

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1644

S.P. 636

In Senate, January 8, 1996

**An Act to Amend the Hospital Cooperation Act of 1992 to Facilitate  
Integrated Health Care Delivery Systems by Authorizing and  
Supervising Certain Hospital Mergers.**

(EMERGENCY)

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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.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator AMERO of Cumberland.  
Cosponsored by Senators: ABROMSON of Cumberland, RAND of Cumberland,  
Representatives: BRENNAN of Portland, DiPIETRO of South Portland, JOHNSON of South  
Portland, MARVIN of Cape Elizabeth, TAYLOR of Cumberland.

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

4  
6           **Whereas,** the merger of certain hospitals in this State into  
coordinated systems may provide opportunities for measurable and  
substantial improvements in the quality, accessibility and  
8 cost-effectiveness of health care delivered to citizens of this  
State; and

10  
12           **Whereas,** hospital mergers may provide a foundation for  
future development of integrated health care delivery systems  
that further improve the quality, accessibility and  
14 cost-effectiveness of health care; and

16           **Whereas,** because of economies of scale and constraints on  
the utilization of scarce health care resources, some mergers of  
18 hospitals in this State may involve a substantial percentage of  
available hospital providers in particular regions of the State;  
20 and

22           **Whereas,** current interpretations of federal and state  
antitrust laws may thwart the formation of coordinated hospital  
24 systems in various parts of this State, unless there is  
sufficient oversight by governmental authorities; and

26  
28           **Whereas,** in the judgment of the Legislature the procedures  
established by this Act will provide sufficient governmental  
supervision to ensure that hospital mergers achieve the desired  
30 public benefits; and

32           **Whereas,** certain hospitals are in the process of planning a  
merger to provide coordinated hospital care in southern Maine and  
34 desire to complete all necessary steps to provide hospital  
services on an integrated basis by January 1, 1997; and

36  
38           **Whereas,** the public will be deprived of the benefit of this  
coordinated hospital system if implementation is delayed or  
prevented due to the absence of an effective system of  
40 governmental supervision; and

42           **Whereas,** the process of an initial administrative review  
established by this Act must begin in mid-1996 in order to be  
44 completed in sufficient time to allow a merged hospital system to  
commence operations no later than January 1, 1997; and

46  
48           **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

2 necessary for the preservation of the public peace, health and  
3 safety; now, therefore,

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

6 **Sec. 1. 22 MRSA §1882, sub-§2-A** is enacted to read:

8 2-A. Merger. "Merger" means a transaction by which  
9 ownership or control over substantially all of the stock, assets  
10 or activities of one or more previously licensed and operating  
11 hospitals is placed under the control of another licensed  
12 hospital or hospitals or the parent organization of another  
13 licensed hospital or hospitals.

14 **Sec. 2. 22 MRSA §1882, sub-§§4 and 5** are enacted to read:

16 **4. Preponderance of evidence.** "Preponderance of evidence"  
17 means an evidentiary burden requiring the party to demonstrate  
18 that a proposition is more likely than not to be true.

20 **5. Substantial preponderance of evidence.** "Substantial  
21 preponderance of evidence" means an evidentiary burden requiring  
22 the party to demonstrate that a proposition is substantially more  
23 likely than not to be true.

26 **Sec. 3. 22 MRSA §1883, sub-§4**, as amended by PL 1995, c. 232,  
27 §4, is further amended by amending the first paragraph to read:

28 **4. Standards for certification of a cooperative agreement.**  
29 The department shall issue a certificate of public advantage for  
30 a cooperative agreement if it determines that the applicants have  
31 demonstrated by ~~clear and convincing~~ a substantial preponderance  
32 of evidence that the likely benefits resulting from the agreement  
33 outweigh any disadvantages attributable to a reduction in  
34 competition that may result from the agreement.

36 **Sec. 4. 22 MRSA §1883, sub-§5-A** is enacted to read:

38 **5-A. Standards for certification of merger.** The department  
39 shall issue a certificate for a cooperative agreement that  
40 constitutes a hospital merger if it determines that the  
41 applicants have satisfied the standards set forth in subsection  
42 4. In evaluating the proposed merger under these standards, the  
43 department shall consider the extent to which any likely  
44 disadvantages resulting from the merger may be ameliorated by any  
45 conditions attached to the certification of the merger pursuant  
46 to paragraph A and the extent to which the likely benefits or  
47 favorable balance of benefits that outweighs disadvantages of the  
48

2 merger may be enhanced by any conditions attached to the  
3 certification of the merger pursuant to paragraph B.

4 A. In a certificate issued under this subsection, the  
5 department may include conditions reasonably necessary to  
6 ameliorate any likely disadvantages, of the type specified  
7 in subsection 4, paragraph B, subparagraphs 1 to 3 resulting  
8 from the merger.

10 B. In a certificate issued under this subsection, the  
11 department may include additional conditions, if proposed by  
12 the applicants and accepted by the department, designed to  
13 achieve public benefits, which may include but need not be  
14 limited to the establishment or continuation of graduate or  
15 post-graduate professional education and training programs  
16 for physicians, nurses and other health care providers and  
17 other initiatives designed to achieve the benefits listed in  
18 subsection 4, paragraph A.

20 C. In a certificate issued under this subsection, the  
21 department shall require the applicants periodically to  
22 report the extent of their compliance with any conditions  
23 included pursuant to paragraphs A and B.

24 **Sec. 5. 22 MRSA §1883, sub-§6**, as enacted by PL 1991, c. 814,  
26 §1, is amended to read:

28 **6. Certificate termination and enforcement.** If the  
29 department determines that the likely benefits resulting from a  
30 certified agreement no longer outweigh any disadvantages  
31 attributable to any potential reduction in competition resulting  
32 from the agreement, the department may initiate proceedings to  
33 terminate the certificate of public advantage in accordance with  
34 Title 5, chapter 375, subchapter IV. The department may also  
35 institute proceedings under Title 5, chapter 375, subchapter IV  
36 to enforce any conditions included in the certificate issued  
37 under subsection 5-A if it determines that the applicants are not  
38 in substantial compliance with the conditions.

40 **Sec. 6. 22 MRSA §1885, sub-§1**, as amended by PL 1993, c. 719,  
41 §10 and affected by §12, is further amended to read:

42 **1. Investigative powers.** The Attorney General, at any time  
43 after an application is filed under section 1883, subsection 2,  
44 may require by subpoena the attendance and testimony of witnesses  
45 and the production of documents in Kennebec County or the county  
46 in which the applicants are located for the purpose of  
47 investigating whether the cooperative agreement satisfies the  
48 standards set forth in section 1883, subsection 4 or 5-A. All  
49 documents produced and testimony given to the Attorney General

2 are confidential. The Attorney General may seek an order from  
the Superior Court compelling compliance with a subpoena issued  
under this section.

4  
6 **Sec. 7. 22 MRSA §1885, sub-§§3 and 4**, as enacted by PL 1991, c.  
814, §1, are amended to read:

8 **3. Automatic stay.** Upon the filing of the complaint in an  
action under subsection 2, the department's certification, if  
10 previously issued, must be stayed and the cooperative agreement  
is of no further force unless the court orders otherwise or until  
12 the action is concluded. The applicants may apply to the  
Superior Court for relief from such a stay, which application may  
14 be granted only upon a showing of compelling justification. The  
Attorney General may apply to the court for any ancillary  
16 temporary or preliminary relief necessary to stay the cooperative  
agreement pending final disposition of the case.

18  
20 **4. Standard for adjudication.** In any action brought under  
subsection 2, the applicants for a certificate bear the burden of  
establishing by clear and convincing a substantial preponderance  
22 of evidence that, in accordance with section 1883, subsection 4  
or 5-A, the likely benefits resulting from the cooperative  
24 agreement outweigh any disadvantages attributable to a reduction  
in competition that may result from the agreement. In assessing  
26 disadvantages attributable to a reduction in competition likely  
to result from the agreement, the court may draw upon the  
28 determinations of federal and Maine courts concerning  
unreasonable restraint of trade under 15 United States Code,  
30 Sections 1 and 2 and Title 10, sections 1101 and 1102.

32 **Sec. 8. 22 MRSA §1885, sub-§5-A** is enacted to read:

34 **5-A. Enforcement of conditions.** If the applicants are not  
in substantial compliance with any conditions included in the  
36 certificate under section 1883, subsection 5-A, the Attorney  
General may seek an order from the Superior Court compelling  
38 compliance with the conditions or an order seeking other  
appropriate equitable remedies.

40  
42 **Sec. 9. 22 MRSA §1886, sub-§§1 and 2**, as enacted by PL 1991, c.  
814, §1, are amended to read:

44 **1. Validity of certified cooperative agreements.**  
Notwithstanding Title 5, chapter 10, Title 10, section--1101  
46 chapter 201 or any other provision of law, a cooperative  
agreement for which a certificate of public advantage has been  
48 issued is a lawful agreement. Notwithstanding Title 5, chapter  
10, Title 10, section-1102 chapter 201 or any other provision of  
50 law, if the parties to a cooperative agreement file an

2 application for a certificate of public advantage governing the  
3 agreement with the department, the conduct of the parties in  
4 negotiating and entering into a cooperative agreement is lawful  
5 conduct. Nothing in this subsection immunizes any person for  
6 conduct in negotiating and entering into a cooperative agreement  
7 for which an application for a certificate of public advantage is  
8 not filed.

9  
10 **2. Validity of cooperative agreements determined not in**  
11 **public interest.** If the department or, in any action by the  
12 Attorney General, the Superior Court determines that the  
13 applicants have not established by ~~clear--and--convincing~~ a  
14 substantial preponderance of evidence that the likely benefits  
15 resulting from a cooperative agreement outweigh any disadvantages  
16 attributable to any potential reduction in competition resulting  
17 from the agreement, the agreement is invalid and has no further  
18 force or effect.

19  
20 **Sec. 10. 22 MRSA §1886, sub-§4,** as enacted by PL 1991, c. 814,  
21 §1, is repealed.

22 **Emergency clause.** In view of the emergency cited in the  
23 preamble, this Act takes effect when approved.  
24

## 25 STATEMENT OF FACT

26  
27  
28 This bill provides for state supervision of certain hospital  
29 mergers by allowing hospitals proposing to merge to file an  
30 application for a certificate of public advantage under the  
31 Hospital Cooperation Act of 1992. The bill authorizes the  
32 Department of Human Services, in conjunction with the Department  
33 of Attorney General, to attach conditions pertaining to quality,  
34 access and cost to a certificate granted in the case of a  
35 merger. The bill establishes procedures to ensure compliance by  
36 providing for enforcement of conditions attached to a certificate  
pertaining to a merger.