

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1545

S.P. 481

In Senate, March 8, 2001

An Act to Increase the Supply of Medical Services to Consumers.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TURNER of Cumberland.
Cosponsored by Representative DUGAY of Cherryfield and
Senator DOUGLASS of Androscoggin, Representative: SCHNEIDER of Durham.

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

2
4 **Sec. 1. 5 MRSA §12004-I, sub-§38,** as amended by PL 1997, c. 689, Pt. A, §1 and affected by Pt. C, §2, is repealed.

6 **Sec. 2. 22 MRSA §253, sub-§3,** as amended by PL 1997, c. 689, Pt. A, §2 and affected by Pt. C, §2, is further amended to read:

8
10 **3. Public hearings.** Prior to adopting the state health plan and in reviewing the state health plan, the department shall conduct public hearings in different regions of the State on the proposed state health plan. Interested persons must be given the opportunity to submit oral and written testimony. Not less than 12 30 days before each hearing, the department shall publish in a newspaper of general circulation in the region the time and place 14 of the hearing, the place where interested persons may review the plan in advance of the hearing and the place to which and period 16 during which written comment may be directed to the department. ~~Prior to adopting the state health plan and in reviewing the 18 state health plan, the department shall provide copies to and shall meet and consult with the Certificate of Need Advisory 20 Committee as provided in section 306-B, subsection 2, paragraph A.~~

22
24 **Sec. 3. 22 MRSA c. 103,** as amended, is repealed.

26 **Sec. 4. 22 MRSA §1714-A, sub-§4, ¶C,** as amended by PL 1991, c. 568, §2, is further amended to read:

28
30 C. The department shall provide in a letter written notice of the requirements of this section to the transferee ~~in a 32 letter acknowledging receipt of a request for a certificate of need or waiver of the certificate of need for~~ in the case of a nursing home or hospital transfer or in response to a 34 request for an application for a license to operate a boarding home.

36
38 **Sec. 5. 22 MRSA §2061, sub-§2,** as amended by PL 1993, c. 390, §24, is further amended to read:

40 **2. Review.** Each project for a health care facility has been reviewed and approved to the extent required by the agency 42 of the State that serves as the Designated Planning Agency of the State ~~or by the Department of Human Services in accordance with 44 the provisions of the Maine Certificate of Need Act of 1978, as amended, or, in the case of a project for a hospital, has been 46 reviewed and approved by the Maine Health Care Finance Commission to the extent required by chapter 107;~~

2 **Sec. 6. 24-A MRSA §4203, sub-§1**, as amended by PL 1995, c.
332, Pt. O, §1, is further amended to read:

4 ~~1. Subject to the Maine Certificate of Need Act of 1978, a~~
A person may apply to the superintendent for and obtain a
6 certificate of authority to establish, maintain, own, merge with,
organize or operate a health maintenance organization in
8 compliance with this chapter. A person may not establish,
maintain, own, merge with, organize or operate a health
10 maintenance organization in this State either directly as a
division or a line of business or indirectly through a subsidiary
12 or affiliate, nor sell or offer to sell, or solicit offers to
purchase or receive advance or periodic consideration in
14 conjunction with, a health maintenance organization without
obtaining a certificate of authority under this chapter.

16 **Sec. 7. 24-A MRSA §4204, sub-§1**, as amended by PL 1981, c.
18 501, §49, is repealed.

20 **Sec. 8. 24-A MRSA §4204, sub-§2-A**, as amended by PL 1999, c.
22 222, §2, is further amended to read:

24 2-A. The superintendent shall issue or deny a certificate
of authority to any person filing an application pursuant to
26 section 4203 ~~within 50 business days of receipt of the notice~~
~~from the Department of Human Services that the applicant has been~~
~~granted a certificate of need or, if a certificate of need is not~~
28 ~~required,~~ within 50 business days of receipt of notice from the
Department of Human Services that the applicant is in compliance
30 with the requirements of paragraph B. Issuance of a certificate
of authority shall must be granted upon payment of the
32 application fee prescribed in section 4220 if the superintendent
is satisfied that the following conditions are met.

34 ~~A. The Commissioner of Human Services certifies that the~~
36 ~~health maintenance organization has received a certificate~~
~~of need or that a certificate of need is not required~~
38 ~~pursuant to Title 22, chapter 103.~~

40 B. ~~If the~~ The Commissioner of Human Services has determined
42 ~~that a certificate of need is not required,~~ the commissioner
makes a determination and provides a certification to the
44 superintendent that the following requirements have been
met.

46 (4) The health maintenance organization must establish
and maintain procedures to ensure that the health care
48 services provided to enrollees are rendered under
reasonable standards of quality of care consistent with
50 prevailing professionally recognized standards of

2 medical practice. These procedures must include
mechanisms to ensure availability, accessibility and
4 continuity of care.

6 (5) The health maintenance organization must have an
ongoing internal quality assurance program to monitor
8 and evaluate its health care services including primary
and specialist physician services, ancillary and
10 preventive health care services across all
institutional and noninstitutional settings. The
12 program must include, at a minimum, the following:

14 (a) A written statement of goals and objectives
that emphasizes improved health outcomes in
16 evaluating the quality of care rendered to
enrollees;

18 (b) A written quality assurance plan that
describes the following:

20 (i) The health maintenance organization's
22 scope and purpose in quality assurance;

24 (ii) The organizational structure
26 responsible for quality assurance activities;

28 (iii) Contractual arrangements, in
appropriate instances, for delegation of
30 quality assurance activities;

32 (iv) Confidentiality policies and procedures;

34 (v) A system of ongoing evaluation
activities;

36 (vi) A system of focused evaluation
38 activities;

40 (vii) A system for reviewing and evaluating
provider credentials for acceptance and
42 performing peer review activities; and

44 (viii) Duties and responsibilities of the
designated physician supervising the quality
46 assurance activities;

48 (c) A written statement describing the system of
ongoing quality assurance activities including:

- 2 (i) Problem assessment, identification,
selection and study;
- 4 (ii) Corrective action, monitoring
evaluation and reassessment; and
- 6 (iii) Interpretation and analysis of
8 patterns of care rendered to individual
patients by individual providers;
- 10 (d) A written statement describing the system of
12 focused quality assurance activities based on
14 representative samples of the enrolled population
that identifies the method of topic selection,
16 study, data collection, analysis, interpretation
and report format; and
- 18 (e) Written plans for taking appropriate
20 corrective action whenever, as determined by the
quality assurance program, inappropriate or
22 substandard services have been provided or
services that should have been furnished have not
been provided.
- 24 (6) The health maintenance organization shall record
26 proceedings of formal quality assurance program
activities and maintain documentation in a confidential
28 manner. Quality assurance program minutes must be
available to the Commissioner of Human Services.
- 30 (7) The health maintenance organization shall ensure
32 the use and maintenance of an adequate patient record
system that facilitates documentation and retrieval of
34 clinical information to permit evaluation by the health
maintenance organization of the continuity and
36 coordination of patient care and the assessment the
quality of health and medical care provided to
38 enrollees.
- 40 (8) Enrollee clinical records must be available to the
Commissioner of Human Services or an authorized
42 designee for examination and review to ascertain
compliance with this section, or as considered
44 necessary by the Commissioner of Human Services.
- 46 (9) The organization must establish a mechanism for
48 periodic reporting of quality assurance program
activities to the governing body, providers and
appropriate organization staff.
- 50

2 ~~The Commissioner of Human Services shall make the~~
3 ~~certification required by this paragraph within 60 days of~~
4 ~~the date of the written decision that a certificate of need~~
5 ~~was not required.~~ If the ~~commissioner~~ Commissioner of Human
6 Services certifies that the health maintenance organization
7 does not meet all of the requirements of this paragraph, the
8 commissioner shall specify in what respects the health
9 maintenance organization is deficient.

10 C. The health maintenance organization conforms to the
11 definition under section 4202-A, subsection 10.

12 D. The health maintenance organization is financially
13 responsible, complies with the minimum surplus requirements
14 of this section and, among other factors, can reasonably be
15 expected to meet its obligations to enrollees and
16 prospective enrollees.

17 (1) In a determination of minimum surplus
18 requirements, the following terms have the following
19 meanings.

20 (a) "Admitted assets" means assets as defined in
21 section 901. For purposes of this chapter, the
22 asset value is that contained in the annual
23 statement of the corporation as of December 31st
24 of the year preceding the making of the investment
25 or contained in any audited financial report, as
26 defined in section 221-A, of more current origin.

27 (b) "Reserves" means those reserves held by
28 corporations subject to this chapter for the
29 protection of subscribers. For purposes of this
30 chapter, the reserve value is that contained in
31 the annual statement of the corporation as of
32 December 31st of the preceding year or any audited
33 financial report, as defined in section 221-A, of
34 more current origin.

35 (2) In making the determination whether the health
36 maintenance organization is financially responsible,
37 the superintendent may also consider:

38 (a) The financial soundness of the health
39 maintenance organization's arrangements for health
40 care services and the schedule of charges used;

41 (b) The adequacy of working capital;

2 (c) Any agreement with an insurer, a nonprofit
hospital or medical service corporation, a
4 government or any other organization for insuring
or providing the payment of the cost of health
6 care services or the provision for automatic
applicability of an alternative coverage in the
event of discontinuance of the plan;

8 (d) Any agreement with providers for the
10 provision of health care services that contains a
covenant consistent with subsection 6; and

12 (e) Any arrangements for insurance coverage or an
14 adequate plan for self-insurance to respond to
claims for injuries arising out of the furnishing
16 of health care services.

18 E. The enrollees are afforded an opportunity to participate
in matters of policy and operation pursuant to section 4206.

20 F. Nothing in the proposed method of operation, as shown by
22 the information submitted pursuant to section 4203 or by
independent investigation, is contrary to the public
24 interest.

26 G. Any director, officer, employee or partner of a health
maintenance organization who receives, collects, disburses
28 or invests funds in connection with the activities of that
organization ~~shall-be~~ is responsible for those funds in a
fiduciary relationship to the organization.
30

32 H. The health maintenance organization shall maintain in
force a fidelity bond or fidelity insurance on those
34 employees and officers of the health maintenance
organization who have duties as described in paragraph G, in
36 an amount not less than \$250,000 for each health maintenance
organization or a maximum of \$5,000,000 in aggregate
38 maintained on behalf of health maintenance organizations
owned by a common parent corporation, or such sum as may be
prescribed by the superintendent.
40

42 I. If any agreement, as set forth in paragraph D,
subparagraph (2), division (c), is made by the health
44 maintenance organization, the entity executing the agreement
with the health maintenance organization must demonstrate to
46 the superintendent's satisfaction that the entity has
sufficient unencumbered surplus funds to cover the assured
48 payments under the agreement, otherwise the superintendent
shall disallow the agreement. In considering approval of
such an agreement, the superintendent shall consider the
50

2 entity's record of earnings for the most recent 3 years, the
3 risk characteristics of its investments and whether its
4 investments and other assets are reasonably liquid and
5 available to make payments for health services.

6 J. A health maintenance organization that offers coverage
7 to groups in this State shall offer to groups of all sizes
8 health benefit plans that meet the requirements for
9 standardized health plans specified in Bureau of Insurance
10 Rule Chapter 750.

12 K. The health maintenance organization provides a spectrum
13 of providers and services that meet patient demand.

14 L. The health maintenance organization meets the
15 requirements of section 4303, subsection 1.

18 M. The health maintenance organization demonstrates a plan
19 for providing services for rural and underserved populations
20 and for developing relationships with essential community
21 providers within the area of the proposed certificate. The
22 health maintenance organization must make an annual report
23 to the superintendent regarding the plan.

24 N. Beginning July 1, 1995, a health maintenance
25 organization that offers coverage to groups in the State
26 shall offer coverage for purchase by individuals.

28 O. Each health maintenance organization shall provide basic
29 health care services.

32 The applicant shall furnish, upon request of the superintendent,
33 any information necessary to make any determination required
34 pursuant to this subsection.

36 **Sec. 9. 24-A MRSA §6203, sub-§1, ¶A**, as enacted by PL 1987, c.
37 482, §1, is amended to read:

38 A. The provider has submitted--to--the--department--an
39 application--for--a--certificate--of--need--if--required--under
40 Title--22--section--304--A--and--the--department--has--submitted--a
41 preliminary--report--of--a--recommendation--for--approval--of--a
42 certificate--of--need--and--the--provider--has applied for any
43 other licenses or permits required prior to operation.

46 **Sec. 10. 24-A MRSA §6203, sub-§1, ¶G**, as enacted by PL 1995,
47 c. 452, §11, is amended to read:

48

2 G. The department has approved the adequacy of all services
proposed under the continuing care agreement not otherwise
4 reviewed ~~under the certificate of need process.~~

6 **Sec. 11. 24-A MRSA §6203, sub-§2**, as amended by PL 1995, c.
452, §§12 to 16, is further amended to read:

8 **2. Final certificate of authority.** The superintendent shall
10 issue a final certificate of authority, subject to annual
renewal, when:

12 A. The provider has obtained any required ~~certificate of~~
14 ~~need--or--other~~ permits or licenses required prior to
construction of the facility;

16 C. The superintendent is satisfied that the provider has
18 demonstrated that it is financially responsible and shall
may reasonably be expected to meet its obligations to
20 subscribers or prospective subscribers;

22 D. The superintendent has determined that the provider's
continuing care agreement meets the requirements of section
24 6206, subsection 3, and the rules promulgated in this
chapter; and

26 G. The provider certifies to the superintendent either:

28 (1) That preliminary continuing care agreements have
30 been entered and deposits of not less than 10% of the
entrance fee have been received either:

32 (a) From subscribers with respect to 70% of the
34 residential units, including names and addresses
of the subscribers, for which entrance fees will
36 be charged; or

38 (b) From subscribers with respect to 70% of the
total entrance fees due or expected at full
40 occupancy of the community; or

42 (2) That preliminary continuing care agreements have
been entered and deposits of not less than 25% of the
44 entrance fee received from either:

46 (a) Subscribers with respect to 60% of the
residential units, including names and addresses
48 of the subscribers, for which entrance fees will
be charged; or

2 (b) Subscribers with respect to 60% of the total
entrance fees due or expected at full occupancy of
the community.

4
6 Within 120 days after determining that the application to the
superintendent and the department is complete, the superintendent
shall issue or deny a final certificate of authority to the
8 provider, ~~unless a certificate of need is required, in which case
the final certificate of authority shall be issued or denied in~~
10 ~~accordance with the certificate of need schedule.~~

12 **Sec. 12. 24-A MRSA §6226**, as enacted by PL 1987, c. 563, §7,
is repealed.

14 **Sec. 13. Revisor's review; cross-references.** The Revisor of
16 Statutes shall review the Maine Revised Statutes and include in
the errors and inconsistencies bill submitted to the Second
18 Regular Session of the 120th Legislature pursuant to Title 1,
section 94 any sections necessary to correct and update any
20 cross-references in the statutes to provisions of law repealed in
this Act.

22

24

SUMMARY

26

Under current law, before introducing additional health care
services and procedures in a market area, a person must apply for
and receive a certificate of need from the Department of Human
28 Services. This bill eliminates that requirement.