

MAINE STATE LEGISLATURE

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DATE: April 1, 1996

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HUMAN RESOURCES

Reported by: Senator PENDEXTER of Cumberland for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A " to S.P. 707, L.D. 1806, Bill, "An Act to Promote Choice and Quality in Long-term Care"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, current law requiring completion of the certificate of need process causes delays in the development of community-based resources for long-term care; and

Whereas, prompt development of community-based long-term care resources is necessary for the comfort and safety of the elderly and disabled population of this State; 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:

PART A

Sec. A-1. 22 MRSA §303, sub-§5. as amended by PL 1981, c. 705, Pt. V, §3, is further amended to read:

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2 **5. Department.** "Department" means the Department of Human
 3 Services, but does not include the Certificate of Need Advisory
 4 Committee within the department.

6 **Sec. A-2. 22 MRSA §303, sub-§7,** as amended by PL 1981, c. 705,
 7 Pt. V, §5, is further amended to read:

8 **7. Health care facility.** "Health care facility" means any
 10 facility, ~~whether public or private, proprietary or not for~~
 11 ~~profit, required to obtain a certificate of need in accordance~~
 12 ~~with federal laws and regulations under the National Health~~
 13 ~~Planning and Resources Development Act of 1974, or any amendment,~~
 14 and shall include hospitals, psychiatric hospitals, tuberculosis
 15 hospitals, skilled nursing facilities, kidney disease treatment
 16 centers including free-standing free-standing hemodialysis units,
 17 intermediate-care facilities, rehabilitation facilities, and
 18 ambulatory surgical facilities, ~~home health care providers and~~
 19 ~~health maintenance organizations.~~ The term shall not apply to
 20 any facility operated by religious groups relying solely on
 21 spiritual means through prayer for healing.

22 **Sec. A-3. 22 MRSA §303, sub-§11-A,** as amended by PL 1987, c.
 23 486, §1, is repealed.

24 **Sec. A-4. 22 MRSA §303, sub-§11-C** is enacted to read:

25 **11-C. Hospital swing bed.** "Hospital swing bed" means acute
 26 care beds licensed by the Division of Licensure and
 27 Certification, Bureau of Medical Services for use also as nursing
 28 care beds. Swing beds may be established only in rural hospitals
 29 with fewer than 100 licensed acute care beds.

30 **Sec. A-5. 22 MRSA §303, sub-§12,** as enacted by PL 1977, c.
 31 687, §1, is repealed.

32 **Sec. A-6. 22 MRSA §303, sub-§12-B** is enacted to read:

33 **12-B. Nursing facility.** "Nursing facility" means any
 34 facility defined under section 1812-A.

35 **Sec. A-7. 22 MRSA §303, sub-§19 and 20,** as enacted by PL 1977,
 36 c. 687, §1, are repealed.

37 **Sec. A-8. 22 MRSA §303, sub-§21,** as enacted by PL 1985, c.
 38 418, §3, is repealed.

39 **Sec. A-9. 22 MRSA §304-A, sub-§3,** as amended by PL 1989, c.
 40 919, §5 and affected by §18, is further amended to read:

41

RWS

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

8 Sec. A-10. 22 MRSA §304-A, sub-§3-A, as repealed and replaced
by PL 1991, c. 485, §1 and affected by §10, is amended to read:

10 3-A. Hospital capital expenditures. The obligation, by or
12 on behalf of a hospital, of any capital expenditure of ~~\$1,000,000~~
\$2,000,000 or more, except that:

14 A. A capital expenditure for the purpose of acquiring major
16 medical equipment is reviewable only to the extent provided
in subsection 2; and

18 B. Any transfer of ownership of a hospital is reviewable.

20 Sec. A-11. 22 MRSA §304-A, sub-§4, as enacted by PL 1981, c.
22 705, Pt. V, §16, is amended to read:

24 4. New health services. The offering or development of any
new health service. For purposes of this section, "new health
26 services" shall include only the following:

28 A. The obligation of any capital expenditures by or on
behalf of a health care facility ~~which~~ that is associated
30 with the addition of a health service ~~which~~ that was not
offered on a regular basis by or on behalf of the facility
32 within the 12-month period prior to the time the services
would be offered;

34 B. The addition of a health service ~~which~~ that is to be
36 offered by or on behalf of a health care facility ~~which~~ that
was not offered on a regular basis by or on behalf of the
38 facility within the 12-month period prior to the time the
services would be offered, and ~~which~~ that, for the 3rd
40 fiscal year of operation, including a partial first year,
following addition of that service, absent any adjustment
42 for inflation, is projected to entail annual operating costs
of at least the expenditure minimum for annual operating
44 costs; or

46 C. The addition of a health service ~~which~~ that falls within
a category of health services ~~which~~ that are subject to
48 review regardless of capital expenditure or operating cost
and which category the department has defined through

regulations promulgated pursuant to section 312, ~~based on~~
~~recommendations from the State Health Coordinating Council;~~

This subsection does not prohibit a nursing facility from
converting beds used for the provision of nursing services to
beds to be used for the provision of residential care services.
If such a conversion occurs, public funds are not obligated for
payment of services provided in the converted beds;

Sec. A-12. 22 MRSA §304-A, sub-§5, as amended by PL 1989, c.
919, §7 and affected by §18, is further amended to read:

5. Termination of a health service. The obligation of any
capital expenditure by or on behalf of a health care facility
other than a hospital that is associated with the termination of
a health service that was previously offered by or on behalf of
the health care facility; except, neither the conversion of
licensed nursing facility beds to residential care beds nor a
decrease in the licensed or certified bed capacity of a nursing
facility may be considered a termination of a health service;

Sec. A-13. 22 MRSA §304-A, sub-§6, as amended by PL 1993, c.
410, Pt. FF, §1, is further amended to read:

6. Changes in bed complement. Any change in the existing
bed complement of a health care facility other than a hospital;
except that a decrease in the licensed or certified bed capacity
of a nursing facility is not subject to review so long as any
capital expenditure incurred in the decrease does not trigger
review under subsection 3.

Sec. A-14. 22 MRSA §304-A, sub-§8, as amended by PL 1993, c.
283, §1, is further amended to read:

8. New health care facilities. The construction,
development or other establishment of a new health care facility,
~~subject to the following limitations;~~ and

~~A. Except as provided in paragraph B, the department shall~~
~~review certificate of need applications, including business~~
~~plans, for home health care providers only to determine~~
~~whether the provider is fit, willing and able to provide the~~
~~proposed services at the proper standard of care as provided~~
~~in section 309, subsection 1, paragraph A. The department~~
~~shall establish a reduced filing fee for home health care~~
~~providers whose applications are reviewed under this~~
~~paragraph.~~

~~B. The department shall review an application for a home~~
~~health care provider to determine its compliance with all~~

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2 the requirements of section 309, subsection 1 if the application involves:

4 (1) A business plan that forecasts 3rd year operating costs exceeding \$500,000; or

6 (2) A transfer of ownership of an existing home health care provider; and

10 Sec. A-15. 22 MRSA §304-D, as amended by PL 1991, c. 485, §2, is further amended by repealing and replacing the headnote to read:

14 §304-D. Waiver of certificate of need for certain minor projects

16 Sec. A-16. 22 MRSA §304-D, sub-§§2 and 5, as enacted by PL 1985, c. 661, §2, are repealed.

18 Sec. A-17. 22 MRSA §304-F is enacted to read:

20 §304-F. Procedures after voluntary nursing facility reductions

22 1. Procedures. A nursing home that voluntarily reduces the number of its licensed beds for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section, provided the facility has been in continuous operation and has not been purchased or leased. To convert beds back to nursing facility beds under this subsection, the nursing facility must:

32 A. Give notice of its intent to preserve conversion options to the department no later than 30 days after the effective date of the license reduction; and

34 B. Obtain a certificate of need to convert beds back under section 309, except that if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2.

42 2. Expedited review. Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a directly affected person. The department shall consider and decide upon these applications as follows:

50

9. 2. 5

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2 A. Review of applications that meet the requirements of
4 this section must be based on the requirements of section
6 309, subsection 1, except that the determinations required
8 by section 309, subsection 1, paragraph B must be based on
10 the historical costs of operating the beds and must consider
12 whether the projected costs are consistent with the costs of
14 the beds prior to closure, adjusted for inflation; and

16 B. Conversion of beds back under this section must be
18 requested within 4 years of the effective date of the
20 license reduction. For good cause shown, the department may
22 extend the 4-year period for conversion for one additional
24 4-year period.

26 3. Effect on other review proceedings. Nursing facility
28 beds that have been voluntarily reduced under this section must
30 be counted as available nursing facility beds for the purpose of
32 evaluating need under section 309 so long as the facility retains
34 the ability to convert them back to nursing facility use under
36 the terms of this section, unless the facility indicates, in
38 response to an inquiry from the department in connection with an
40 ongoing project review, that it is unwilling to convert them to
42 meet a need identified in that project review.

44 4. Rulemaking. Rules adopted pursuant to this section are
46 major substantive rules as defined by Title 5, chapter 375,
48 subchapter II-A.

28 **Sec. A-18. 22 MRSA §306-A, sub-§6,** as enacted by PL 1981, c.
30 705, Pt. V, §19, is amended to read:

32 **6. Automatic withdrawal.** Any incomplete application shall
34 ~~be--deemed~~ is considered withdrawn if the applicant fails to
36 respond to a request for additional required information within
one-year 180 days of the date such the request was forwarded by
the department.

38 **Sec. A-19. 22 MRSA §306-A, sub-§§7 and 8** are enacted to read:

40 **7. Voluntary withdrawal of application.** During the review
42 period, prior to the date that staff submit a final report to the
44 commissioner, an applicant may withdraw an application without
46 prejudice. Written notice of the withdrawal must be submitted to
the department. A withdrawn application may be resubmitted at a
later date, as a new application, requiring a new letter of
intent and new filing fees, docketing and review.

48 **8. Filing fee.** A nonrefundable filing fee must be paid at
the time an application is filed with the department.

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2 A. The department shall establish minimum and maximum
3 filing fees, pursuant to section 312, to be paid per
4 application.

6 B. If the approved capital expenditure is higher than the
7 initially proposed capital expenditure, then the filing fee
8 must be recalculated and the difference in fees, if any,
9 must be paid before the certificate of need may be issued.

10 C. Rules adopted pursuant to this subsection are major
11 substantive rules as defined by Title 5, chapter 375,
12 subchapter II-A.

14 **Sec. A-20. 22 MRSA §307, sub-§2-A, ¶A,** as repealed and
16 replaced by PL 1985, c. 737, Pt. A, §48, is amended to read:

18 A. The committee shall ~~be~~ is composed of 10 members, 9 of
19 whom shall ~~---be~~ are appointed by the Governor. The
20 Commissioner of Human Services shall name a designee to
21 serve as an ex officio, nonvoting member of the committee.
22 The 9 members appointed by the Governor shall must be
23 selected in accordance with the following requirements.

24 (1) Four members shall must be appointed to represent
25 the following.

28 (a) One member shall must represent the hospitals.

30 (b) One member shall must represent the nursing
31 home long-term care industry.

32 (c) One member shall must represent major
33 3rd-party payors.

34 (d) One member shall must represent physicians
35 providers.

38 In appointing these representatives, the Governor shall
39 consider recommendations made by the Maine Hospital
40 Association, the Maine Health Care Association, the
41 Maine Medical Association, the Maine Osteopathic
42 Association and other representative organizations.

44 (2) Five public members shall must be appointed as
45 consumers of health care. One of these members shall
46 must be designated on an annual basis by the Governor
47 as chair of the committee. Neither the public members
48 nor their spouses or children may, within 12 months
49 preceding the appointment, have been affiliated with,
50 employed by, or have had any professional affiliation

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2 with any health care facility or institution, health
 3 product manufacturer or corporation or insurer
 4 providing coverage for hospital or medical care, ~~and~~
~~provided that;~~ however neither membership in or
 5 subscription to a service plan maintained by a
 6 nonprofit hospital and medical service organization,
 7 nor enrollment in a health maintenance organization,
 8 nor membership as a policyholder in a mutual insurer or
 9 coverage under such a policy, nor the purchase of or
 10 coverage under a policy issued by a stock insurer may
 11 disqualify a person from serving as a public member.

12 **Sec. A-21. 22 MRSA §307, sub-§2-B, ¶D,** as amended by PL 1983,
 13 c. 722, is further amended to read:

14 D. ~~The chairman shall serve~~ chair serves as a voting
 15 presiding officer and, in consultation with the members of
 16 the committee, shall rule on the relevance of argument and
 17 evidence and make determinations as to reasonable
 18 questioning. The department's administrative hearing unit
 19 shall provide technical support to the committee for the
 20 conducting of hearings as necessary. Members of the
 21 committee may conduct reasonable questioning in the course
 22 of a hearing.

23 **Sec. A-22. 22 MRSA §307, sub-§2-B, ¶H,** as enacted by PL 1981,
 24 c. 705, Pt. V, §25, is amended to read:

25 H. At its next meeting following the receipt of comments
 26 pursuant to paragraph F or G, or in the case of a public
 27 hearing pursuant to paragraph G, the committee shall make a
 28 recommendation of approval ~~or~~ disapproval or approval with
 29 conditions with respect to the application or applications
 30 under consideration. This meeting is open to the public;
 31 however, during the committee's deliberations, participation
 32 is limited to committee members. The recommendation shall
 33 must be determined by majority vote of the appointed members
 34 present and voting. Members of the committee may make
 35 additional oral comments or submit written comments, as they
 36 deem consider appropriate, with respect to the basis for
 37 their recommendations or their individual views. The
 38 committee recommendation and any accompanying comments shall
 39 must be forwarded to the commissioner. If the committee is
 40 unable to obtain a majority on a recommendation, the
 41 committee shall report to the commissioner the result of any
 42 vote taken.

43 **Sec. A-23. 22 MRSA §307, sub-§5-A, ¶B,** as amended by PL 1985,
 44 c. 418, §9, is further amended to read:

45

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2 B. After reviewing each application, the commissioner shall
 4 make a decision either to issue a certificate of need or to
 6 deny the application for a certificate of need. The
 8 decision of the commissioner shall must be based on the
 10 informational record developed in the course of review as
 12 specified in paragraph C. The commissioner may issue a
 14 certificate of need with specific conditions. Notice of the
 16 decision shall must be sent to the applicant and the
 committee. This notice shall must incorporate written
 findings which that state the basis of the decision,
 including the findings required by section 309, subsection
 1. If the decision is not consistent with the
 recommendations of the Certificate of Need Advisory
 Committee, the commissioner shall provide a detailed
 statement of the reasons for the inconsistency.

18 **Sec. A-24. 22 MRSA §307, sub-§6-A.** as amended by PL 1993, c.
 410, Pt. FF, §2, is further amended to read:

20 **6-A. Review cycles.** The department shall establish review
 22 cycles for the review of applications. There must be at least
 24 one review cycle for each type or category of project each
 26 calendar year, the dates for which must be published at least 3
 28 months in advance. An application must be reviewed during the
 next scheduled review cycle following the date on which the
 application is either declared complete or submitted for review
 pursuant to section 306-A, subsection 4, paragraph B. ~~Hospital~~
~~projects--that--must--be--considered--within--the--constraints~~
~~established--by--the--Certificate--of--Need--Development--Account~~
~~established--pursuant--to--section--396-K--may--be--grouped--for~~
~~competitive--review--purposes--at--least--once--each--year;--provided~~
~~that,--for--minor--projects,--as--defined--by--the--department--through~~
~~rules--adopted--pursuant--to--section--312,--the--department--shall~~
~~allocate--a--portion--of--the--Certificate--of--Need--Development--Account~~
~~for--the--approval--of--those--projects--and--shall--establish--at--least--6~~
~~review--eyeles--each--year--for--the--review--of--these--projects.~~
 36 Nursing home projects that propose to add new nursing home beds
 38 to the inventory of nursing home beds within the State may be
 grouped for competitive review purposes consistent with
 40 appropriations made available for that purpose by the
 42 Legislature. A nursing home project that proposes renovation,
 replacement or other actions that will increase Medicaid costs
 44 ~~and--for--which--an--application--is--filed--after--March--1,--1993~~ may be
 approved only if appropriations have been made by the Legislature
 expressly for the purpose of meeting those costs, except that the
 46 department may approve, without a prior appropriation for the
express purpose, projects to reopen beds previously reserved by a
 48 nursing facility through a voluntary reduction pursuant to
section 304-F, provided that the annual total of reopened beds
 50 approved does not exceed 100. The department may hold an

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2 application for up to 90 days following the commencement of the
3 next scheduled review cycle if, on the basis of one or more
4 letters of intent on file at the time the application is either
5 declared complete or submitted for review pursuant to section
6 306-A, subsection 4, paragraph B, the department expects to
7 receive within the additional 90 days one or more other
8 applications pertaining to similar types of services, facilities
9 or equipment affecting the same health service area. Pertinent
10 health service areas must be defined in rules adopted by the
11 department pursuant to section 312, ~~based on recommendations by
the State Health Coordinating Council.~~

12 **Sec. A-25. 22 MRSA §309, sub-§1, ¶D,** as amended by PL 1995, c.
14 462, Pt. A, §41, is further amended to read:

16 D. That the proposed services are consistent with the
17 orderly and economic development of health facilities and
18 health resources for the State, that the citizens of the
19 State have the ability to underwrite the additional costs of
20 the proposed services and that the proposed services are in
21 accordance with standards, criteria or plans adopted and
22 approved pursuant to the state health plan developed by the
23 department ~~and the findings of the Maine Health Care Finance
Commission under section 396-K with respect to the ability
of the citizens of the State to pay for the proposed
services.~~

28 **Sec. A-26. 22 MRSA §309, sub-§2,** as amended by PL 1985, c.
30 661, §§4 and 5, is repealed.

32 **Sec. A-27. 22 MRSA §309, sub-§2-A** is enacted to read:

34 2-A. Criteria for certificate of need. In determining
whether to issue or deny a certificate of need under subsection
1, the department shall, among other criteria, consider the
following:

38 A. Whether the project will substantially address specific
problems or unmet needs in the area to be served by the
project;

42 B. Whether the project will have a positive impact on the
health status indicators of the population to be served;

44 C. Whether the services affected by the project will be
accessible to all residents of the area proposed to be
served. Accessibility is determined through analysis of the
area including population, topography and availability of
transportation and health services;

50

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2 D. Whether there are less costly or more effective
alternate methods of reasonably meeting identified health
service needs of the project;

4
6 E. Whether the project is financially feasible in both an
intermediate and long-term time frame;

8 F. Whether the project would produce a cost benefit in the
existing health care system of the State and the area in
10 which the project is proposed;

12 G. Whether the quality of any health care provided by the
applicant in the past meets industry standards; and

14
16 H. Whether the project will provide demonstrable
improvements in quality and outcome measures applicable to
18 the services proposed in the project.

20 **Sec. A-28. 22 MRSA §309, sub-§3,** as enacted by PL 1981, c.
705, Pt. V, §33, is repealed.

22 **Sec. A-29. 22 MRSA §309, sub-§6,** as amended by PL 1989, c.
502, Pt. A, §65, is further amended to read:.

24
26 **6. Hospital projects.** ~~Notwithstanding subsections 1, 4 and~~
~~5, the department may not issue a certificate of need for a~~
28 ~~project which is subject to the provisions of section 396-D,~~
~~subsection 5, and section 396-K, if the associated costs exceed~~
30 ~~the amount which the commission has determined will have been~~
~~credited to the Certificate of Need Development Account pursuant~~
32 ~~to section 396-K, after accounting for previously approved~~
~~projects. A project shall not be denied solely on the basis of~~
34 ~~exceeding the amount remaining in the Certificate of Need~~
~~Development Account or Hospital Development Account in a~~
36 ~~particular payment year and shall be held for further~~
~~consideration by the department in the first appropriate review~~
38 ~~cycle beginning after the Certificate of Need Development Account~~
~~or Hospital Development Account is credited with additional~~
40 ~~amounts. Projects which that are carried forward shall compete~~
42 ~~equally with newly proposed projects. For the purposes of this~~
~~subsection, a project may be held for a final decision beyond the~~
~~time frames set forth in section 307, subsection 3.~~

44 **Sec. A-30. 22 MRSA §309, sub-§7,** as enacted by PL 1989, c.
501, Pt. P, §24, is repealed.

46
48 **Sec. A-31. 22 MRSA §324,** as enacted by PL 1981, c. 705, is
repealed and the following enacted in its place:

50 **§324. Review**

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2 The Department shall report to the legislative joint
3 standing committee having jurisdiction over health and
4 institutional services not later than January 31, 1999 on the
5 continuing feasibility of this chapter.

6 **Sec. A-32. 22 MRSA §1708, sub-§3, ¶¶B and C**, as enacted by PL
7 1991, c. 591, Pt. E, §21 and affected by §22, are amended to read:

10 B. Are reasonable and adequate to meet the costs incurred
11 by efficiently and economically operated facilities; and

12 C. Are consistent with federal requirements relative to
13 limits on reimbursement under the federal Social Security
14 Act, Title XIX- ; and

15 **Sec. A-33. 22 MRSA §1708, sub-§3, ¶D** is enacted to read:

18 D. Ensure that any calculation of an occupancy percentage
19 or other basis for adjusting the rate of reimbursement for
20 nursing facility services to reduce the amount paid in
21 response to a decrease in the number of residents in the
22 facility or the percentage of the facility's occupied beds
23 excludes all beds that the facility has removed from service
24 for all or part of the relevant fiscal period in accordance
25 with section 304-F. If the excluded beds are converted to
26 residential care beds or another program for which the
27 department provides reimbursement, nothing in this paragraph
28 precludes the department from including those beds for
29 purposes of any occupancy standard applicable to the
30 residential care or other program pursuant to duly adopted
31 rules of the department.

32 **Sec. A-34. 22 MRSA §1715, sub-§1**, as enacted by PL 1989, c.
33 919, §15 and affected by §18, is amended by amending the first
34 paragraph to read:

35 **1. Access requirements.** Any person, including, but not
36 limited to an affiliated interest as defined in section 396-L,
37 that is subject to the requirements of this subsection, shall
38 provide the services listed in paragraph C to individuals who are
39 eligible for charity care in accordance with a charity care
40 policy adopted by the affiliate or provider that is consistent
41 with rules applicable to hospitals under section 396-F 1716. A
42 person is subject to this subsection if that person:

43 **Sec. A-35. 22 MRSA §1715, sub-§2, ¶¶A and B**, as enacted by PL
44 1989, c. 919, §15 and affected by §18, are amended to read:

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2 A. Any person who knowingly violates any provision of this
3 section or any valid order or rule made or adopted pursuant
4 to section 396-F 1716, or who willfully fails, neglects or
5 refuses to perform any of the duties imposed under this
6 section, commits a civil violation for which a forfeiture of
7 not less than \$200 and not more than \$500 per patient may be
8 adjudged with respect to each patient denied access unless
9 specific penalties are elsewhere provided. Any forfeiture
10 imposed under this section may not exceed \$5,000 in the case
11 of the first judgment under this section against the
12 provider, \$7,500 in the case of a 2nd judgment against the
13 provider or \$10,000 in the case of the 3rd or subsequent
14 judgment against the provider. The Attorney General is
15 authorized to prosecute the civil violations.

16 B. Upon application of the Attorney General or any affected
17 patient, the Superior Court or District Court has full
18 jurisdiction to enforce the performance by providers of
19 health care of all duties imposed upon them by this section
20 and any valid rules adopted pursuant to section 396-F 1716.

22 **Sec. A-36. 22 MRSA §1716** is enacted to read:

24 **§1716. Charity care guidelines**

26 The department shall adopt reasonable guidelines for
27 policies to be adopted and implemented by hospitals with respect
28 to the provision of health care services to patients who are
29 determined unable to pay for the services received. The
30 department shall adopt income guidelines that are consistent with
31 the guidelines applicable to the Hill-Burton Program established
32 under 42 United States Code, Section 291, et seq. (1995). The
33 guidelines and policies must include the requirement that upon
34 admission or, in cases of emergency admission, before discharge
35 of a patient, hospitals must investigate the coverage of the
36 patient by any insurance or state or federal programs of medical
37 assistance. The guidelines must include provisions for notice to
38 the public and the opportunity for a fair hearing regarding
39 eligibility for charity care.

40 **Sec. A-37. 22 MRSA §3189, sub-§4**, as amended by PL 1993, c.
41 410, Pt. FFF, §§7 and 8, is repealed.

42 **Sec. A-38. 22 MRSA §3472, sub-§5**, as amended by PL 1989, c.
43 858, §4, is further amended to read:

44 **5. Department.** "Department" means either the Department of
45 Human Services ~~through its Bureau of Elder and Adult Services~~ or,
46 in the case of mentally retarded adults, the Department of Mental
47 Health and Mental Retardation.
48
49
50

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2 **Sec. A-39. 22 MRSA §4311, sub-§1-A**, as enacted by PL 1983, c.
 824, Pt. X, §4, is amended to read:

4
 6 **1-A. Municipalities reimbursed.** When a municipality pays
 for expenses approved pursuant to section 4313 for hospital
 inpatient or outpatient care at any hospital ~~during the time~~
 8 ~~preceding the hospital's first payment year, as defined in~~
~~section 396-C, subsection 1,~~ on behalf of any person who is
 10 otherwise eligible and who would have been entitled to receive
 payments for hospital care if that care had been rendered prior
 12 to May 1, 1984, for services under the Catastrophic Illness
 Program, section 3185, the department shall reimburse the
 14 municipality for 100% of those payments.

16 **Sec. A-40. 22 MRSA §4313, sub-§1**, as repealed and replaced by
 PL 1987, c. 347, §§4 and 7 and c. 542, Pt. H, §§4 and 8, is
 18 amended to read:

20 **1. Emergency care.** In the event of an admission of an
 eligible person to the hospital, the hospital shall notify the
 22 overseer of the liable municipality within 5 business days of the
 person's admission. In no event may hospital services to a
 24 person who meets the financial eligibility guidelines, adopted
 pursuant to section ~~396-F, subsection 1,~~ 1716 be billed to the
 26 patient or to a municipality.

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PART B

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32 **Sec. B-1. 22 MRSA §3174-I, ¶E**, as amended by PL 1995, c. 170,
 §2, is further amended to read:

34 E. The department shall perform a reassessment of the
 individual's medical needs when the individual becomes
 36 financially eligible for Medicaid benefits.

38 (1) If the individual, at both the admission
 assessment and any reassessment, is determined not to
 40 be medically eligible for the services provided by the
 nursing facility, and is determined not to be medically
 42 eligible at the time of the determination of financial
 eligibility, the nursing facility is responsible for
 44 providing services at no cost to the individual until
 such time as a placement at the appropriate level of
 46 care becomes available. After a placement becomes
 available at an appropriate level of care, the nursing
 48 facility may resume billing the individual for the cost
 of services.

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(2) If the individual is initially assessed as needing the nursing facility's services under the assessment criteria and process in effect at the time of admission or is admitted as covered by Medicare for nursing facility services, but is reassessed as not needing them those services at the time the individual is found financially eligible, then Medicaid the department shall reimburse the nursing facility for services it provides to the individual in accordance with the Maine Medical--Assistance--Manual,--chapter--II,--section--67 principles of reimbursement for residential care facilities adopted by the department pursuant to section 3173. In calculating the fixed-cost component of per diem rates for nursing facility services, the department shall exclude days of service for which reimbursement is provided under this subparagraph.

Sec. B-2. 22 MRSA §3174-Q is enacted to read:

§3174-Q. Medicaid stability

Beginning August 1, 1996, the department shall obtain authorization from the Legislature before implementing changes in benefit structures and eligibility levels in the Medicaid program that could cause the following changes:

1. Percentages of enrollment. Changes in excess of 10% in the percentages of enrollment among different groups that are categorically eligible for Medicaid; and

2. Services covered. Elimination of services covered under the program on August 1, 1996.

Sec. B-3. 22 MRSA §3477, sub-§1, as amended by PL 1989, c. 858, §11, is further amended to read:

1. Reasonable cause to suspect. When, while acting in a professional capacity, an allopathic or osteopathic physician, medical intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, certified nursing assistant, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant or emergency medical technician suspects that an adult has been abused, neglected or exploited, and has reasonable cause to suspect that the adult is incapacitated, then the professional shall immediately report or cause a report to be made to the department.

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Whenever a person is required to report ~~in the capacity~~ as a member of the staff of a medical, public or private institution, agency or facility, the staff person shall immediately ~~notify the person in charge of the institution, agency or facility, or the designated agent of the person in charge, who shall then cause a report to be made.~~ The staff person shall also make a report directly to the department.

Sec. B-4. 22 MRSA §3480, sub-§3 is enacted to read:

3. Right of entry and access to records of licensed facilities. The department and any duly designated officer or employee of the department have the right to enter upon and into the premises of any facility licensed under sections 1817 and 7801 in order to obtain information necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding. The department has access to all records in the facility's possession that are relevant to the investigation of a report of suspected abuse, neglect or exploitation and any subsequent adult protective proceeding and is not required to issue a subpoena to the facility before obtaining access to the records.

Sec. B-5. 22 MRSA §5107-B is enacted to read:

§5107-B. Long-term Care Steering Committee

There is established the Long-term Care Steering Committee, referred to in this section as the "committee," to provide input to the commissioner on all policy initiatives, laws and rules concerning long-term care and assisted living in order to ensure that long-term care and assisted living programs reflect the needs and preferences of the elderly and individuals with disabilities.

1. Membership; terms. The committee consists of 9 members appointed by the Governor.

A. Two members must be adults with disabilities who are consumers of independent living services. Two members must be family members of individuals who are consumers of long-term care services, one of whom must represent persons with Alzheimer's disease or other dementia. Five members must be individuals over 65 years of age.

B. A member of the committee may not have any financial or governance interest in the provision of long-term care services.

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2 2. Appointments. Statewide organizations representing the
interests of the elderly and adults with disabilities, an
4 association concerned with Alzheimer's disease and related
disorders, a statewide independent living council, veterans'
6 organizations, area agencies on aging and the long-term care
ombudsman program may submit recommendations for members of the
8 committee to the Governor, who shall make appointments to the
committee with regard to the geographic and economic diversity of
10 consumers of long-term care and assisted living services. By
June 1, 1996, the Governor shall appoint 3 members to initial
12 one-year terms on the committee, 3 members to initial 2-year
terms and 3 members to initial 3-year terms. After the initial
appointments, all members serve terms of 3 years.

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16 3. Meetings. By July 1, 1996, the Governor shall convene
the first meeting of the committee, at which the members shall
18 elect a chair from among themselves. The committee shall meet at
least once each month.

20 4. Reimbursement. Members of the committee are entitled to
22 receive reimbursement for travel to meetings upon application to
the Department of Human Services.

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26 **PART C**

28 **Sec. C-1. Report on criminal law enforcement.** The Commissioner
of the Department of Human Services shall convene a study group
30 to review the department's case histories of reported crimes
against the elderly and to identify the potential barriers to
32 successful prosecution of crimes against the elderly, including a
review of the Maine Criminal Code. The study group must include
34 at least one representative from the Maine Prosecutors
Association, one member from the Office of the Attorney General
and one member from any other law enforcement agency. The study
36 group may also include any other persons the department
determines appropriate. The department shall provide the public
38 at least 2 weeks' notice prior to each meeting. The study group
shall report its findings and any proposed legislation to the
40 joint standing committee of the Legislature having jurisdiction
over criminal justice matters no later than November 1, 1996.

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44 **Sec. C-2. Development limitation; report from Commissioner of**
Human Services. Development of family care homes by the
Department of Human Services is limited to 20 homes in which the
46 cost of resident housing and care is reimbursed by the department
and 20 homes in which the cost of resident housing and care is
48 paid for with private funds. By January 1, 1997 the Commissioner
of Human Services shall report to the joint standing committee of

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the Legislature having jurisdiction over health and human services matters on the experience and progress of the department in developing adult family care homes.

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

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

FISCAL NOTE

The Department of Human Services may require future additional General Fund appropriations and Federal Expenditure Fund allocations for nursing facility costs for beds brought back on line without specific appropriations for that purpose. The exact amounts required can not be estimated at this time.

The Department of Human Services will realize some minor savings from the changes in the certificate of need laws.

The additional costs associated with the Long-term Care Steering Committee can be absorbed by the Department of Human Services utilizing existing budgeted resources.

The Department of Human Services and the Department of the Attorney General will incur some minor additional costs to report on criminal law enforcement. These costs can be absorbed within the respective departments' existing budgeted resources.'

SUMMARY

This amendment replaces the bill and makes it an emergency. It deletes those sections of the bill that raised the criminal penalties for certain assaults and misuse of entrusted property. In their place, the amendment requires the Commissioner of Human Services to convene a study group to review reported crimes against the elderly and to identify barriers to successful prosecution. The addition of an emergency clause makes all of the certificate of need provisions effective on April 15, 1996. It deletes from the bill the statutory provisions on the

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2 long-term care ombudsman program because those sections are
3 contained in the legislation from the Assisted Living Task Force
4 in L.D. 1835.

6 This amendment requires the Department of Human Services to
7 seek authorization from the Legislature prior to implementing
8 changes to the Medicaid program that would cause changes in
9 enrollment of greater than 10% among categorically eligible
10 groups or elimination of services covered on August 1, 1996.

12 This amendment creates the Long-term Care Steering Committee
13 to provide input to the Commissioner of Human Services on all
14 policy initiatives, laws and rules concerning long-term care and
15 assisted living. It requires a report from the Commissioner of
16 Human Services by January 1, 1997 to the joint standing committee
17 of the Legislature having jurisdiction over health and human
18 services matters on the experience and progress of the department
19 in developing adult family care homes.

20 This amendment provides an expedited review process for
21 nursing facilities that have voluntarily reduced their licensed
22 bed capacity. It also allows the reopening of up to 100
23 voluntarily reduced beds per year through the certificate of need
24 process without express approval from the Legislature.

26 This amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT