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Legislative Document **No. 1875**

S.P. 689 In Senate, February 15, 1994

An Act to Authorize and Regulate the Integrated Delivery of Services by the Licensed Acute Care Hospitals in the City of Portland.

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Human Resources suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.
Cosponsored by Senator: HARRIMAN of Cumberland, Representatives: BRENNAN of Portland, PENDEXTER of Scarborough, TOWNSEND of Portland.

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

Whereas, Maine Medical Center, Mercy Hospital and Brighton Medical Center, all hospitals located in Portland, are seeking to develop a system for the integrated delivery of services; and

Whereas, an integrated delivery system can, by consolidating and coordinating services and support functions, enhance access to, reduce the total cost of, and maintain the quality of health care services to the residents of the area served by these hospitals; and

Whereas, the establishment and operation of an integrated delivery system by the 3 general hospitals in the Portland area can best be undertaken with clear authorization from the Legislature and active supervision of the resulting changes in hospital revenues, in order to ensure that the public obtains the benefits of coordinated services; and

Whereas, the existing administrative mechanism for regulating hospital revenues is not suited to assessing the rapid changes that will take place as an integrated delivery system is implemented nor capable of taking into account the coordinated resources of 3 separate community hospitals providing their services on an integrated basis; and

Whereas, given the current rates of increase in health care costs and the rapid pace of change in both financing and delivery of health care, the benefits of an integrated delivery system must not be delayed; 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. 22 MRSA §304-A, 2nd ¶, as amended by PL 1987, c. 725, §1, is further amended to read:

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

Sec. 2. 22 MRSA §304-F is enacted to read:

§304-F. Waiver for integrated delivery system consolidations

The certificate of need review requirements under this chapter are waived for any acquisition, expenditure, new health service or increase in licensed bed capacity that is necessary in order to form or to operate the integrated delivery system approved under section 393, only if one of the following circumstances apply.

A. The acquisition, expenditure, new health service or increase in bed capacity was described to the commission in the request for approval of the integrated delivery system under section 393 and was included in the approval granted by the commission.

B. The equipment or other assets in an acquisition consists of items transferred or conveyed to a hospital participating in the integrated delivery system by another hospital participating in that system.

C. A capital expenditure by or on behalf of a hospital participating in the integrated delivery system occurs simultaneously with a reduction in the value of the capital assets of another hospital or hospitals in the integrated delivery system if the reduction in value is equal to or greater than the value of the expenditure.

D. The new health service is a service previously offered by another hospital participating in the integrated delivery system.

Sec. 3. 22 MRSA §382, sub-§§7-A and 7-B are enacted to read:

7-A. Integrated delivery system. "Integrated delivery system" means the system established by the acute care general hospitals located in the City of Portland to deliver services on a coordinated basis, as authorized in section 393.

7-B. Integrated delivery system transition period. "Integrated delivery system transition period" means the first 60 months operation of the integrated delivery system.

Sec. 4. 22 MRSA §393 is enacted to read:

§393. Integrated delivery system

1. Integrated delivery system authorized. Those acute care hospitals located in the City of Portland may establish an integrated delivery system for the purposes of coordinating and, to the extent appropriate, consolidating the health care services delivered by the hospitals.

2. Governance structure. The hospitals specified in subsection 1 may adopt a governance structure or a joint operating agreement to provide coordinated or consolidated management services, budget development and control services and any other services or functions necessary or useful in developing and operating a system for integrated delivery of services by the hospitals.

3. Revenues. The revenues charged and collected for patient services by the integrated delivery system or any of the hospitals participating in that system are collectively subject to the limits established in accordance with section 396, subsection 8.

Sec. 5. 22 MRSA §396, sub-§1, as repealed and replaced by PL 1989, c. 588, Pt. A, §9, is amended to read:

1. Authority. The commission may establish and approve revenue limits and apportionment methods for individual hospitals, except for those hospitals that are subject to a community revenue limit in accordance with subsection 8.

Sec. 6. 22 MRSA §396, sub-§8 is enacted to read:

8. Community revenue limit system. The commission shall establish a community revenue limit system, which applies to the aggregate patient service charges of the integrated delivery system authorized in section 393. The community revenue limit system constitutes the exclusive mechanism for control of the revenues of hospitals within the integrated delivery system and is a substitute for the determination of separate financial requirements, revenue limits and apportionment and allocation methods for each of the participating hospitals as otherwise provided in this chapter. The commission may specify the procedure and calculations applicable to the community revenue limit system either by rule or by order entered after opportunity for hearing but without rulemaking proceedings.

A. The commission shall establish community revenue limits and shall determine compliance with those revenue limits in accordance with the provisions of this chapter that apply to the average revenue per case system described in subsection 3, except that a single average revenue per case limit, a single outpatient service revenue limit or schedule of outpatient rates per unit of service and a single capital revenue limit component must be applied to the sum of the acute patient care service revenues of the hospitals participating in the integrated delivery system.

B. Notwithstanding section 396-C, subsection 1, the commission shall establish beginning and ending dates for the payment year of the integrated delivery system. This payment year is not required to coincide with the fiscal years of the hospitals participating in the integrated delivery system. In order to facilitate the transition to the community revenue limit system, the commission may specify an initial common payment year that is less than or greater than 12 months in duration and may make corresponding adjustments in the lengths of the payment years of the participating hospitals for the period immediately preceding implementation of the integrated delivery system.

C. The commission shall determine payment year financial requirements for the integrated delivery system for the first payment year of that system by combining the financial requirements of each of the participating hospitals and making such adjustments as may be necessary to establish a common payment year for all participating hospitals. Following the first payment year of the integrated delivery system, payment year financial requirements must be determined in accordance with section 396-C, subsection 3, as modified by the provisions of this subsection.

D. For each payment year during the integrated delivery system transition period the commission may make an offsetting adjustment to reflect the impact on the community financial requirements of the consolidation of services and functions of the participating hospitals that can reasonably be accomplished by means of the coordinated planning, budgeting, management and delivery of services by the integrated delivery system.

E. During the integrated delivery system transition period the commission may not make adjustments to community financial requirements as otherwise provided in section 396-D, subsection 8 for the termination or significant reduction of health services as a result of transfers of services among hospitals in the integrated delivery system, for the transfer or assignment of functions to another hospital within the integrated delivery system or for mergers, consolidations or hospital restructuring involving only hospitals within the integrated delivery system.

F. To the extent that the integrated delivery system would otherwise receive an increase in its financial requirements as a result of the application of the standard component adjustment specified in section 396-D, subsection 6-A, the commission shall determine that portion of the standard

component increase that is attributable to consolidation efficiencies for which an offsetting adjustment was made in accordance with paragraph D. The commission shall ensure that the integrated delivery system does not receive that portion of any standard component adjustment that would otherwise result from the consolidation efficiencies for which an offsetting adjustment was made.

G. The commission may not reduce the financial requirements of the integrated delivery system to reflect aggregate cost reductions resulting from actions or events unrelated to the coordination and consolidation of services and functions among the hospitals participating in the integrated delivery system.

H. By rule or by order entered after notice and opportunity for hearing the commission may deviate from the provisions of sections 396-D, 396-E, 396-F, 396-G, 3296-H and 396-I to the extent necessary to adapt the provisions of those sections to the calculation of community financial requirements and a community revenue limit applicable in the aggregate to the hospitals participating in the integrated delivery system. The commission shall make specific findings concerning the reasons that each deviation made pursuant to this paragraph is required in order to implement the community revenue limit system.

Sec. 7. 22 MRSA §396-I, sub-§3, ¶E is enacted to read:

E. Payments to hospitals in the integrated delivery system are made on the basis of prices established by the system consistent with the limits set by the commission. The commission shall establish by rule the necessary adjustment to approved revenues in subsequent payment years, to the extent that a determination is made that the system overcharged or undercharged purchasers and payors other than Medicare and Medicaid.

Sec. 8. 22 MRSA §396-L, sub-§2, as amended by PL 1989, c. 919, §11 and affected by §18, is further amended by amending the first paragraph to read:

2. Reporting and consideration of significant transactions; corporate plans. Statements of significant transactions and corporate plans ~~shall~~ must be submitted and considered as follows, except that statements of significant transactions or corporate plans are not required to be filed by hospitals participating in the integrated delivery system or by the integrated delivery system, with respect to transactions between or among the participating hospitals or between those hospitals

and any corporation having the purpose of coordinating or managing the integrated delivery system.

Sec. 9. 22 MRSA §396-L, sub-§4, ¶J is enacted to read:

J. Any hospital restructuring that is necessary to form or to operate the integrated delivery system authorized by section 393, including, without limitation, any transfer of existing hospital patient care services among the hospitals participating in the system, any transfer of assets or pledge of credit among the hospitals participating in the system and any formation of or transfer of assets to a separate corporation having the purpose of coordinating or managing the system may take place without commission approval.

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

5. Determination of available resources; exemption from corporate plan requirement. Unless a hospital has elected to have available resources determined under paragraph C or the hospital is participating in the integrated delivery system authorized by section 393, such resources ~~shall~~ must be determined under paragraph B. The available resources for the integrated delivery system authorized by section 393 must be determined on an aggregate basis, taking into account the affiliated interests of each of the hospitals participating in the integrated delivery system.

Sec. 11. 22 MRSA §396-L, sub-§7, ¶A, as enacted by PL 1989, c. 919, §14 and affected by §18, is amended to read:

A. No hospital or hospital-capitalized affiliate may transfer assets to or otherwise subsidize the operation of any affiliated interest, except to the extent that:

(1) The activities of the affiliated interest and any subsidies of them have been expressly approved by the commission in the course of a proceeding to approve an application for restructuring under subsection 4; ~~or~~

(2) The transfer or pledge, as applicable, is exempt from commission review subject to subsection 4, paragraph F~~.~~; or

(3) The transfer or subsidy takes place between or among hospitals participating in the integrated delivery system authorized in section 393.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

STATEMENT OF FACT

This bill authorizes the establishment of an integrated delivery system by the 3 acute care hospitals located in Portland. Recognizing the unique regulatory and economic issues presented by such integration, as well as the substantial opportunities for cost savings and improvement of services over time, the bill establishes a separate system by which the Maine Health Care Finance Commission will regulate revenues for services provided through the integrated delivery system.

The bill also exempts reallocations of services and assets within the integrated delivery system from the certificate of need review.

With respect to regulatory requirements other than revenue limits themselves, the commission's rules and its enabling law would continue to apply, except that certain restructuring and affiliated interest provisions would be modified for transactions among hospitals within the integrated system and for the formation of the system itself.

The major difference between regulation of individual hospitals and regulation of the system are the "community" approach to the establishment of financial requirements and revenue limits and the "consolidation efficiencies" adjustment, which would reduce financial requirements to reflect the savings resulting from consolidating services and functions.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.