

# MAINE STATE LEGISLATURE

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "*A*" to H.P. 1767, L.D. 2435, Bill, "An Act to Modify the Applicability of the Certificate of Need Program to Hospitals and to Exempt Certain Hospital Restructuring Activities from the Requirement of Approval by the Maine Health Care Finance Commission"

Amend the bill by inserting after the enacting clause the following:

'Sec. 1. 4 MRSA §152, sub-§5, ¶¶P and Q, as enacted by PL 1989, c. 392, §1, are amended to read:

P. Actions to compel the compliance with court orders including the right to appoint persons to sign instruments as provided for in the Maine Rules of Civil Procedure; and

Q. Actions in which the equitable relief is sought through an equitable defense, a counterclaim, a cross-claim or other responsive pleading or reply permitted by the Maine Rules of Civil Procedure; and

Sec. 2. 4 MRSA §152, sub-§5, ¶R is enacted to read:

R. Actions to enforce access to health care under Title 22, section 1715.'

Further amend the bill in section 9 by striking out all of the first line (page 3, line 32 in L.D.) and inserting in its place the following:

'Sec. 9. 22 MRSA §396-L, sub-§2, ¶B-1 is enacted to read:'

Further amend the bill by inserting after section 9 the following:

'Sec. 10. 22 MRSA §396-L, sub-§4, as repealed and replaced by PL 1985, c. 778, §5, is amended by amending the first paragraph to read:

4. Hospital restructuring. Unless exempt by rule or order

2 of the commission or by paragraph F or H, no hospital  
restructuring may take place without the approval of the  
4 commission. No hospital restructuring may be approved by the  
commission unless it is established by the applicant for approval  
6 that the hospital restructuring is consistent with the interests  
of the people of the State.'

8 Further amend the bill in section 10 by striking out all of  
the first line (page 3, line 45 in L.D.) and inserting in its  
10 place the following:

12 'Sec. 10. 22 MRSA §396-L, sub-§4, ¶¶H and I are enacted to  
read:'

14 Further amend the bill in section 10 by inserting at the end  
16 the following:

18 'I. No less than 10 days prior to the effective date of any  
20 hospital restructuring that is exempt from approval under  
paragraph H, each affected hospital shall file with the  
22 commission a notice including a description of the  
contemplated restructuring, the date on which it is expected  
24 to occur and other information the commission may reasonably  
require about the characteristics and expected effects of  
26 the restructuring. No more than 30 days after each  
restructuring described in a notice under this subsection  
28 occurs, each affected hospital shall file with the  
commission a report of the date on which the restructuring  
30 took place, any differences between the restructuring that  
occurred and the description furnished in the notice and any  
32 corrections or amendments of the other information in the  
notice that is necessary to reflect the results of the  
34 restructuring that actually took place.'

36 Further amend the bill by striking out all of section 12 and  
inserting in its place the following:

38 'Sec. 12. 22 MRSA §1715 is enacted to read:

40 **§1715. Access requirements applicable to certain health care**  
42 **providers**

44 **1. Access requirements. Any person, including, but not**  
**limited to an affiliated interest as defined in section 396-L,**  
**that is subject to the requirements of this subsection, shall**  
46 **provide the services listed in paragraph C to individuals who are**  
**eligible for charity care in accordance with a charity care**  
48 **policy adopted by the affiliate or provider that is consistent**  
**with rules applicable to hospitals under section 396-F. A person**  
50 **is subject to this subsection if that person:**

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

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

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

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

16 (a) Screening procedures that are not related to  
18 the diagnosis or treatment of a specific  
condition; or

20 (b) Services when:

22 (i) The services are owned by a community  
24 health center, a physician or group of  
physicians;

26 (ii) The services are offered solely to the  
28 patients of that center, physician or group  
of physicians; and

30 (iii) Referrals for the purpose of  
32 performing those services are not accepted  
from other physicians;

34 (2) Laboratory services performed by a hospital or by  
36 a medical laboratory licensed in accordance with the  
Maine Medical Laboratory Commission, or licensed by an  
38 equivalent out-of-state licensing authority, excluding  
40 those licensed laboratories owned by community health  
centers, a physician or group of physicians where the  
laboratory services are offered solely to the patients  
of that center, physician or group of physicians;

42 (3) Cardiac diagnostic services, including, but not  
44 limited to, cardiac catheterization and angiography but  
46 excluding electrocardiograms and electrocardiograph  
stress testing;

48 (4) Lithotripsy services;

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

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

8           This subsection does not apply to a service that was provided by  
10           a provider prior to July 1, 1990. This paragraph is repealed  
              July 1, 1993.

12           2. Enforcement. The requirements of subsection 1 are  
14           enforced through the following mechanisms.

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

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

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

42           D. It is an affirmative defense to any legal action brought  
44           under this section that the person subject to this section  
46           denied access to services on the grounds that the economic  
              viability of the facility or practice would be jeopardized  
              by compliance with this section.'

48           Further amend the bill in section 14 in subsection 1 in the  
50           14th line (page 7, line 47 in L.D.) by striking out the  
              following: "2" and inserting in its place the following: '4'

2 Further amend the bill by striking out all of section 15 and  
inserting in its place the following:

4 'Sec. 15. Effective date. Sections 1 to 15 and 17 of this Act  
take effect on October 1, 1991.'

6  
8 Further amend the bill by renumbering the sections to read  
consecutively.

10 Further amend the bill by inserting at the end before the  
statement of fact the following:

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14

### FISCAL NOTE

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18 The Judicial Department has indicated that additional cases  
may be filed as a result of this bill and anticipates that the  
additional costs can be absorbed within its resources.

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22 The Department of the Attorney General will absorb the costs  
of prosecuting civil violations under the provisions of this bill  
within its budgeted resources. A General Fund appropriation will  
be necessary, however, if the Department of the Attorney General  
is ordered to pay attorney's fees and other costs in the same  
manner as a private person. This amount can not be determined at  
this time.

28

30 The Maine Health Care Finance Commission will provide staff  
to the study commission within its available resources.'

32

### STATEMENT OF FACT

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36 This amendment clarifies that the requirement of providing  
charity care applies only to the services listed in the bill and  
not to all services offered by a provider. The amendment  
38 excludes from the charity care obligation certain imaging  
screening procedures and changes the factors qualifying a service  
with a per unit charge of \$250 or more. The amendment also  
40 provides an affirmative defense to a charge of failure to provide  
the required charity care, exempts for 3 years services that are  
42 in existence on July 1, 1990, and adds a fiscal note.

44

46 In addition, this amendment makes a conforming technical  
change in the Maine Revised Statutes, Title 22, section 396-L and  
adds reporting requirements to allow the Maine Health Care  
48 Finance Commission to monitor the frequency, characteristics and  
timing of those hospital restructurings that will no longer  
50 require prior approval.