

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2433

H.P. 1765

House of Representatives, March 14, 1990

Reported by Representative MANNING for the Commission to Study the Certificate of Need Law and the Impact of Competitive Market Forces on Ambulatory Health Services pursuant to Public Law 1989, chapter 588, Part A, section 56.

Reference to the Joint Standing Committee on Human Resources suggested and printing ordered under Joint Rule 18.

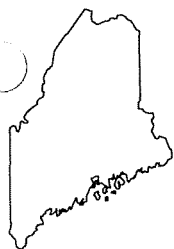
A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Extend the Certificate of Need Program to All Major
Medical Equipment, Raise the Threshold for Review of Certain
Projects and Improve Access to Care in Nonhospital Settings.**



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

2
4 **Sec. 1.** 22 MRSA §304-A, first ¶, as enacted by PL 1981, c. 705, Pt. V, §16, is amended to read:

6 No person may enter into any commitment for financing a project which that requires a certificate of need or incur an obligation for the project without having sought and received a certificate of need, except that this prohibition shall does not apply to commitments for financing conditioned upon the receipt of a certificate of need or to obligations for predevelopment activities of less than \$150,000 for health care facilities other than hospitals or \$250,000 for hospitals.

14 **Sec. 2.** 22 MRSA §304-A, sub-§2, as amended by PL 1987, c. 363, §§1 and 2, is repealed and the following enacted in its place:

18 2. Acquisitions of major medical equipment. The acquisition by any person of major medical equipment. There is a waiver for the use of major medical equipment on a temporary basis as provided in section 308, subsection 4;

22 **Sec. 3.** 22 MRSA §304-A, sub-§3, as amended by PL 1987, c. 436, §1, is further amended to read:

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

32 **Sec. 4.** 22 MRSA §304-A, sub-§3-A is enacted to read:

34 3-A. Hospital capital expenditures. The obligation, by or on behalf of a hospital, of any capital expenditure of \$1,000,000 or more, except that any transfer of ownership of a hospital is reviewable;

40 **Sec. 5.** 22 MRSA §304-A, sub-§§5 and 6, as enacted by PL 1981, c. 705, Pt. V, §16, are amended to read:

42 **5. Termination of a health service.** The obligation of any capital expenditure by or on behalf of a health care facility which other than a hospital that is associated with the termination of a health service which that was previously offered by or on behalf of the health care facility;

48 **6. Changes in bed complement.** Any change in the existing bed complement of a health care facility other than a hospital, in any 2-year period, which that:

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

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

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

16 Sec. 6. 22 MRSA §304-A, sub-§6-A is enacted to read:

18 6-A. Increases in licensed bed capacity of a hospital. Any
change in the existing bed complement of a hospital, in any
2-year period, that:

20 A. Increases the licensed or certified bed capacity of the
22 hospital by more than 10% or more than 5 beds, whichever is
less; or

24 B. Increases the number of beds licensed or certified by
26 the department to provide a particular level of care by more
than 10% of that number or more than 5 beds, whichever is
28 less;

30 Sec. 7. 22 MRSA §304-A, sub-§7, as enacted by PL 1981, c. 705,
Pt. V, §16, is amended to read:

32 7. Predevelopment activities. Any appropriately
34 capitalized expenditure of \$150,000 or more or, in the case of
hospitals, \$250,000 or more for predevelopment activities
36 proposed to be undertaken in preparation for any project which
that would itself require a certificate of need;

38 Sec. 8. 22 MRSA §382, sub-§9-A is enacted to read:

40 9-A. Outpatient services. "Outpatient services" means all
42 therapeutic or diagnostic health care services rendered to a
person who has not been admitted to a hospital as an inpatient.

44 Sec. 9. 22 MRSA §1715 is enacted to read:

46 §1715. Access requirements applicable to certain health care
48 providers

50 1. Access requirements. Any person, including, but not
52 limited to, an affiliated interest as defined in section 396-L
that meets the requirements of this subsection, shall provide

2 services to individuals who are eligible for charity care in
3 accordance with a charity care policy adopted by the affiliate or
4 provider that is consistent with regulations applicable to
5 hospitals under section 396-F. A person is subject to this
6 subsection if that person:

7 A. Is either a direct provider of major ambulatory service,
8 as defined in section 382, subsection 8-A, or is or has been
9 required to obtain a certificate of need under former
10 section 304 or section 304-A;

11 B. Provides outpatient services as defined in section 382,
12 subsection 9-A; and

13 C. Provides one or more of the following services:

14 (1) Imaging services, including, but not limited to,
15 magnetic resonance imaging, computerized tomography,
16 mammography and radiology. For purposes of this
17 section, imaging services do not include those where:

18 (a) The services are owned by a community health
19 center, a physician or group of physicians;

20 (b) The services are offered solely to the
21 patients of the center, the physician or group of
22 physicians; and

23 (c) Referrals for the purpose of performing such
24 services are not accepted from other physicians;

25 (2) Laboratory services provided by a hospital or by a
26 medical laboratory licensed in accordance with the
27 Maine Medical Laboratory Commission, or licensed by an
28 equivalent out-of-state licensing authority, excluding
29 those licensed laboratories owned by community health
30 centers, a physician or group of physicians where the
31 laboratory services are offered solely to the patients
32 of the center, the physician or group of physicians;

33 (3) Cardiac diagnostic services, including cardiac
34 catheterization and angiography but excluding
35 electrocardiograms and electrocardiograph stress
36 testing;

37 (4) Lithotripsy services;

38 (5) Services provided by free-standing ambulatory
39 surgery facilities certified to participate in the
40 Medicare program; or

2 (6) Any other service performed in an outpatient
3 setting requiring the purchase of new equipment costing
4 \$500,000 or more or for which the charge per unit of
5 service is \$250 or more.

6 2. Enforcement. The requirements of subsection 1 are
7 enforced through the following mechanisms.

8
9 A. Any person who knowingly violates any provision of this
10 section or any valid order or rule made or promulgated
11 pursuant to section 396-F, or who willfully fails, neglects
12 or refuses to perform any of the duties imposed under this
13 section, commits a civil violation for which a forfeiture of
14 not less than \$200 and not more than \$500 per patient may be
15 adjudged with respect to each patient denied access unless
16 specific penalties are elsewhere provided. Any forfeiture
17 imposed under this section may not exceed \$5,000 in the case
18 of the first judgment under this section against the
19 provider, \$7,500 in the case of a 2nd judgment against the
20 provider or \$10,000 in the case of the 3rd or subsequent
21 judgment against the provider. The Attorney General is
22 authorized to prosecute such civil violations.

23 B. Upon application of the Attorney General or any affected
24 patient, the Superior Court or District Court has full
25 jurisdiction to enforce the performance by providers of
26 health care of all duties imposed upon them by this section
27 and any valid regulations adopted pursuant to section 396-F.

28 C. In any civil action under this section, the court, in
29 its discretion, may allow the prevailing party, other than
30 the Attorney General, reasonable attorney's fees and costs,
31 and the Attorney General is liable for attorney's fees and
32 costs in the same manner as a private person.

33 Sec. 10. PL 1989, c. 588, Pt. A, §56, sub-§1, ¶B is amended by
34 inserting after the 2nd sentence a new sentence to read:

35 Its study must also include evaluation of methods of sizing
36 the hospital development account.

37

38

STATEMENT OF FACT

39

40 This bill reflects the recommendations of a minority of the
41 Commission to Study the Certificate of Need Law and the Impact of
42 Competitive Market Forces on Ambulatory Health Services.

43

The bill:

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50
52

1. Makes several changes to the current scope of the certificate of need law, which requires that certain investments and additional expenditures for the provision of health services may not take place unless, after appropriate review, a certificate for them is issued. It amends the Maine Revised Statutes, Title 22, section 304-A, to raise the minimum capital expenditure for which certificate of need review is required from \$350,000 to \$1,000,000 in the case of hospitals. The threshold for review of predevelopment activities by hospitals is increased from \$150,000 to \$250,000;

2. Eliminates certificate of need review for the termination of a health service by a hospital. It modifies the requirements with respect to changes in bed complement to allow a hospital to decrease its number of licensed beds or relocate them without a certificate of need. Certificate of need review of substantial increases in licensed bed capacity of a hospital would still be required;

3. Expands certificate of need review of the acquisition of major medical equipment to any person, whether or not the equipment will be located in a health care facility. This change to the certificate of need law assures that hospitals and nonhospitals will be regulated in the same manner when major new capital investments in health care technology are being made;

4. Adds a definition of outpatient services to the definitions set forth in the enabling legislation for the Maine Health Care Finance Commission. This definition is added to clarify the distinction between inpatient and outpatient activities, not only for purposes of the Maine Health Care Finance Commission law, but also for the purpose of access requirements established in this bill for nonhospital providers of health care;

5. Establishes access requirements applicable to affiliated interests of hospitals and certain other nonhospital providers. This language is identical to that recommended by the majority of the commission. Its purpose is to require providers of significant outpatient services in facility settings to provide access to health care that parallels the access requirements for hospitals under Title 22, section 396-F. It is not intended to apply to individual providers that do not employ special facilities or major items of special equipment; and

6. Modifies the charge of the commission to require that the methods of sizing the hospital development account be evaluated as part of the 2nd year of the commission's work. This language is identical to a provision included in the bill recommended by the majority of the commission.