

# MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1545

DATE: April 2, 2002 (Filing No. S-538)

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "B" 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Sec. 1. 22 MRSA §303, sub-§1, as enacted by PL 1977, c. 687, §1, is repealed.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-§2-A, as enacted by PL 1981, c. 705, Pt. V, §1, is repealed.

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 C, §2, is repealed.

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 C, §2, is repealed.

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 V, §6, is repealed.

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 C, §2, is repealed.

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

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

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

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

6           **Sec. 9. 22 MRSA §303, sub-§17-A,** as enacted by PL 1981, c.  
7 705, Pt. V, §12, is repealed.

10           **Sec. 10. 22 MRSA §304-A, first ¶,** as amended by PL 1997, c.  
11 689, Pt. B, §10 and affected by Pt. C, §2, is further amended to  
12 read:

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

22           **Sec. 11. 22 MRSA §304-A, sub-§2,** as amended by PL 1997, c.  
23 689, Pt. B, §10 and affected by Pt. C, §2, is repealed.

24           **Sec. 12. 22 MRSA §304-A, sub-§3,** as amended by PL 1997, c.  
25 689, Pt. B, §10 and affected by Pt. C, §2, is further amended to  
26 read:

28           **3. Capital expenditures.** Except as provided in subsection  
29 8-A, the obligation by or on behalf of a health care facility of  
30 any capital expenditure of \$2,000,000 or more, as adjusted  
31 pursuant to section 305-A. Capital expenditures in the case of a  
32 natural disaster, major accident or equipment failure for  
33 replacement equipment or for parking lots and garages,  
34 information and communications systems and physician office space  
35 do not require a certificate of need; and

38           **Sec. 13. 22 MRSA §304-A, sub-§§4 and 6,** as amended by PL 1997,  
39 c. 689, Pt. B, §10 and affected by Pt. C, §2, are repealed.

40           **Sec. 14. 22 MRSA §304-A, sub-§8-A,** as enacted by PL 1997, c.  
41 689, Pt. B, §10 and affected by Pt. C, §2, is amended to read:

44           **8-A. Nursing facilities.** The obligation by a nursing  
45 facility, when related to nursing services provided by the  
46 nursing facility, of any capital expenditures of \$500,000 or  
47 more, as adjusted pursuant to section 305-A.

48           A certificate of need is not required for a nursing facility to  
49 convert beds used for the provision of nursing services to beds  
50

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2 to be used for the provision of residential care services. If  
such a conversion occurs, public funds are not obligated for  
4 payment of services provided in the converted beds~~,-and.~~

6 **Sec. 15. 22 MRSA §304-A, sub-§9**, as amended by PL 1997, c.  
689, Pt. B, §10 and affected by Pt. C, §2, is repealed.

8 **Sec. 16. 22 MRSA §304-E, sub-§3, ¶¶C and D**, as enacted by PL  
10 1987, c. 725, §2, are amended to read:

12 C. Whether the proposed project primarily involves the  
maintenance of a health-care nursing facility as is; and

14 D. Whether the health and welfare of any person the health  
16 care nursing facility is already serving will be  
significantly adversely affected if a waiver is not granted.

18 **Sec. 17. 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  
are appointed by the Governor. The commissioner shall name  
24 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~~  
Asseeciation and other representative organizations.

46 (2) ~~Five~~ Two public members must be appointed as  
consumers of health care. ~~One--of--these~~ These members  
48 must be designated on an annual basis by the Governor  
as ~~ehair~~ chairs of the committee. Neither the public

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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. 18. 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. 19. 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 health-care~~ A nursing 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. 20. 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~~ nursing facilities. The requirements of this Act do not apply with respect to:

**1. Nursing facilities.** Any ~~health-care~~ nursing facility:

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

2           **2. Activities; acquisitions.** Activities or acquisitions by  
or on behalf of a health maintenance organization ~~or a health~~  
eare nursing facility controlled, directly or indirectly, by a  
4 health maintenance organization or combination of health  
maintenance organizations to the extent mandated by the National  
6 Health Planning and Resources Development Act of 1974, as amended  
and its accompanying regulations;.

8  
10           ~~3. Home health care services. Home health care services~~  
~~offered by a home health care provider;~~

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

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

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

20           **Sec. 21. 22 MRSA §318**, as enacted by PL 1977, c. 687, §1, is  
22 amended to read:

24           **§318. Withholding of license**

26           No ~~A~~ new health-care nursing facility, as defined in section  
303, shall ~~be~~ is not eligible to obtain a license under the  
28 applicable state law, if the facility has not obtained a  
certificate of need as required by this chapter. The license of  
30 any facility shall may not extend to include or otherwise be  
~~deemed~~ to allow the delivery of any services, the use of any  
32 equipment ~~which~~ that has been acquired, the use of any portion of  
a facility or any other change for which a certificate of need as  
34 required by this Act has not been obtained. Any unauthorized  
delivery of services, use of equipment or portion of a facility,  
36 or other change shall ~~be deemed~~ is considered to be in violation  
of the respective chapter under which the facility is licensed.

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

42           **§319. Withholding of funds**

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

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department shall determine the eligibility of a facility to receive reimbursement for all projects subject to the provisions of this Act.

**Sec. 23. 22 MRSA §324**, as amended by PL 1997, c. 689, Pt. B, §37 and affected by Pt. C, §2, is repealed.

**Sec. 24. 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:

A. ~~Is either a direct provider of major ambulatory service, as defined in section 382, subsection 8-A, or is or has been required to obtain a certificate of need under the former section 304 or 304-A.~~ For purposes of this paragraph, "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 post-procedure recovery rooms or short-term convalescent rooms;

B. ~~Provides outpatient services as defined in section 382, subsection 9-A.~~ For purposes of this paragraph, "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; and

C. Provides one or more of the following services:

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

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

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(b) Services when:

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

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

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

(2) Laboratory services performed by a hospital or by a medical laboratory licensed in accordance with the Maine Medical Laboratory Commission, or licensed by an equivalent out-of-state licensing authority, excluding those licensed laboratories owned by community health centers, a physician or group of physicians where the 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:



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

4  
6 C. In the administration of the plan, there is a failure to  
8 comply substantially with any such provision of subsection  
10 1, paragraphs A to I, the director shall notify the area  
12 agency that no further payments from its allotments under  
14 ~~sections 306 and~~ section 5115 will be made to the agency or,  
16 in his the director's discretion, that further payments to  
18 the agency will be limited to projects under or portions of  
20 the area plan not affected by the failure, until he the  
22 director is satisfied that there will no longer be any  
24 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.'

26 Further amend the bill in section 8 by striking out all of  
28 the amending clause (page 2, lines 20 and 21 in L.D.) and  
inserting in its place the following:

30 'Sec. 8. 24-A MRSA §4204, sub-§2-A, as amended by PL 2001, c.  
72, §19 and c. 410, Pt. A, §8, is further amended to read:'

32  
34 Further amend the bill in section 8 in subsection 2-A in  
36 paragraph D in subparagraph (1) by striking out all of division  
(a) (page 5, lines 23 to 29 in L.D.) and inserting in its place  
the following:

38 '(a) "Admitted assets" means assets recognized by  
40 the superintendent pursuant to section 901-A. For  
42 purposes of this chapter, the asset value is that  
44 contained in the annual statement of the  
corporation as of December 31st of the year  
preceding the making of the investment or  
contained in any audited financial report, as  
defined in section 221-A, of more current origin.'

46  
48 Further amend the bill in section 8 in subsection 2-A by  
striking out all of paragraph J (page 7, lines 6 to 10 in L.D.)

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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.

General Fund	2001-02	2002-03
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.

FISCAL NOTE

This amendment would exempt the nursing facility provisions of the Maine Certificate of Need Act of 1978 from repeal. This

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2 would effectively eliminate the Medicaid costs of the bill. The  
bill now includes a net General Fund deappropriation of \$93,283  
4 in fiscal year 2002-03.

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

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

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

22

**SUMMARY**

24

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

30

32 SPONSORED BY:

*Karl W. Turner*

(Senator TURNER)

34

COUNTY: Cumberland

36