally retarded, means any facility or distinct part of a
facility which is not primarily for the care and treatment of
mental diseases, and which is:

19 A. Primarily engaged in providing to residents skilled
21 nursing care and related services for residents who require
medical or nursing care;

23 B. Primarily engaged in providing to residents
25 rehabilitation services for the rehabilitation of injured,
disabled or sick persons;

27 C. Primarily engaged in providing to residents, on a
29 regular basis, health-related care and services to
31 individuals who, because of their mental or physical
condition, require care and services, above the level of
room and board, which can be made available to them only in
an institution;

33 D. Required to obtain a nursing home license from the
35 Bureau of Medical Services, Division of Licensure and
Certification; or

37 E. Located in this State on an Indian reservation and is
39 certified by the United States Secretary of Health and
41 Human Services as meeting the requirements of the United
States Social Security Act, Title XIX, Section 1919.

43 **13-B. Obligation.** An "obligation" for a capital
45 expenditure is considered to be incurred by or on behalf of a
health care facility:

47 A. When a contract, enforceable under Maine law, is
49 entered into by or on behalf of the health care facility
for the construction, acquisition, lease leasing or
financing of a capital asset;

1 B. When the governing board of the health care facility
3 takes formal action to commit its own funds for a
5 construction project undertaken by the health care facility
7 as its own contractor; or

9 C. In the case of donated property, on the date on which
11 the gift is completed under applicable Maine law.

13 14. Offer. "Offer," when used in connection with "health
15 services," means that the health care facility or health
17 maintenance organization holds itself out as capable of providing
19 or having the means to provide a health service.

21 15. Person. "Person" means an individual, trust or
23 estate, partnership, corporation, including associations, joint
25 stock companies and insurance companies, the State or a political
27 subdivision or instrumentality, including a municipal corporation
29 of the State, or any other legal entity recognized by state law.

31 16. Predevelopment activities. "Predevelopment
33 activities" means any appropriately capitalized expenditure by or
35 on behalf of a health care facility made in preparation for the
37 offering or development of a new health service for which a
39 certificate of need would be required and arrangements or
41 commitments made for financing the offering or development of the
43 new health service; and shall ~~include~~ includes site acquisitions,
45 surveys, studies, expenditures for architectural designs, plans,
47 working drawings and specifications.

49 17. Project. "Project" means any acquisition, capital
51 expenditure, new health service, ~~termination~~ or change in a
health service, predevelopment activity or other activity which
requires a certificate of need under section 304-A.

17-A. Rehabilitation facility. "Rehabilitation facility"
means an inpatient facility which is operated for the primary
purpose of assisting in the rehabilitation of disabled persons
through an integrated program of medical and other services which
are provided under competent professional supervision.

18. Secretary. "Secretary" means the United States
Secretary of Health and Human Services and any other officer or
employee of the United States Department of Health and Human
Services to whom the authority involved may be delegated.

19. Skilled nursing facility. "Skilled nursing facility"
means ~~an institution~~ a nursing facility or a distinct part of an
~~institution~~ a facility which is primarily engaged in providing to
inpatients skilled nursing care and related services for patients
who require medical or nursing care, or rehabilitation services
for the rehabilitation of injured, disabled or sick persons.

1 20. ~~State Health Coordinating Council.~~ ~~"State Health~~
2 ~~Coordinating Council"~~ ~~means the entity established by the~~
3 ~~Governor in accordance with the provisions of section 1524 of the~~
4 ~~National Health Planning and Resources Development Act of 1974.~~

5
6 21. ~~State health plan.~~ ~~"State health plan" means the plan~~
7 ~~prepared annually by the State Health Coordinating Council after~~
8 ~~consideration of the preliminary state health plan prepared by~~
9 ~~the Office of Health Planning and Development, within the Bureau~~
10 ~~of Medical Services.~~

11 Sec. 5. 22 MRSA §304-A, as amended by PL 1987, c. 725, §1,
12 is further amended to read:

13
14 §304-A. Certificate of need required

15
16 No person may enter into any commitment for financing a
17 project which requires a certificate of need or incur an
18 obligation for the project without having sought and received a
19 certificate of need, except that this prohibition shall not apply
20 to commitments for financing conditioned upon the receipt of a
21 certificate of need or to obligations for predevelopment
22 activities of less than \$150,000 \$300,000.

23
24 Except as provided in sections ~~304-D~~ and section 304-E, a
25 certificate of need from the department shall be required for:

26
27 1. Acquisition by lease, donation, transfer. Any
28 acquisition by ~~or on behalf of a health care facility~~ any person
29 under lease or comparable arrangement or through donation, which
30 would have required review if the acquisition had been by
31 purchase;

32
33 2. ~~Acquisitions of major medical equipment.~~ ~~The following~~
34 ~~acquisitions:~~

35
36 A. ~~The acquisition by any person of major medical~~
37 ~~equipment that will be owned by or located in a health care~~
38 ~~facility;~~ ~~or~~

39
40 B. ~~The acquisition by any person of major medical~~
41 ~~equipment not owned by or located in a health care facility~~
42 ~~if:~~

43
44 (1) ~~The equipment will not be used to provide services~~
45 ~~for inpatients of a hospital, but the person fails to~~
46 ~~file a written notice of intent to acquire the~~
47 ~~equipment at least 60 days prior to entering into a~~
48 ~~contract to acquire the equipment;~~ ~~or~~

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50 (2) ~~The department finds, within 30 business days~~
51 ~~after the date it receives a written notice of intent~~

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~~to acquire the equipment, that the equipment will be used to provide services for inpatients of a hospital.~~

~~There shall be a waiver for the use of major medical equipment on a temporary basis as provided in section 308, subsection 4;~~

2-A. Major medical equipment. The acquisition by any person of major medical equipment costing \$1,000,000 or more.

There shall be a waiver for the use of major medical equipment on a temporary basis as provided in section 308-A, subsection 2, paragraph B;

3. Capital expenditures. The obligation by or on behalf of a health care facility, except a skilled or intermediate care nursing facility, of any capital expenditure of \$350,000 \$1,000,000 or more. Intermediate care and skilled nursing care Nursing facilities shall have a threshold of \$500,000, except that any transfer of ownership shall be reviewable;

4. New health services. The offering or development of any new health service. For purposes of this section, "new health services" shall include only the following:

~~A. The obligation of any capital expenditures by or on behalf of a health care facility which is associated with the addition of a health service which was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered;~~

B. The addition of a health service, other than an acute care service, which is to be offered by or on behalf of a health care facility which was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered, and which, for the 3rd fiscal year of operation, including a partial first year, following addition of that service, absent any adjustment for inflation, is projected to entail annual operating costs of at least the expenditure minimum for annual operating costs; or

C. The addition of a health service which falls within a category of health services which are subject to review regardless of capital expenditure or operating cost and which category the department has defined through regulations promulgated pursuant to section 312, based on recommendations from the State Health Coordinating Council;

~~5. Termination of a health service. The obligation of any capital expenditure by or on behalf of a health care facility~~

1 which is associated with the termination of a health service
3 which was previously offered by or on behalf of the health care
4 facility;

5 6. Changes in bed complement. Any change in the existing
6 bed complement of a health care facility, in any 2-year period,
7 which:

9 A. Increases or decreases the licensed or certified bed
10 capacity of the health care facility by more than 10% or
11 more than 5 beds, whichever is less;

13 B. Increases or decreases the number of beds licensed or
14 certified by the department to provide a particular level
15 of care by more than 10% of that number or more than 5
16 beds, whichever is less; or

17 B-1. Converts licensed or certified beds to a different
18 level of care; or

21 C. Relocates more than 10% of the health care facility's
22 licensed or certified beds or more than 5 beds, whichever
23 is less, from one physical plant to another;

25 7. Predevelopment activities. Any appropriately
26 capitalized expenditure of \$150,000 \$300,000 or more for
27 predevelopment activities proposed to be undertaken in
28 preparation for any project which would itself require a
29 certificate of need;

31 8. New health care facilities. The construction,
32 development or other establishment of a new health care facility;
33 and

35 9. Other circumstances. In the following circumstances:-

37 A. Any proposed use of major medical equipment to serve
38 inpatients of a hospital, if the equipment is not located
39 in a health care facility and was acquired without a
40 certificate of need, except acquisitions waived under
41 section 308, subsection 4; or

43 B. If a person adds a health service not subject to review
44 under subsection 4, paragraph A or C and which was not
45 deemed subject to review under subsection 4, paragraph B at
46 the time it was established and which was not reviewed and
47 approved prior to establishment at the request of the
48 applicant, and its actual 3rd fiscal year operating cost,
49 as adjusted by an appropriate inflation deflator
50 promulgated by the department, after consultation with the
51 Maine Health Care Finance Commission, exceeds the
expenditure minimum for annual operating cost in the 3rd

1 fiscal--year--of--operation--following--addition--of--these
3 services.

5 9-A. Other circumstances. If a person adds a health
7 service not subject to review under subsection 4, paragraph C and
9 which is not deemed subject to review under subsection 4,
11 paragraph B at the time it was established and which was not
13 reviewed and approved prior to establishment at the request of
 the applicant, and its actual 3rd fiscal year operating cost, as
 adjusted by an appropriate inflation deflator promulgated by the
 department, exceeds the expenditure minimum for annual operating
 cost in the 3rd fiscal year of operation following addition of
 these services.

15 Sec. 6. 22 MRSA §304-B, sub-§1, as enacted by PL 1981, c.
17 705, Pt. V, §17, is amended to read:

19 1. Criteria for subsequent review. The following
21 activities require subsequent review and approval, if the
 department has previously issued a certificate of need and if
 ~~within one year~~ after the approved activity is undertaken:

23 A. There is a significant change in financing, capital
25 cost or operating cost;

27 B. There is a change affecting the licensed or certified
 bed capacity as approved in the certificate of need;

29 C. There is a change involving the addition or termination
31 of the health services proposed to be rendered by the
 facility;

33 D. There is a change in the site or the location of the
35 proposed facility; or

37 E. There is a substantial change proposed in the design of
 the facility or the type of construction.

39 Sec. 7. 22 MRSA §304-D, as enacted by PL 1985, c. 661, §2,
41 is repealed.

43 Sec. 8. 22 MRSA §304-E, sub-§1, as enacted by PL 1987, c.
 725, §2, is amended to read:

45 1. Request for waiver. An applicant for a project
47 requiring a certificate of need, other than a ~~project-related to~~
 ~~acute-patient-care~~ or a project that could affect the financial
49 requirements of a hospital under chapter 107, may request a
 waiver of the review requirements under this chapter. The
51 applicant shall submit, with the request, sufficient written
 documentation to demonstrate that the proposed project meets the

1 conditions of this section and that sufficient public notice of
2 the proposed waiver has been given.

3 **Sec. 9. 22 MRSA §307, sub-§1-A** is enacted to read:

4
5 1-A. Preliminary report. Upon completing its preliminary
6 evaluation and analysis of an application, the department shall
7 issue a preliminary report in writing, analyzing the proposed
8 project in terms of the principles and criteria set forth in
9 section 309.

10
11 **Sec. 10. 22 MRSA §307, sub-§2-A, ¶D**, as enacted by PL 1985,
12 c. 737, Pt. A, §48, is amended to read:

13
14 D. Each appointed member of the committee shall be
15 compensated according to Title 5, ~~chapter--379~~ section
16 12004-I, subsection 38.

17
18 **Sec. 11. 22 MRSA §307, sub-§2-B, ¶¶B and F**, as enacted by PL
19 1981, c. 705, Pt. V, §25, are amended to read:

20
21 B. Findings, recommendations, reports, studies, surveys,
22 compilations, analyses and related documents prepared by
23 the staff of the agency shall be in final form and be made
24 available to affected persons at least 5 business days
25 prior to its hearings. Any reports, studies, surveys,
26 compilations or analyses developed by others but relied
27 upon by the staff in its preliminary report shall be
28 clearly and expressly referenced in that report. The
29 department shall make its preliminary staff report
30 available to the committee and affected persons at least 5
31 business days prior to a public hearing conducted by the
32 committee.

33
34 F. During the first 7 business days following the close of
35 a public hearing conducted by the committee, interested or
36 affected persons may submit written comments concerning any
37 aspect of the review under consideration, including the
38 preliminary report of the staff and any findings,
39 recommendations, reports, studies, surveys, compilations,
40 analyses or related documents included in the preliminary
41 report or relied upon by the staff in preparing that
42 report. The department shall provide copies of comments
43 submitted in that manner to all persons registered as
44 affected persons and to appointed members of the
45 committee. In reviews where no hearing is held, interested
46 or affected persons may submit comments 10 days after the
47 submission of the preliminary staff report, but no later
48 than the 70th day of a 90-day review cycle or the 130th day
49 of a 150-day review cycle.

1 **Sec. 12. 22 MRSA §307, sub-§5-A, ¶C**, as amended by PL 1985,
3 c. 418, §9, is further amended to read:

5 C. For purposes of this subsection, "informational record
7 developed in the course of review" includes the following:

9 (1) All applications, filings, correspondence and
11 documentary material submitted by applicants and
13 interested or affected persons prior to the termination
15 of the public comment period under subsection 2-B,
17 paragraph F or, if no hearing is held, prior to the
19 80th day of a 90-day review cycle and prior to the
21 140th day of a 150-day review cycle;

23 (2) All documentary material reflecting information
25 generated by the department, including reports,
27 surveys, studies, compilations, analyses or other
29 documents prepared by the staff in making any findings
31 or recommendations contained in its preliminary report,
33 prior to termination of the public comment period or,
35 if no hearing is held, prior to the 80th day of a
37 90-day review cycle and prior to the 140th day of a
39 150-day review cycle;

41 (3) Stenographic or electronic recording of any public
43 hearing or meeting held during the course of review,
45 whether or not transcribed;

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

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

(6) Officially noticed facts; and

(7) The final staff report of the department.

Documentary materials may be incorporated in the record by
reference, provided that registered affected persons are
afforded the opportunity to examine the materials.

Sec. 13. 22 MRSA §307, sub-§6-A, as amended by PL 1985, c.
418, is further amended to read:

6-A. Review cycles. The department shall establish review
cycles for the review of applications. There shall be at least
one review cycle for each type or category of project each
calendar year, the dates for which shall be published at least 3
months in advance. An application shall be reviewed during the
next scheduled review cycle following the date on which the

1 application is either declared complete or submitted for review
3 pursuant to section 306-A, subsection 4, paragraph B. Hospital
5 projects which must be considered within the constraints
7 established by the Certificate of Need Development Account
9 established pursuant to section 396-K may be grouped for
11 competitive review purposes at least once each year; provided
13 that, for minor projects, as defined by the department through
15 rules adopted pursuant to section 312, the department shall
17 allocate a portion of the Certificate of Need Development Account
19 for the approval of those projects and shall establish at least 6
21 review cycles each year for the review of those projects.
23 Nursing home projects which propose to add new nursing home beds
25 to the inventory of nursing home beds within the State may be
27 grouped for competitive review purposes consistent with
appropriations made available for that purpose by the
Legislature. The department may hold an application for up to 90
days following the commencement of the next scheduled review
cycle if, on the basis of one or more letters of intent on file
at the time the application is either declared complete or
submitted for review pursuant to section 306-A, subsection 4,
paragraph B, the department expects to receive within the
additional 90 days one or more other applications pertaining to
similar types of services, facilities or equipment affecting the
same health service area. Pertinent health service areas shall
be defined in regulations promulgated by the department pursuant
to section 312, ~~based on recommendations by the State Health
Coordinating Council.~~

29 Sec. 14. 22 MRSA §308, as amended by PL 1987, c. 436, §§4
and 5, is repealed.

31 Sec. 15. 22 MRSA §308-A is enacted to read:

33 §308-A. Simplified review; emergency review

35 1. Simplified review. The department may waive otherwise
37 applicable requirements and establish a simplified review process
39 for projects which do not warrant a full review. Procedures for
41 conducting these reviews shall be established by the department
in its rules.

43 A. The department may conduct a simplified review if the
applicant can demonstrate that the proposed project:

45 (1) Meets an already demonstrated need as established
47 by applicable state health plans or by the rules of the
department;

49 (2) Is a part of a minor modernization or replacement
program which is an integral part of an institutional

1 health care facility's health services or capital
2 expenditures plans required by section 305; and

3
4 (3) Is required to meet federal, state or local life
5 safety codes or other applicable requirements.

6
7 B. The department shall conduct a simplified review for
8 any continuing care retirement community applicant as
9 defined in section 303, subsection 4-A and which conforms
10 to the following conditions.

11 (1) There shall be no more than one nursing home bed
12 for every 4 independent living units in the CCRC. An
13 independent living unit means any residential unit that
14 is not required to be licensed as a nursing home bed.

15
16 (2) Admissions to the nursing home component of a CCRC
17 shall be limited to persons who are residents of the
18 CCRC and who have paid their entrance fees, pursuant to
19 Title 24-A, chapter 73.

20 (3) The CCRC may not obtain state public assistance
21 certification or funds for any persons residing in the
22 facility.

23 (4) The CCRC must comply with Title 24-A, chapter 73,
24 and regulations promulgated under that chapter.

25
26 C. A certificate of need shall be issued whenever the
27 department determines:

28 (1) That the applicant is fit, willing and able to
29 provide health services at the proper standard of care;
30 and

31 (2) That the proposed services are consistent with the
32 orderly and economic development of health facilities
33 and health resources for the State and are in
34 accordance with standards, criteria or plans adopted
35 and approved pursuant to the state health plan
36 developed by the department.

37
38 2. Emergency review. In order to expedite the review of
39 an application submitted in response to an emergency situation,
40 the department may establish a schedule for the review of an
41 application which commences on a day other than the first day of
42 an established review cycle.

43
44 A. The department shall determine that an emergency
45 situation exists whenever it finds that an applicant has
46 demonstrated:

1
3 (1) The necessity for immediate or temporary relief
5 due to natural disaster, fire, unforeseen safety
7 consideration or other circumstances;

9 (2) The serious adverse effect of delay on the
11 applicant and the community that would be occasioned by
13 compliance with the regular requirements of this
15 chapter and the rules promulgated by the department;
17 and

19 (3) That there is a lack of substantial change in the
21 facility or its services as they existed before the
23 emergency situation or that the facility will provide
25 services that:

27 (a) Existed in the community before the emergency
29 situation;

31 (b) Were disrupted in the facility;

33 (c) Are essential for the health or safety of the
35 community; and

37 (d) Will otherwise be unavailable within a
39 reasonable time.

41 B. The department may waive the review of an acquisition
43 or proposed use of major medical equipment required
45 pursuant to section 304-A if the equipment will be used to
47 provide services to inpatients of a hospital only on a
49 temporary basis in the case of:

51 (1) A natural disaster;

(2) A major accident; or

(3) Equipment failure.

 Sec. 16. 22 MRSA §309, sub-§2, as amended by PL 1985, c. 661,
§§4 and 5, is further amended to read:

 2. ~~Criteria for certificate of need. In the determination~~
~~to issue or deny a certificate of need under subsection 1, the~~
~~department shall, among other criteria, consider the following~~
 The department shall consider at least the following criteria
when reviewing any application, whether in accordance with
procedures for full review, simplified review, emergency review,
review of competing applications, subsequent review or any other
type of review authorized under this Act:

- 1 A. The relationship of the health services being reviewed
2 to the state health plan;
- 3
- 4 B. The relationship of the health services being reviewed
5 to the health services and capital requirements' plans, if
6 any, of the applicant;
- 7
- 8 C. The current and projected needs that the population
9 served or to be served has for the proposed services;
- 10
- 11 D. The availability of less costly alternatives or more
12 effective methods of providing the proposed services;
- 13
- 14 E. The relationship of the proposed services to the
15 existing health care systems;
- 16
- 17 F. The availability of resources, including health
18 personnel, management personnel and funds for capital and
19 operating needs, for the provision of the proposed services
20 and the availability of alternative uses of the resources
21 for the provision of other health services;
- 22
- 23 G. The relationship, including the organizational
24 relationship, of the proposed services to ancillary or
25 support services;
- 26
- 27 H. The special needs and circumstances of health
28 maintenance organizations;
- 29
- 30 I. The special needs and circumstances of those entities
31 which provide a substantial portion of their services or
32 resources, or both, to individuals not residing in health
33 service areas in which the entities are located or in
34 adjacent health service areas;
- 35
- 36 J. The importance of recognizing the public's choice of
37 allopathic or osteopathic health services by considering
38 the unique needs and circumstances of providers of
39 allopathic and osteopathic health care;
- 40
- 41 K. The costs and methods of any proposed construction or
42 modification of a facility, including the costs and methods
43 of energy provisions;
- 44
- 45 L. The probable impact of the proposal being reviewed on
46 the costs of providing health services;
- 47
- 48 M. The need for utilizing new technological developments
49 on a limited experimental basis in the absence of
50 sufficient data to establish the need for the services;
- 51

1 N. The gains that may be anticipated from innovative
3 measures in the organization, financing and delivery of
health care and the development of comprehensive services
5 for the community to be served;

7 O. The special needs and circumstances of biomedical and
behavioral research projects which are designed to meet a
9 national need and for which local conditions offer special
advantages; and

11 P. For any facility located within 30 miles of the state
border, the gains that may be anticipated from the ability
13 to attract health care consumers from out-of-state and the
ability to provide health care for Maine citizens who
15 formerly had to obtain that care out-of-state;

17 O. The immediate and long-term financial and economic
feasibility of the proposal, as well as the probable effect
19 of the proposal on the costs of, and charges and net
patient revenues for providing, health services by the
21 person proposing the project;

23 R. The effect of the means proposed for the delivery of
health services on the clinical needs of health
25 professional training programs in the area in which the
services are to be provided and, if applicable, the extent
27 to which the health professional schools in the area, if
any, will have access to the services for training purposes;

29 S. The probable impact of the proposal being reviewed on
the costs of providing health services by the person
31 proposing the construction project and on the costs and
charges to the public of providing health services by other
33 persons;

35 T. The special circumstances of health care facilities
37 with respect to conserving energy;

39 U. The effect on competition, including whether the effect
of issuing or denying the certificate of need may be
41 substantially to lessen competition, create a monopoly or
restrain trade; and

43 V. The quality of any health care provided by the
45 applicant in the past.

47 Sec. 17. 22 MRSA §309, sub-§3, as enacted by PL 1981, c. 705,
Pt. V, §33, is repealed.

49 Sec. 18. 22 MRSA §309, sub-§5, as enacted by PL 1981, c. 705,
51 Pt. V, §33, is amended to read:

1 5. Standards applied in certificate of need. The
3 commissioner shall, in issuing a certificate of need, make his
5 decision, to the maximum extent practicable, directly related to
7 criteria established under federal laws and standards or criteria
9 prescribed in regulations promulgated by the department pursuant
11 to subsections 1 to 4 and section 312.

13 The commissioner shall not deny issuance of a certificate of
15 need, or make his decision such issuance subject to fulfillment
17 of a condition on the part of the applicant, except where the
19 denial or condition directly relates to criteria established
21 under federal laws and standards or criteria prescribed in
23 regulations promulgated by the department in accordance with
25 subsections 1 to 4 and section 312, which are pertinent to the
27 application.

29 **Sec. 19. 22 MRSA §309, sub-§6**, as amended by PL 1987, c. 436,
31 §6, is further amended to read:

33 6. Hospital projects. Notwithstanding subsections 1, 4 and
35 5, the department may not issue a certificate of need for a
37 project which is subject to the provisions of section 396-D,
39 subsection 5, and section 396-K, if the associated costs exceed
41 the amount which the commission has determined will have been
43 credited to the Certificate of Need Development Account pursuant
45 to section 396-K, after accounting for previously approved
47 projects. A project shall not be denied solely on the basis of
49 exceeding the amount remaining in the Certificate of Need
51 Development Account or Hospital Development Account in a
particular payment year and shall be held for further
consideration by the department in the first appropriate review
cycle beginning after the Certificate of Need Development Account
or Hospital Development Account is credited with additional
amounts. Projects which are carried forward shall compete equally
with newly proposed projects. For the purposes of this
subsection, a project may be held for a final decision beyond the
time frames set forth in section 307, ~~subsections~~ subsection 3
and-4.

Sec. 20. 22 MRSA §311, as amended by PL 1985, c. 701, is
repealed and the following enacted in its place:

§311. Remedy

 1. Review. Any person aggrieved by a final decision of
the department made under the provisions of this Act shall be
entitled to review in accordance with the Maine Administrative
Procedure Act, Title 5, chapter 375, subchapter VII. A decision
of the department to issue a certificate of need or to deny an
application for a certificate of need shall not be considered
final until the department has taken final action on a request
for reconsideration under section 310.

1
2 2. New information or changes in circumstances. A
3 decision by the department is not final when opportunity for
4 reconsideration under section 310 exists with respect to matters
5 involving new information or changes in circumstances. When new
6 information or changes in circumstances are not alleged by the
7 applicant or other person aggrieved by the decision, a person
8 aggrieved by a decision of the department may, at its option,
9 seek reconsideration under section 310 or may seek direct
10 judicial review under this section.

11
12 3. Security required. In civil actions which challenge a
13 decision to issue a certificate of need and which are brought by
14 an actual or potential competitor of the recipient of the
15 certificate of need, the court shall require the party seeking
16 judicial review to give security in such sums as the court deems
17 proper, for the payment of such costs and damages as may be
18 incurred or suffered by any other party who is found to have been
19 wrongfully delayed or restrained from proceeding to implement the
20 certificate of need, provided that for good cause shown and
21 recited in the order, the court may waive the giving of security.

22 A. A "competitor," as used in this subsection, means
23 either another applicant who participated in the agency
24 review in which the certificate of need was granted or
25 another provider of the type of services which are the
26 subject of that review who offers these services in a
27 community which the recipient of the certificate of need
28 intends to serve.

29
30 B. A surety upon a bond or undertaking under this
31 subsection submits the person giving the security to the
32 jurisdiction of the court and irrevocably appoints the
33 clerk of the court as that person's agent, upon whom any
34 papers affecting the liability on the bond or undertaking
35 may be served. That liability may be enforced on motion
36 without the necessity of an independent action. The motion
37 and such notice of the motion as the court prescribes may
38 be served on the clerk of the court who shall forthwith
39 mail copies to the persons giving the security if their
40 addresses are known.

41
42 Sec. 21. 22 MRSA §312, as amended by PL 1981, c. 705, Pt. V,
43 §34, is further amended to read:

44 §312. Rules

45
46 The department shall adopt any rules, regulations,
47 standards, criteria or plans that may be necessary to carry out
48 the provisions and purposes of this Act. The department shall, to
49 the extent applicable, take into consideration recommendations
50 contained in the state health plan as approved by the Governor

1 department. The department shall provide for public notice and
3 hearing on all proposed rules, ~~regulations~~, standards, criteria,
5 plans or schedules pursuant to Title 5, chapter 375. The
department is authorized to accept any federal funds to be used
for the purposes of carrying out this chapter.

7 **Sec. 22. 22 MRSA §316-A**, as amended by PL 1983, c. 200, §§1,
2 and 3, is repealed and the following enacted in its place:

9

§316-A. Exemptions

11

13 Except as otherwise specifically provided, nothing in this
14 Act may be construed to preempt, replace or otherwise negate the
15 requirements of any other laws or regulations governing health
16 care facilities. The requirements of this Act may not apply with
17 respect to any health care facility operated by religious groups
relying solely on spiritual means through prayer for healing.

19 **Sec. 23. 22 MRSA §323**, as enacted by PL 1981, c. 705, Pt. V,
21 §39, is repealed:

21

23 **Sec. 24. 22 MRSA §324**, as enacted by PL 1981, c. 705, Pt. V,
§40, is repealed.

FISCAL NOTE

25

27 The only additional expenses associated with the amendments
28 contained herein amount to approximately \$700 per year for
29 incremental per diem costs for the members of the Certificate of
Need Advisory Committee, for fiscal years 1989-90 and 1990-91.

31

STATEMENT OF FACT

33

35 This bill proposes to bring the Certificate of Need Act up
36 to date and to address problems the Department of Human Services
37 has encountered in monitoring the current health care system.