

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

B. The Department of Labor on behalf of the employee or employees.

7. Lien. Whoever loses wages or medical benefits due to an employer's violation of this section shall have a lien against the employer's property or assets for the full amount of the wages wrongfully withheld and the medical benefits for which the employer is liable under this section. The lien shall be created and enforced as provided in Title 10, chapter 603 for mechanics' liens.

8. Exceptions. The following exceptions apply.

A. An employer is not liable under this section for benefits which would have been payable under an employee health benefit plan if the failure to provide the notice required by subsection 2 or 3 is due to circumstances beyond the control of the employer.

B. This section does not apply to any termination of or failure to implement an employee health benefit plan which results from or occurs during a strike or lockout. Section 634 applies to the termination of any employee health benefit plan during a strike.

Effective July 16, 1986.

CHAPTER 661

H.P. 1428 - L.D. 2018

AN ACT to Revise the Certificate of Need
Process.

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

Sec. 1. 22 MRSA §304-C, as enacted by PL 1985, c. 338, §2, is repealed.

Sec. 2. 22 MRSA §304-D is enacted to read:

§304-D. Waiver of certificate of need review for certain minor projects and for projects for which hospitals do not seek positive adjustment to financial requirements established by the Maine Health Care Finance Commission

1. Categories of projects eligible for waiver. A hospital may apply for a waiver of the certificate of need review requirements otherwise imposed by this chapter with respect to the following projects:

A. The offering or development of any new health services involving:

(1) No capital expenditure or a capital expenditure of less than \$300,000; and

(2) Third-year annual operating costs of at least the expenditure minimum for operating costs, but less than \$250,000; or

B. Any project that is a minor project, as defined in section 396-K, subsection 1, paragraph B, and that meets the requirements of section 396-K, subsection 3, paragraph E, subparagraph (2).

2. Conditions of waiver. As a condition of receipt of a waiver of certificate of need review under subsection 1, paragraph A, the hospital shall not be subject to any adjustments to its financial requirements pursuant to section 396-D.

3. Waiver process for certain new health services. Any hospital may file a request for waiver under subsection 1, paragraph A, with the department describing the proposed project and its projected associated capital costs and projected operating costs, as appropriate. Within 15 days following receipt of the hospital's waiver request and other information, if requested, the department shall issue its waiver determination.

The department shall waive certificate of need review in all cases where the request demonstrates that:

A. The project meets the criteria of subsection 1, paragraph A; and

B. The hospital agrees to be bound by the conditions of subsection 2.

4. Waiver process for certain minor projects. Any hospital may file a request for waiver under subsection 1, paragraph B, with the department describing the proposed project and its associated capital and operating costs. Within 15 days following receipt of the commission's determination under section 396-K, subsection 3, paragraph E, the department shall issue its waiver determination. The department

shall waive certificate of need review in all cases where the request demonstrates that the project meets the criteria of subsection 1, paragraph B.

5. Treatment of project by the Maine Health Care Finance Commission. The total capital costs and operating costs associated with a project described in subsection 1, paragraph A, shall not be debited against the Certificate of Need Development Account or the Hospital Development Account pursuant to section 396-K.

Sec. 3. 22 MRSA §307, sub-§5-A, as amended by PL 1985, c. 418, §9, is further amended to read:

5-A. Decision by the department. Decisions by the commissioner shall be made in accordance with the following procedures.

A. The department shall prepare its final staff report based solely on the record developed to date, as defined in paragraph C, subparagraphs (1) to (6).

B. After reviewing each application, the commissioner shall make a decision either to issue a certificate of need or to deny the application for a certificate of need. The decision of the commissioner shall be based on the informational record developed in the course of review as specified in paragraph C. Notice of the decision shall be sent to the applicant and the committee. This notice shall incorporate written findings which 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.

C. For purposes of this subsection, "informational record developed in the course of review" includes the following:

(1) All applications, filings, correspondence and documentary material submitted by applicants and interested or affected persons prior to the termination of the public comment period under subsection 2-B, paragraph F or, if no hearing is held, prior to the 80th day of a 90-day review cycle and prior to the 140th day of a 150-day review cycle;

- (2) All documentary material reflecting information generated by the department prior to termination of the public comment period or, if no hearing is held, prior to the 80th day of a 90-day review cycle and prior to the 140th day of a 150-day review cycle;
- (3) Stenographic or electronic recording of any public hearing or meeting held during the course of review, whether or not transcribed;
- (4) All material submitted or obtained in accordance with the procedures in subsection 2-B, paragraph G;
- (5) The staff report of the agency, the preliminary staff report of the department and the recommendations of the committee;
- (6) Officially noticed facts; and
- (7) The final staff report of the department.

Documentary materials may be incorporated in the record by reference, provided that registered affected persons are afforded the opportunity to examine the materials.

In making a determination on any pending application under the certificate of need program, the department shall not rely on the contents of any documents relating to the application when those documents are submitted to the department anonymously.

Sec. 4. 22 MRSA §309, sub-§2, ¶¶N and O, as enacted by PL 1977, c. 687, §1, are amended to read:

N. The gains that may be anticipated from innovative measures in the organization, financing and delivery of health care and the development of comprehensive services for the community to be served; and

O. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages; and

Sec. 5. 22 MRSA §309, sub-§2, ¶P is enacted to read:

P. For any facility located within 30 miles of the state border, the gains that may be anticipated from the ability to attract health care consumers from out-of-state and the ability to provide health care for Maine citizens who formerly had to obtain that care out-of-state.

Sec. 6. 22 MRSA §309, sub-§6, as amended by PL 1985, c. 338, §3, is further amended to read:

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

Sec. 7. 22 MRSA §396-D, sub-§3, ¶A, as enacted by PL 1983, c. 579, §10, is amended to read:

A. An allowance for the cost of facilities and fixed equipment shall include:

(1) Debt service requirements associated with the hospital's facilities and fixed equipment; and

(2) Annual contributions to a sinking fund sufficient to provide a down payment on replacement facilities and fixed equipment. The sinking fund shall be required to be maintained by each hospital and the commission may include in it price level depreciation on fixed equipment or a portion of price level depreciation on facilities.

In determining payment year financial requirements, the commission shall include an adjustment

in the allowance for facilities and fixed equipment to reflect changes in debt service and to reflect any new increases or decreases in capital costs which result from the acquisition, replacement or disposition of facilities or fixed equipment and which are not related to projects subject to review under the Maine Certificate of Need Act for which an adjustment is required to be made under subsection 5 or subsection 9, paragraph D. Any positive adjustments made to reflect such increases in capital costs shall not be effective until the facilities or fixed equipment have been put into use and the associated expenses would be eligible for reimbursement under the Medicare program.

Sec. 8. 22 MRSA §396-D, sub-§5, ¶A, as amended by PL 1985, c. 339, §1, is further amended to read:

A. Except as provided in paragraph C, in determining payment year financial requirements, the commission shall include an adjustment to reflect any net increases or decreases in the hospital's costs resulting from projects that have been approved by the department in accordance with the Maine Certificate of Need Act and that otherwise meet the requirements of section 396-K, subsection 2, paragraph B, or subsection 3, paragraph C. These adjustments may be made subsequent to the commencement of a fiscal year and shall take effect on the date that expenses associated with the project would be eligible for reimbursement under the Medicare program.

Sec. 9. 22 MRSA §396-D, sub-§9, ¶D is enacted to read:

D. In determining payment year financial requirements, the commission shall include an adjustment to reflect any net increases or decreases in the hospital's costs resulting from projects that meet the requirements of section 396-K, subsection 3, paragraph E.

(1) Except as provided in subparagraph (2), the adjustment under this paragraph shall only be made as part of the annual revenue limit determination and not as an interim adjustment.

(2) Once during the course of its 3rd payment year, a hospital whose fiscal year commences on or after October 1, 1986, and before March 1, 1987, may seek an adjustment

under this paragraph, if it has not sought such an adjustment as part of its 3rd payment year revenue limit filing.

Sec. 10. 22 MRSA §396-K, as amended by PL 1985, c. 347, §§1 to 3, is repealed and the following enacted in its place:

§396-K. Establishment of Hospital Development Account

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Major project" means a hospital project subject to review under the Maine Certificate of Need Act that has incremental annual capital and operating costs in its 3rd year of implementation, including a partial first fiscal year, of \$150,000 or more.

B. "Minor project" means a hospital project subject to review under the Maine Certificate of Need Act that has incremental annual capital and operating costs in its 3rd fiscal year of implementation, including a partial first fiscal year, of less than \$150,000.

C. "Payment year cycle" means each annual period of October 1st to September 30th beginning with the first payment year cycle of October 1, 1984, to September 30, 1985.

2. Certificate of Need Development Account. For the first and 2nd payment year cycles, as defined in subsection 1, the commission shall establish a statewide Certificate of Need Development Account to support the development and undertaking of projects which are subject to review pursuant to the Maine Certificate of Need Act. This account shall be administered as follows.

A. The commission shall credit the Certificate of Need Account with the following amounts:

(1) For the first payment year cycle, 1% of the sum of:

(a) The total budgeted expenses, including capital costs, of all hospitals, for their most recent fiscal year

ending prior to July 1, 1984, which were submitted to and approved by a voluntary budget review organization prior to July 1, 1983; and

(b) The total actual expenses, including capital costs, which were incurred, in its most recent fiscal year ending prior to July 1, 1983, by any hospital which did not secure approval, prior to July 1, 1983, of its budget for its most recent fiscal year ending prior to July 1, 1984; and

(2) For the 2nd payment year cycle, 1% of the first payment year financial requirements determined for all hospitals in the State.

The amount to be credited in a particular payment year cycle will be deemed credited to the Certificate of Need Account as of the first day of that payment year cycle.

B. The commission shall approve an adjustment to a hospital's financial requirements under section 396-D, subsection 5, paragraph A, for a project if:

(1) The project was subject to review and was approved by the department under the Maine Certificate of Need Act; and

(2) The associated incremental annual capital and operating costs do not exceed the amount remaining in the Certificate of Need Development Account as of the date of approval of the project by the department, after accounting for previously approved projects.

C. Debits and carry-overs shall be determined as follows.

(1) Except as provided in subparagraph (2), the commission shall debit against the Certificate of Need Development Account the full amount of the incremental annual capital and operating costs associated with each project for which an adjustment is approved under paragraph B. Incremental annual capital and operating costs shall be determined in the same manner as adjustments to finan-

cial requirements are determined under section 396-D, subsection 5, for the 3rd fiscal year of implementation of the project.

(2) In the case of a project which is approved in the first or 2nd payment year cycle and whose associated incremental annual capital and operating costs are determined to exceed \$2,000,000, debits shall be made as follows:

(a) In the payment year cycle in which the project is approved, the commission shall debit against the Certificate of Need Development Account an amount equal to \$2,000,000; and

(b) In the payment year cycle immediately following the cycle in which the project is approved, the commission shall debit against the Certificate of Need Development Account established under this subsection or the statewide component of the Hospital Development Account established under subsection 3 an amount equal to the difference between the incremental annual capital and operating costs associated with the project and the amount debited under division (a) in the previous payment year cycle.

(3) Amounts credited to the Certificate of Need Development Account for the first payment year cycle for which there are no debits shall be carried forward to the 2nd payment year cycle. Amounts credited to the Certificate of Need Development Account for the 2nd payment year cycle for which there are no debits shall be carried forward to the 3rd payment cycle as a credit to the statewide component of the Hospital Development Account established in accordance with subsection 3.

3. Hospital Development Account. For the 3rd and subsequent payment year cycles, the commission shall establish a Hospital Development Account to support the development of hospital facilities and services. This account shall be administered as follows.

A. The commission shall annually establish, by rule, the amount to be credited to the Hospital

Development Account. In establishing the amount of the credit, the commission shall, at a minimum, consider:

- (1) The State Health Plan;
- (2) The ability of the citizens of the State to underwrite the additional costs;
- (3) The limitations imposed on payments for new facilities and services by the Federal Government pursuant to the United States Social Security Act, Title XVIII and XIX;
- (4) The special needs of small hospitals;
- (5) The historic needs and experience of hospitals over the past 5 years;
- (6) The amount in the account for the previous years and the level of utilization by hospitals in those years;
- (7) Obsolescence of physical plants;
- (8) Technological developments; and
- (9) Management services or other improvements in the quality of care.

The commission shall report, no later than January 15th of each year, to the joint standing committee of the Legislature having jurisdiction over human resources regarding the rationale the commission used in establishing the amount credited to the Hospital Development Account in the previous year.

The amount to be credited in a particular payment year cycle will be deemed credited to the Hospital Development Account as of the first day of that payment year cycle.

B. The annual credit to the Hospital Development Account shall be apportioned into the following 2 components.

- (1) One component, equal to 80% of the annual credit, shall be designated as the "statewide component" and shall be used on a statewide basis for the support of major projects and those minor projects that meet the requirements of paragraph C.

(2) One component, equal to 20% of the annual credit, shall be designated as the "individual hospital component" and shall be further allocated and administered in accordance with paragraphs D and E.

C. The commission shall approve an adjustment to a hospital's financial requirements under section 396-D, subsection 5, paragraph A, for a major or minor project if:

(1) The project was approved by the department under the Maine Certificate of Need Act; and

(2) The associated incremental annual capital and operating costs do not exceed the amount remaining in the statewide component of the Hospital Development Account as of the date of approval of the project by the department, after accounting for previously approved projects.

D. The component specified in paragraph B, subparagraph (2), shall be allocated to individual hospitals. The amount allocated to each hospital shall be considered the hospital's individual development account and shall be determined as follows:

(1) 0.5% of the individual hospital component specified in paragraph B, subparagraph (2), shall first be allocated to each hospital; and

(2) The remainder of the individual hospital component shall then be allocated to each hospital by dividing the hospital's payment year financial requirements by the total payment year financial requirements of all hospitals and multiplying that quotient by the amount of the remainder. For purposes of this calculation, the payment year financial requirements of a hospital are the most recent payment year financial requirements determined as of the first day of each payment year cycle, regardless of whether those financial requirements are determined pursuant to a proposed revenue limit, a provisional revenue limit or a final revenue limit as of that date.

E. The commission shall approve an adjustment to a hospital's financial requirements under section 396-D, subsection 9, paragraph D, for a proposal:

(1) If the proposal is either:

(a) A minor project that has not been approved by the department under the Maine Certificate of Need Act; or

(b) A proposal that is not subject to review under the Maine Certificate of Need Act; and

(2) To the extent that the associated incremental annual capital and operating costs as determined by the commission do not exceed the amount remaining in the hospital's individual development account, after accounting for previous projects debited against the account. The commission need not make a determination under this subparagraph nor an adjustment under this paragraph unless the person seeking the adjustment has submitted all information reasonably required by the commission to calculate these costs.

F. Debits and carry-overs shall be determined as follows.

(1) Except as provided in subparagraph (2), the commission shall debit against the statewide component of the Hospital Development Account the full amount of the incremental annual capital and operating costs associated with each project for which an adjustment is approved under paragraph C. Incremental annual capital and operating costs shall be determined in the same manner as adjustments to financial requirements are determined under section 396-D, subsection 5, for the 3rd fiscal year of implementation of the project.

(2) In the case of a project which is approved under paragraph C and which involves extraordinary incremental annual capital and operating costs, the commission may, in accordance with duly promulgated rules, defer the debiting of a portion of the annual costs associated with the project until a subsequent payment year cycle or cycles.

(3) The commission shall debit against a hospital's individual development account the full amount of the incremental annual capital and operating costs associated with each proposal of the hospital for which an adjustment is approved under paragraph E. Incremental annual capital and operating costs shall be determined in the same manner as adjustments to financial requirements are determined under section 396-D, subsection 9, paragraph D, for the 3rd fiscal year of implementation of the proposal.

(4) Amounts credited to the statewide component of the Hospital Development Account for which there are no debits shall be carried forward to subsequent payment year cycles as a credit to the statewide component. Amounts credited to an individual hospital account for which there are no debits shall be carried forward to subsequent payment year cycles as a credit to that account.

4. Determinations by department. For purposes of implementing, subsection 3, paragraph E, the department shall determine whether a project is subject to review under the Maine Certificate of Need Act and, if so, whether it is a minor or major project.

Effective July 16, 1986.

CHAPTER 662

H.P. 1537 - L.D. 2173

AN ACT to Create a Noncommercial Scallop License and to Adjust Fees for the Scallop Boat License.

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

Sec. 1. 12 MRSA §6701, sub-§4, as enacted by PL 1977, c. 661, §5, is amended to read:

4. Exception. In any one day, any person licensed pursuant to section 6703 may take or possess not more than 2 bushels of shell scallops or 4 quarts of shucked scallops for personal use without a scallop license under this section.