

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)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 371

H.P. 269

House of Representatives, January 31, 1995

An Act to Abolish the Maine Health Care Finance Commission.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative WHITCOMB of Waldo.

Cosponsored by Representative: NASS of Acton, Senator: HANLEY of Oxford.

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

4 **PART A**

6 **Sec. A-1. 2 MRSA §6-B**, as enacted by PL 1983, c. 579, §1, is repealed.

8 **Sec. A-2. 3 MRSA §927, sub-§9, ¶B**, as repealed and replaced by PL 1991, c. 376, §11, is amended to read:

10 B. Independent agencies:

- 12 (1) Maine Conservation School;
- 14 (2) Office of State Historian;
- 16 (3) Maine Arts Commission;
- 18 (4) Maine State Museum Commission;
- 20 (5) Maine Historic Preservation Commission;
- 22 ~~(6) Maine Health Care Finance Commission;~~
- 24 (7) Board of Occupational Therapy Practice;
- 26 (8) Board of Respiratory Care Practitioners;
- 28 (9) Radiologic Technology Board of Examiners;
- 30 (10) Maine Library Commission;
- 32 (11) Maine Waste Management Agency; and
- 34 (12) Maine Court Facilities Authority.

36 **Sec. A-3. 5 MRSA §931, sub-§1, ¶L**, as amended by PL 1991, c. 376, §17, is repealed.

40 **Sec. A-4. 5 MRSA §1653, sub-§3, ¶¶B and C**, as enacted by PL 1983, c. 716, §2, are amended to read:

42 B. Receives public funds from one or more state departments or agencies; and

44 C. Is not an administrative unit of the Federal Government or State Government; ~~and.~~

48 **Sec. A-5. 5 MRSA §1653, sub-§3, ¶D**, as enacted by PL 1983, c. 716, §2, is repealed.

2 (2) Third-year annual operating costs of less than
3 \$250,000.

4 **2. Conditions of waiver.** As a condition of receipt of a
5 waiver of certificate of need review under subsection 1,
6 paragraph A, the hospital shall--not--be is subject to any
7 ~~adjustments--to--its--financial--requirements--pursuant--to--section~~
8 ~~396-D~~ conditions imposed by the department.

10 **3. Waiver process for certain new health services.** Any
11 hospital may file a request for waiver under subsection 1,
12 paragraph A, with the department describing the proposed project
13 and its projected associated capital costs and projected
14 operating costs, as appropriate. Within 15 days following
15 receipt of the hospital's waiver request and other information,
16 if requested, the department shall issue its waiver determination.

18 The department shall waive certificate of need review in all
19 cases where the request demonstrates that:

- 20 A. The project meets the criteria of subsection 1,
21 paragraph A; and
- 22 B. The hospital agrees to be bound by the conditions of
23 subsection 2.

26 ~~**5. Treatment of project by the Maine Health Care Finance**~~
27 ~~**Commission.**~~ ~~---The---total---capital---costs---and---operating---costs~~
28 ~~associated with a project described in subsection 1, paragraph A,~~
29 ~~shall not be debited against the Certificate of Need Development~~
30 ~~Account or the Hospital Development Account pursuant to section~~
31 ~~396-K.~~

34 **Sec. B-3. 22 MRSA §304-E, sub-§1,** as enacted by PL 1987, c.
35 725, §2, is amended to read:

36 **1. Request for waiver.** An applicant for a project
37 requiring a certificate of need, other than a project related to
38 acute patient care ~~or a project that could affect the financial~~
39 ~~requirements of a hospital under chapter 107,~~ may request a
40 waiver of the review requirements under this chapter. The
41 applicant shall submit, with the request, sufficient written
42 documentation to demonstrate that the proposed project meets the
43 conditions of this section and that sufficient public notice of
44 the proposed waiver has been given.

46 **Sec. B-4. 22 MRSA §307, sub-§6-A,** as amended by PL 1993, c.
47 410, Pt. FF, §2, is further amended to read:

50 **6-A. Review cycles.** The department shall establish review
cycles for the review of applications. There must be at least

one review cycle for each type or category of project each
2 calendar year, the dates for which must be published at least 3
months in advance. An application must be reviewed during the
4 next scheduled review cycle following the date on which the
application is either declared complete or submitted for review
6 pursuant to section 306-A, subsection 4, paragraph B. Hospital
projects--that--must--be--considered--within--the--constraints
8 established--by--the--Certificate--of--Need--Development--Account
established--pursuant--to--section--396-K--may--be--grouped--for
10 competitive--review--purposes--at--least--once--each--year--provided
that--for--minor--projects--as--defined--by--the--department--through
12 rules--adopted--pursuant--to--section--312--the--department--shall
allocate--a--portion--of--the--Certificate--of--Need--Development--Account
14 for--the--approval--of--those--projects--and--shall--establish--at--least--6
review--cycles--each--year--for--the--review--of--these--projects.
16 Nursing home projects that propose to add new nursing home beds
to the inventory of nursing home beds within the State may be
18 grouped for competitive review purposes consistent with
appropriations made available for that purpose by the
20 Legislature. A nursing home project that proposes renovation,
replacement or other actions that will increase Medicaid costs
22 and for which an application is filed after March 1, 1993 may be
approved only if appropriations have been made by the Legislature
24 expressly for the purpose of meeting those costs. The department
may hold an application for up to 90 days following the
26 commencement of the next scheduled review cycle if, on the basis
of one or more letters of intent on file at the time the
28 application is either declared complete or submitted for review
pursuant to section 306-A, subsection 4, paragraph B, the
30 department expects to receive within the additional 90 days one
or more other applications pertaining to similar types of
32 services, facilities or equipment affecting the same health
service area. Pertinent health service areas must be defined in
34 rules adopted by the department pursuant to section 312, based on
recommendations by the State Health Coordinating Council.

36
38 **Sec. B-5. 22 MRSA §309, sub-§1, ¶D**, as amended by PL 1993, c.
477, Pt. D, §4 and affected by Pt. F, §1, is further amended to
read:

40
42 D. That the proposed services are consistent with the
orderly and economic development of health facilities and
44 health resources for the State, that the citizens of the
State have the ability to underwrite the additional costs of
46 the proposed services and that the proposed services are in
accordance with standards, criteria or plans adopted and
approved pursuant to the state health plan developed by the
48 department and the findings of the Maine Health Care Finance
Commission under section 396-J with respect to the ability

2 ef--the--citizens--of--the--State--to--pay--for--the--proposed
services.

4 **Sec. B-6. 22 MRSA §309, sub-§6**, as amended by PL 1989, c. 502,
Pt. A, §65, is repealed.

6
8 **PART C**

10 **Sec. C-1. 22 MRSA c. 107**, as amended, is repealed.

12
14 **PART D**

16 **Sec. D-1. 22 MRSA §1714-A, sub-§2**, as amended by PL 1991, c.
568, §1, is further amended to read:

18 **2. Establishment of debt.** A debt is established by the
department when it notifies a provider of debt, ~~or when the Maine~~
20 ~~Health--Care--Finance--Commission--notifies--a--hospital--that--the~~
~~hospital--owes--the--department--pursuant--to--a--final--reconciliation~~
22 ~~decision--and--order.~~ A debt is collectible by the department 31
days after exhaustion of all administrative appeals and any
24 judicial review available under Title 5, chapter 375.

26 **Sec. D-2. 22 MRSA §1715**, as enacted by PL 1989, c. 919, §15
and affected by §18, is amended to read:

28
30 **§1715. Access requirements applicable to certain health care
providers**

32 **1. Access requirements.** Any person, including, but not
limited to an affiliated interest as defined in this section
34 396-L, that is subject to the requirements of this subsection,
shall provide the services listed in paragraph C to individuals
36 who are eligible for charity care in accordance with a charity
care policy adopted by the affiliate or provider ~~that--is~~
38 ~~eonsistent--with--rules--applicable--to--hospitals--under--section~~
396-F. A person is subject to this subsection if that person:

40
42 A. Is either a direct provider of major ambulatory service,
as defined in this section ~~382--subsection-8-A~~, or is or has
44 been required to obtain a certificate of need under the
former section 304 or 304-A;

46 B. Provides outpatient services as defined in this section
~~382--subsection-9-A~~; and

48
50 C. Provides one or more of the following services:

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

6 (a) Screening procedures that are not related to
7 the diagnosis or treatment of a specific
8 condition; or

10 (b) Services when:

12 (i) The services are owned by a community
13 health center, a physician or group of
14 physicians;

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

20 (iii) Referrals for the purpose of
21 performing those services are not accepted
22 from other physicians;

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

32 (3) Cardiac diagnostic services, including, but not
33 limited to, cardiac catheterization and angiography but
34 excluding electrocardiograms and electrocardiograph
35 stress testing;

38 (4) Lithotripsy services;

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

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

48 1-A. Definitions. As used in this section, unless the
49 context otherwise indicates, the following terms have the
50 following meanings.

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

A. "Affiliated interest" means:

- (1) A person who is a subsidiary of a hospital;
- (2) A person who is a parent entity of a hospital;
- (3) A person who is a subsidiary of a hospital's parent entity; or
- (4) A person, other than an individual, who:
 - (a) Controls a hospital or is controlled by a hospital or any of its affiliates as defined in subparagraphs (1) to (3); and
 - (b) Is engaged directly or indirectly in the provision of a health care service or services, the costs of which would be considered elements of financial requirements if performed by a hospital.

B. "Major ambulatory service" means surgical procedures, chiropractic methodologies or medical procedures, including diagnostic procedures and therapeutic radiological procedures, that require special facilities such as operating rooms or suites, special equipment such as fluoroscopic equipment or computed tomographic scanners or special rooms such as a post-procedure recovery room or short-term convalescent room.

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

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

A. Any person who knowingly violates any provision of this section ~~or any valid order or rule made or adopted pursuant to section 396-F~~, or who willfully fails, neglects or refuses to perform any of the duties imposed under this section, commits a civil violation for which a forfeiture of not less than \$200 and not more than \$500 per patient may be 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

2 judgment against the provider. The Attorney General is
authorized to prosecute the civil violations.

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

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

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

22 **Sec. D-3. 22 MRSA §2061, sub-§2,** as amended by PL 1993, c.
390, §24, is further amended to read:

24 **2. Review.** Each project for a health care facility has
26 been reviewed and approved to the extent required by the agency
of the State that serves as the Designated Planning Agency of the
28 State or by the Department of Human Services in accordance with
the provisions of the Maine Certificate of Need Act of 1978, as
30 amended, ~~or, in the case of a project for a hospital, has been~~
~~reviewed and approved by the Maine Health Care Finance Commission~~
32 ~~to the extent required by chapter 107;~~

34 **Sec. D-4. 22 MRSA §3189, sub-§4, ¶E,** as enacted by PL 1989, c.
588, Pt. A, §43, is amended to read:

36 E. The committee may study issues relating to
38 implementation of the program as it deems advisable. The
committee shall study what asset limits, if any, are
40 appropriate to determine eligibility for benefits under the
program. The study of asset limits shall must include
42 consideration of:

44 (1) The treatment of assets in other federal and state
46 medical programs serving the population with greater
income than the Medicaid program, including the
48 Hill-Burton program of hospital community care
described in United States Code, Title 42, Chapter 6-A,
Subchapter IV; the Medicaid expansion under the United
50 States Omnibus Budget Reconciliation Act of 1986,

2 Public Law 99-509; and the United States Family Support
3 Act of 1988, Public Law 100-482; ~~and the treatment of~~
4 ~~assets under the charity care income guidelines adopted~~
~~pursuant to section 396-F, subsection 1;~~

6 (2) The needs of working and nonworking participants
7 for funds to pay transportation and other work-related
8 costs, noncovered medical costs and other emergencies
9 and reasonable incentives for savings; and

10 (3) Program administrative costs.

12 The committee shall recommend a policy on assets to the
14 department for review.

16 **Sec. D-5. 22 MRSA §4311, sub-§1-A**, as enacted by PL 1983, c.
18 824, Pt. X, §4, is amended to read:

20 **1-A. Municipalities reimbursed.** When a municipality pays
21 for expenses approved pursuant to section 4313 for hospital
22 inpatient or outpatient care at any hospital ~~during the time~~
23 ~~preceding the hospital's first payment year, as defined in~~
24 ~~section 396-C, subsection 1,~~ on behalf of any person who is
25 otherwise eligible and who would have been entitled to receive
26 payments for hospital care if that care had been rendered prior
27 to May 1, 1984, for services under the Catastrophic Illness
28 Program, section 3185, the department shall reimburse the
municipality for 100% of those payments.

30 **Sec. D-6. 22 MRSA §4313, sub-§1**, as repealed and replaced by
32 PL 1987, c. 542, Pt. H, §§4 and 8, is amended to read:

34 **1. Emergency care.** In the event of an admission of an
35 eligible person to the hospital, the hospital shall notify the
36 overseer of the liable municipality within 5 business days of the
37 person's admission. In no event may hospital services to a
38 person who meets the financial eligibility guidelines, ~~adopted~~
~~pursuant to section 396-F, subsection 1,~~ be billed to the patient
39 or to a municipality.

42 **PART E**

44 **Sec. E-1. 24-A MRSA §6304, sub-§1**, as enacted by PL 1989, c.
46 931, §5, is amended to read:

48 **1. Assessment from policyholders and self-insureds.** With
49 respect to professional liability insurance policies for
50 physicians and hospitals issued on or after July 1, 1990, each
insurer shall collect an assessment from each policyholder. With

2 respect to professional liability insurance for self-insureds
issued on or after July 1, 1990, each self-insured shall pay an
4 assessment as directed by the superintendent. The superintendent
shall determine the amount of the assessment in accordance with
6 this chapter. Notwithstanding any provision of law, assessments
made and collected pursuant to this chapter do not constitute
8 premium, as defined in section 2403, for purposes of any laws of
this State relating to taxation, filing of insurance rates or
10 assessment purposes other than as expressly provided under this
chapter. The assessments are considered as premium only for
12 purposes of any laws of this State relating to cancellation or
nonrenewal of insurance coverage ~~and--the--determination--of~~
~~hospital-financial-requirements-under-Title-22,-chapter-107.~~

14 **Sec. E-2. 36 MRSA §2801-A**, as corrected by RR 1991, c. 1,
16 §56, is repealed.

18 **Sec. E-3. 38 MRSA §1310-X, sub-§4**, as amended by PL 1993, c.
20 355, §52, is further amended to read:

22 **4. Exemption.** A commercial biomedical waste disposal or
treatment facility is exempt from the prohibitions of this
24 section if at least 51% of the facility is owned by a hospital or
hospitals as defined in Title 22, section ~~382~~ 303, subsection 7
11-B or an affiliated interest or interests as defined in Title
26 22, section ~~396-B~~ 1715, subsection ~~1,-~~paragraph-A 1-A.

28 PART F

30 **Sec. F-1. Authorization to expend funds; transfer of funds.** On the
32 effective date of this Act, the Treasurer of State shall exercise
authority over all funds remaining in all accounts into which
34 funds were deposited from the hospital assessment under the Maine
Revised Statutes, Title 22, section 2801-A. The Treasurer of
36 State shall pay all bills and expenses of the former Maine Health
Care Finance Commission and any expenses incurred as a result of
38 the closing of the commission. One year from the effective date
of this Act the Treasurer of State shall transfer to the General
40 Fund the balance of funds remaining from all accounts into which
funds were deposited from the hospital assessment under Title 22,
42 section 2801-A.

44 STATEMENT OF FACT

46 This bill repeals the provisions of law that established the
48 Maine Health Care Finance Commission. The bill also corrects
cross-references. When the repealed sections provided

2 definitions referred to in unrelated laws, this bill enacts the
required new definitions.