

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "*A*" to S.P. 481, L.D. 1545, Bill, "An Act to Increase the Supply of Medical Services to Consumers"

Amend the bill by striking out all of sections 1 to 4 and inserting in their place the following:

**Sec. 1. 22 MRSA §303, sub-§1**, as enacted by PL 1977, c. 687, §1, is repealed.

**Sec. 2. 22 MRSA §303, sub-§6-C** is enacted to read:

**6-C. Health care.** "Health care" means long-term care in a nursing facility.

**Sec. 3. 22 MRSA §303, sub-§7**, as amended by PL 1997, c. 689, Pt. B, §4 and affected by Pt. C, §2, is further amended to read:

**7. Health care facility.** "Health care facility" means a ~~hospital, psychiatric hospital,~~ nursing facility, ~~kidney disease treatment center including free standing hemodialysis facility,~~ ~~rehabilitation facility,~~ ~~ambulatory surgical facility,~~ ~~independent radiological service center,~~ ~~independent cardiac catheterization center or cancer treatment center~~ as defined in subsection 12-B. The term does not include the office of a private physician or physicians, dentist or dentists, whether in individual or group practice.

**Sec. 4. 22 MRSA §303, sub-§8**, as amended by PL 1997, c. 689, Pt. B, §5 and affected by Pt. C, §2, is repealed.

**SENATE AMENDMENT**

2           **Sec. 5. 22 MRSA §303, sub-§11-B**, as enacted by PL 1981, c.  
705, Pt. V, §6, is repealed.

4           **Sec. 6. 22 MRSA §303, sub-§12-A**, as amended by PL 1997, c.  
689, Pt. B, §6 and affected by Pt. C, §2, is repealed.

8           **Sec. 7. 22 MRSA §303, sub-§13**, as amended by PL 1981, c. 705,  
Pt. V, §8, is further amended to read:

10           **13. Modification.** "Modification" means the alteration,  
12 improvement, expansion, extension, renovation or replacement of a  
health care facility ~~or health maintenance organization~~ or  
14 portion thereof, including initial equipment thereof and the  
replacement of equipment or existing buildings.

16           **Sec. 8. 22 MRSA §303, sub-§14**, as enacted by PL 1977, c. 687,  
18 §1, is amended to read:

20           **14. Offer.** "Offer," when used in connection with "health  
services," means that the health care facility ~~or health~~  
22 ~~maintenance organization~~ holds itself out as capable of providing  
or having the means to provide a health service.

24           **Sec. 9. 22 MRSA §303, sub-§17-A**, as enacted by PL 1981, c.  
26 705, Pt. V, §12, is repealed.

28           **Sec. 10. 22 MRSA §304-A, first ¶**, as amended by PL 1997, c.  
689, Pt. B, §10 and affected by Pt. C, §2, is further amended to  
30 read:

32           ~~No person may~~ A nursing facility may not enter into any  
commitment for financing a project that requires a certificate of  
34 need or incur an expenditure for the project without having  
sought and received a certificate of need, except that this  
36 prohibition does not apply to obligations for financing  
conditioned upon the receipt of a certificate of need or to  
38 obligations for predevelopment activities.

40           **Sec. 11. 22 MRSA §304-A, sub-§2**, as amended by PL 1997, c.  
689, Pt. B, §10 and affected by Pt. C, §2, is repealed.

42           **Sec. 12. 22 MRSA §304-A, sub-§6**, as amended by PL 1997, c.  
44 689, Pt. B, §10 and affected by Pt. C, §2, is further amended to  
read:

46           **6. Changes in bed complement.** Any increase in the existing  
48 licensed bed complement or any increase in the licensed bed  
category of a health care facility; and

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2           **Sec. 13. 22 MRSA §304-A, sub-§8-A**, as enacted by PL 1997, c.  
689, Pt. B, §10 and affected by Pt. C, §2, is amended to read:

4           **8-A. Nursing facilities.** The obligation by a nursing  
6 facility, when related to nursing services provided by the  
nursing facility, of any capital expenditures of \$500,000 or  
8 more, as adjusted pursuant to section 305-A.

10          A certificate of need is not required for a nursing facility to  
12 convert beds used for the provision of nursing services to beds  
to be used for the provision of residential care services. If  
14 such a conversion occurs, public funds are not obligated for  
payment of services provided in the converted beds~~,-and.~~

16           **Sec. 14. 22 MRSA §304-A, sub-§9**, as amended by PL 1997, c.  
689, Pt. B, §10 and affected by Pt. C, §2, is repealed.

18           **Sec. 15. 22 MRSA §306-B, sub-§1, ¶A**, as enacted by PL 1997, c.  
20 689, Pt. B, §20 and affected by Pt. C, §2, is amended to read:

22          A. The committee is composed of ~~10~~ 5 members, ~~9~~ 4 of whom  
24 are appointed by the Governor. The commissioner shall name  
a person employed by the department as the commissioner's  
designee to serve as an ex officio, nonvoting member of the  
26 committee. The ~~9~~ 4 members appointed by the Governor must  
be selected in accordance with the following requirements.

28           (1) ~~Four~~ Two members must be appointed as follows:

30           ~~{a}--One member must represent the hospitals;~~

32           (b) One member must represent the nursing home  
industry; and

34           (c) One member must represent major 3rd-party  
36 payors~~,-and.~~

38           ~~{d}--One member must represent providers.~~

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

46           (2) ~~Five~~ Two public members must be appointed as  
48 consumers of health care. ~~One--of--these~~ These members  
must be designated on an annual basis by the Governor  
as ~~chair~~ chairs of the committee. Neither the public  
50 members nor their spouses or children may, within 12

months preceding the appointment, have been affiliated with, employed by or have had any professional affiliation with any health care facility or institution---or nursing facility,---health---product manufacturer---or---corporation---or---insurer---providing coverage for hospital or medical care; however, neither membership in or subscription to a service plan maintained by a nonprofit hospital and medical service organization, nor enrollment in a health maintenance organization, nor membership as a policy holder in a mutual insurer or coverage under such a policy, nor the purchase of or coverage under a policy issued by a stock insurer may disqualify a person from serving as a public member.

**Sec. 16. 22 MRSA §306-B, sub-§1, ¶E,** as enacted by PL 1997, c. 689, Pt. B, §20 and affected by Pt. C, §2, is amended to read:

E. Five Three members of the committee constitute a quorum. Actions of the committee must be by majority vote.

**Sec. 17. 22 MRSA §315,** as enacted by PL 1977, c. 687, §1, is amended to read:

**§315. Division of project to evade cost limitation prohibited**

No A health care facility ~~or other party~~ required to obtain a certificate of need shall may not separate portions of a single project into components, including, but not limited to, site facility and equipment, to evade the cost limitations or other requirements of section 304.

**Sec. 18. 22 MRSA §316-A,** as corrected by RR 1997, c. 2, §§42 and 43, is amended to read:

**§316-A. Exemptions**

Except as otherwise specifically provided, nothing in this Act may be construed to preempt, replace or otherwise negate the requirements of any other laws or regulations governing health care facilities. The requirements of this Act do not apply with respect to:

**1. Health care facilities.** Any health care facility:

A. Operated by religious groups relying solely on spiritual means through prayer for healing; or

**2. Activities; acquisitions.** Activities or acquisitions by or on behalf of a health maintenance organization or a health

care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Planning and Resources Development Act of 1974, as amended and its accompanying regulations;.

~~3.-- Home health care services.-- Home health care services offered by a home health care provider;~~

~~5.-- Hospice.-- Hospice services and programs;~~

~~6.-- Assisted living.-- Assisted living programs and services regulated under chapter 1665; and~~

~~7.-- Existing capacity.-- The use by an ambulatory surgical facility licensed on January 1, 1998 of capacity in existence on January 1, 1998.~~

**Sec. 19. 22 MRSA §319**, as amended by PL 1985, c. 418, §18, is further amended to read:

**§319. Withholding of funds**

No A health care facility ~~or other provider~~ may not be eligible to apply for or receive any reimbursement, payment or other financial assistance from any state agency or other ~~3rd party~~ 3rd-party payor, either directly or indirectly, for any capital expenditure or operating costs attributable to any project for which a certificate of need as required by this Act has not been obtained. For the purposes of this section, the department shall determine the eligibility of a facility to receive reimbursement for all projects subject to the provisions of this Act.

**Sec. 20. 22 MRSA §324**, as amended by PL 1997, c. 689, Pt. B, §37 and affected by Pt. C, §2, is repealed.

**Sec. 21. 22 MRSA §1715, sub-§1**, as amended by PL 1995, c. 653, Pt. B, §5 and c. 696, Pt. A, §34 and affected by c. 653, Pt. B, §8, is further amended to read:

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

2 A. ~~Is either a direct provider of major ambulatory service,~~  
3 ~~as defined in section 382, subsection 8-A, or is or has been~~  
4 ~~required to obtain a certificate of need under the former~~  
5 ~~section 304 or 304-A. For purposes of this paragraph,~~  
6 "major ambulatory service" means surgical procedures,  
7 chiropractic methodologies or medical procedures, including  
8 diagnostic procedures and therapeutic radiological  
9 procedures, that require special facilities such as  
10 operating rooms or suites, special equipment such as  
11 fluoroscopic equipment or computed tomographic scanners or  
12 special rooms such as post-procedure recovery rooms or  
13 short-term convalescent rooms;

14 B. ~~Provides outpatient services as defined in section 382,~~  
15 ~~subsection 9-A. For purposes of this paragraph, "outpatient~~  
16 ~~services" means all therapeutic or diagnostic health care~~  
17 ~~services rendered to a person who has not been admitted to a~~  
18 ~~hospital as an inpatient; and~~

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

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

25 (a) Screening procedures that are not related to  
26 the diagnosis or treatment of a specific  
27 condition; or

28 (b) Services when:

29 (i) The services are owned by a community  
30 health center, a physician or group of  
31 physicians;

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

35 (iii) Referrals for the purpose of  
36 performing those services are not accepted  
37 from other physicians;

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

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

(4) Lithotripsy services;

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

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

Further amend the bill in section 5 in subsection 2 in the 4th, 5th and 6th lines (page 1, lines 43, 44 and 45 in L.D.) by striking out the following: "~~or by the Department of Human Services in accordance with the provisions of the Maine Certificate of Need Act of 1978, as amended~~" and inserting in its place the following: 'or by the Department of Human Services in accordance with the provisions of the Maine Certificate of Need Act of 1978, as amended'

Further amend the bill by inserting after section 5 the following:

'Sec. 6. 22 MRSA §5118, sub-§4, ¶C, as enacted by PL 1981, c. 470, Pt. A, §117, is amended to read:

C. In the administration of the plan, there is a failure to comply substantially with any such provision of subsection 1, paragraphs A to I, the director shall notify the area agency that no further payments from its allotments under ~~sections 306 and~~ section 5115 will be made to the agency or, in ~~his~~ the director's discretion, that further payments to the agency will be limited to projects under or portions of the area plan not affected by the failure, until ~~he~~ the director is satisfied that there will no longer be any failure to comply. Until ~~he~~ the director is so satisfied, no further payments may be made to the agency from its allotments under section 5115, or payments may be limited to projects under or portions of the area plan not affected by the failure. The director shall, in accordance with regulations ~~he shall prescribe~~ the director prescribes, disburse funds so withheld directly to any public or



nonprofit private organization or agency of the area, submitting an approved plan in accordance with section 5116. Any payment or payments shall must be matched in the proportions specified in section 5116.'

Further amend the bill by inserting after section 8 the following:

'Sec. 9. 24-A MRSA §4225, as amended by PL 1975, c. 293, §4 and enacted by c. 503, is further amended to read:

**§4225. Commissioner of Human Services' authority to contract**

The Commissioner of Human Services, in carrying out his the commissioner's obligations under sections 4204, ~~subsection 1, paragraph B,~~ 4215 and 4216, subsection 1, may contract with qualified persons to make recommendations concerning the determinations required to be made by ~~him~~ the commissioner. Such recommendations may be accepted in full or in part by the Commissioner of Human Services.'

Further amend the bill by striking out all of sections 9 to 11.

Further amend the bill by striking out all of section 13 and inserting in its place the following:

'Sec. 13. Appropriations and allocations. The following appropriations and allocations are made.

**HUMAN SERVICES, DEPARTMENT OF  
Bureau of Medical Services**

Initiative: Effective October 1, 2002, eliminates 2 Health Care Financial Analyst positions responsible for certificate of need review as a result of the elimination of acute care certificate of need.

<b>General Fund</b>	<b>2001-02</b>	<b>2002-03</b>
Positions - Legislative Count	(0.000)	(-2.000)
Personal Services	\$0	(\$88,283)
All Other	0	(5,000)
 Total	 \$0	 (\$93,283)'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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**FISCAL NOTE**

This amendment would exempt the nursing facility provisions of the Certificate of Need Act from repeal. This would effectively eliminate the Medicaid costs of the bill. The bill now includes a net General Fund deappropriation of \$93,283 in fiscal year 2002-03.

The bill as amended would still reduce staffing needs in the Department of Human Services, Bureau of Medical Services. The fiscal note assumes 2 Health Care Financial Analyst positions in the bureau would be eliminated effective October 1, 2002 resulting in a net General Fund savings of \$93,283 in fiscal year 2002-03.

The bill as amended would continue to reduce the collection of certificate of need application fees, resulting in a loss of Other Special Revenue funds revenue of \$60,000 in fiscal year 2002-03.

Continuing to eliminate acute care certificate of need requirements could also have an impact on private sector health care spending. This impact can not be estimated at the present time and is not included in this fiscal note.

**SUMMARY**

This amendment repeals certificate of need for all facilities and providers of health care except nursing facilities. It includes an appropriations and allocations section.

SPONSORED BY: Carl W. Turner  
(Senator TURNER)  
  
COUNTY: Cumberland