

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

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

MENTAL HEALTH AND MENTAL RETARDATION, 1986-87
DEPARTMENT OF

Day Treatment Programs

All Other \$75,000

These funds are to be used to provide and support essential mental health services in day treatment programs serving emotionally handicapped school-age children and their families.

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

Effective April 25, 1986.

CHAPTER 778

S.P. 946 - L.D. 2372

AN ACT to Amend the Maine Health Care Finance Commission Laws with Respect to the Certificate of Need Development Account, Recognition of Certain Operating Costs, Repeal of Provisions Governing Reorganizations and Affiliated Interests, Streamlining of Procedure and for Other Purposes.

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

Sec. 1. 22 MRSA §388, sub-§1, as enacted by PL 1983, c. 579, §10, is repealed and the following enacted to read:

1. Annual reports. The commission shall prepare the following annual reports.

A. Prior to January 1st, the commission shall prepare and transmit to the Governor and to the Legislature a report of its operations and activities during the previous year. This report shall include such facts, suggestions and policy recommendations as the commission considers necessary.

B. The commission shall prepare a report of the annual savings to the payors as a result of this chapter and shall submit this report annually to the Bureau of Insurance. The Bureau of Insurance shall take this savings into account in approving health insurance rates. A copy of this report shall be submitted to the joint standing committee of the Legislature having jurisdiction over human resources.

Sec. 2. 22 MRSA §388, sub-§2, as enacted by PL 1983, c. 579, §10, is amended to read:

2. Reports to legislative committee. While the Legislature is in session, the commission or its staff shall, upon request of the joint standing committee of the Legislature having jurisdiction over health and institutional services human resources, appear before the committee to discuss its annual report reports and any other items requested by the committee.

Sec. 3. 22 MRSA §396-D, sub-§8, ¶D, as enacted by PL 1983, c. 579, §10, is amended to read:

D. A reorganization hospital restructuring, as defined pursuant to section 396-L.

Sec. 4. 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 the reasonable costs, including reasonable attorneys' fees, incurred by a hospital to prosecute an appeal of a commission decision pursuant to section 397, subsection 4, provided that the adjustment shall reflect only those reasonable costs that are associated with the issues on which the hospital has prevailed in court, including costs associated with presenting those issues to the commission in the case from which the appeal was taken. The commission shall make an adjustment under this paragraph only to the extent that the costs found to be reasonable are not otherwise included in financial requirements.

Sec. 5. 22 MRSA §396-L, as enacted by PL 1983, c. 579, §10, is repealed and the following enacted to read:

§396-L. Affiliated interests

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

A. "Affiliated interest" means:

(1) Any person who is a subsidiary of a hospital;

(2) Any person who is a parent entity of a hospital;

(3) Any person who is a subsidiary of a hospital's parent entity;

(4) Any person, other than an individual, who:

(a) Controls a hospital or which a hospital, or any of its affiliates as defined in subparagraphs (1) to (3), controls; and

(b) Which is engaged directly or indirectly in the provision of a health care service or services, the costs of which would be considered elements of financial requirements if performed by a hospital.

B. "Available assets" means the sum of board-designated funds and current assets less inventories and net receivables.

C. For purposes of paragraph A, to "control" means both:

(1) To have power, alone or in concert with other hospitals or affiliated interests, to direct the management and policies of another person, other than an individual; and

(2) To have that power by means of any one of the following or any combination of the following:

(a) Common governing board members;

(b) Articles of incorporation, by-laws, partnership agreements, contracts, deeds, trust documents, assignments, leases or other legal documents; or

(c) In the case of a for-profit corporation, ownership of 10% or more of the corporation's voting securities, directly, indirectly or by a chain of successive ownership.

"Control" does not include the power to determine terms, conditions and prices only through an arms-length contract for the purchase of goods or services, such as a contract for professional services or the power to direct management and policies only through canonical or similar religious control.

D. "Hospital-capitalized affiliate" means any affiliated interest that was capitalized, in whole or in part, by transfers of assets from a hospital or another hospital-capitalized affiliate, unless one of the following applies:

(1) The affiliated interest has returned to the hospital, with interest at a market rate, all assets transferred to it by the hospital or another hospital-capitalized affiliate;

(2) All of the assets transferred to the affiliated interest by the hospital or hospital-capitalized affiliate were exempt under subsection 4, paragraph F; or

(3) The total assets received by the affiliated interest from the hospital or any hospital-capitalized affiliate do not exceed \$10,000.

E. "Hospital restructuring" means any one of the following:

(1) Transfer of any assets of a hospital or hospital-capitalized affiliate to any person, provided that the transfer of assets to a title-holding company within the meaning of the United States Internal Revenue Code, Section 501, paragraph C, subparagraph (2), that holds property on behalf of the transfer or shall not be considered a hospital restructuring;

(2) Pledge of a hospital's assets or credit or pledge of the assets or credit of a hospital-capitalized affiliate, to secure the financial obligation of another person;

(3) Transfer of an existing service or function, directly or indirectly, by a hospital to an affiliated interest or an entity which, as a result of the transfer would become an affiliated interest;

(4) Undertaking by an affiliated interest or an entity which as a result of the undertaking would become an affiliated interest of any health care service whose associated costs would be considered elements of financial requirements if performed by a hospital;

(5) Entry of a hospital or hospital-capitalized affiliate into a partnership as a general partner, or any similar act by means of which a hospital or hospital-capitalized affiliate assumes or acquires general liability or responsibility for the obligations, acts or omissions of a business venture other than one undertaken solely by the hospital;

(6) Creation, organization, acquisition or transfer, directly or indirectly, of a subsidiary of a hospital;

(7) Creation or organization, directly or indirectly, of a parent entity of a hospital by any means, including without limitation, the acquisition by any person of ownership or control of a hospital or its existing parent entity; and

(8) Merger of a hospital or its parent entity with any person or any transaction functionally equivalent to a merger.

F. "Related party" means any person, other than an affiliated interest as defined in paragraph A, that would be considered related to the hospital, as defined under the Medicare program established pursuant to the United States Social Security Act, Title XVIII.

G. "Significant transaction" means a transaction if it has an actual or imputed value or worth in

excess of \$10,000 or more for a fiscal year or if the total amount of the contract price, consideration and other advances by the institution on account of the transactions is \$10,000 or more for the fiscal year.

H. "Subsidiary" means a person over which another person exercises majority control by virtue of voting stock of a for-profit corporation or voting members of a not-for-profit corporation.

I. "Transfer of assets," for purposes of paragraphs D and E, means any transaction if, and to the extent that, the fair market value of any assets conveyed by the hospital or hospital-capitalized affiliate in that transaction exceeds the value of any consideration received by the hospital or hospital-capitalized affiliate. Transfers of assets under this definition include loans at interest rates below market levels.

2. Reporting and consideration of significant transactions; corporate plans. Statements of significant transactions and corporate plans shall be submitted and considered as follows.

A. Each hospital shall annually submit to the commission a written statement of significant transactions, as defined in subsection 1, between itself and any person in which an officer, trustee or director of a hospital is an employee, partner, director, officer or beneficial owner of 3% or more of the capital stock, between itself and any affiliated interest, between itself and any auxiliary, or between itself and any related party.

B. In determining base year financial requirements pursuant to section 396-B or in establishing adjustments for productivity or other factors pursuant to section 396-D, the commission may disregard unreasonable or unnecessary costs under significant transactions between a hospital and the persons specified in paragraph A.

C. Each hospital which has or will have affiliated interests, and which has not elected to determine the resources available from those affiliates under subsection 5, paragraph C, shall file, at such time as may be reasonably established by the commission, a 5-year corporate plan containing information as specified by the

commission. At a minimum, the plan shall set forth the manner in which financial resources of the affiliated interests will be applied to offset financial requirements of the hospital in accordance with subsection 5 and section 396-E, subsection 1, paragraph G. The commission shall review and approve or disapprove each corporate plan taking into account, at a minimum, the following factors as the commission deems appropriate in the interests of the people of the State:

- (1) Long-term capital and operating needs of the affiliated interests to meet market conditions and achieve reasonable growth;
- (2) Federal reimbursement and burdens imposed on other payors;
- (3) The effect which the services of the affiliated interests would have on the quality and efficiency of health services; and
- (4) Requirements associated with maintaining tax-exempt status.

The hospital shall submit annual updates of its corporate plan which shall not require approval unless significant modifications are made to the plan. Notwithstanding the provisions of section 387, confidential commercial information submitted by a hospital or its affiliates under this paragraph or under subsection 4 shall not be subject to public disclosure. The commission shall adopt rules establishing criteria for determining the confidentiality of such information and establishing procedures to afford hospitals and affiliated interests notice and opportunity to comment in response to requests for information which may be considered confidential.

3. Access to accounts and records. The commission may require the production of books, accounts, records, papers and memoranda of an auxiliary which is engaged in commercial activities or of an affiliated interest or related party which relate, directly or indirectly, to any of its dealings with a hospital which affect the hospital's costs or charges. The commission may, in determining financial requirements of a hospital, disallow all or a portion of the payments under such dealings, the account or record of which is not made available to the commission.

4. Hospital restructuring. Unless exempt by rule or order of the commission or by paragraph F, no

hospital restructuring may take place without the approval of the commission. No hospital restructuring may be approved by the commission unless it is established by the applicant for approval that the hospital restructuring is consistent with the interests of the people of the State.

A. The following procedures shall apply to an application for approval of a hospital restructuring.

(1) Except as provided in subparagraph (2), the commission shall rule upon all requests for approval of a hospital restructuring within 90 days of the filing date. The filing date shall be the date when the commission notifies the applicant that the filing is complete.

(2) If the commission deems that the necessary investigation cannot be concluded within 90 days after the filing date, the commission may extend the period for a further period of no more than 90 days. If the commission fails to make a final ruling on or before the end of the 2nd 90-day period or such later date as may be fixed by agreement of all parties, the application shall be deemed disapproved.

(3) Review of hospital restructurings that are also subject to review under the Maine Certificate of Need Act shall, to the maximum extent practicable, be conducted simultaneously with the department's review under the Act.

B. In granting its approval, the commission shall impose such terms, considerations or requirements as, in its judgment, are necessary to protect the interests of payors and purchasers. These conditions shall include provisions which assure the following.

(1) The commission has reasonable access to books, records, documents and other information relating to the hospital or any of its affiliates.

(2) The commission has all reasonable powers to detect, identify, review and approve or disapprove, costs associated with transactions between affiliated interests.

(3) The hospital's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired.

(4) The ability of the hospital to provide reasonable and adequate care is not impaired.

(5) The hospital continues to be subject to applicable laws, principles and rules governing the regulation of hospitals.

(6) The hospital's credit is not impaired or adversely affected.

(7) The requirements of subsection 5 will be met.

C. The commission may adopt rules providing for the filing by hospitals of information by means of which the commission may verify that acts or events that require approval under this subsection are not occurring without such approval. This rule-making authority shall not be construed to permit general review of the prudence of ordinary hospital investments of endowments.

D. For purposes of this subsection, the commission shall review a filing and, if additional information is necessary to determine the filing complete, shall make its initial request for such additional information within 30 days of its receipt of the filing and shall make any subsequent requests within 15 days of its receipt of the previously requested information.

E. Any hospital or affiliated interest of a hospital may apply to the commission for an advance determination as to the applicability of this subsection to a particular set of facts. The commission shall issue such an advance determination within 30 days of the filing of a complete request. A completed request is one containing such information as the commission may specify by rule and with respect to which the requesting party has given such reasonable notice to other affected persons as may be required by commission rule.

F. A hospital or hospital-capitalized affiliate may engage in a hospital restructuring without commission approval if:

(1) The hospital restructuring is a transfer or pledge that falls solely within subsection 1, paragraph E, subparagraph (1) or (2); and

(2) The aggregate value of all such transfers and pledges, as of the time immediately following the hospital restructuring, does not exceed 10% of the lesser of the net worth or the available assets of the hospital or hospital-capitalized affiliate, as determined as of the end of the most recent fiscal year for which a complete financial statement is available prior to the restructuring.

5. Determination of available resources; exemption from corporate plan requirement. Unless a hospital has elected to have available resources determined under paragraph C, such resources shall be determined under paragraph B.

A. For purposes of this subsection, the "hospital's portion" shall be the proportion of the total capitalization of the affiliated interest that is owned by or was provided by the hospital and any hospital-capitalized affiliate.

B. After review of corporate plans submitted in accordance with subsection 2, the commission shall, consistent with the following provisions, determine the amount of financial resources of an affiliated interest to be applied to hospital financial requirements pursuant to section 396-E.

(1) Gifts, grants and income from investments received by affiliated interests shall not be considered available resources.

(2) The hospital's portion of excess revenues of nonprofit affiliated interests and the hospital's portion of profits of for-profit affiliated interests shall be offset, except to the extent that the retention of such funds by the affiliated interest is required to meet its capital and operating needs as defined in the plan submitted to and approved by the commission pursuant to subsection 2. The amount of the excess revenues or profits shall be determined without regard to any gifts, grants or other transfers of funds by the affiliated interest to the hospital or to other affiliates but shall otherwise be determined on a con-

solidated after-tax basis.

(3) Of the amounts determined under subparagraph (2), 50% shall be offset generally against hospital financial requirements.

C. A hospital may elect not to file corporate plans and updates under subsection 2. A hospital that makes such an election shall annually file complete financial statements of each of its affiliated interests and, if available, audited, consolidated financial statements with the commission. Available resources from the affiliated interests of a hospital that makes an election under this paragraph shall be determined as follows: Fifty percent of the hospital's portion of all excess revenues of nonprofit affiliated interests and 50% of the hospital's portion of all profits of for-profit affiliated interests shall be applied to hospital financial requirements. In determining total profits or excess revenues, the commission may consider the reasonableness of reported expenses. The amount of excess revenues or profits shall be determined without regard to any gifts, grants or other transfers of funds by the affiliated interest to the hospital or to other affiliates but shall otherwise be determined on a consolidated after-tax basis. Gifts, grants and income from investments received by affiliated interests shall not be considered available resources.

6. By November 1, 1986, the commission shall adopt rules governing hospital restructuring and significant transactions as defined in this chapter, including, but not limited to, rules addressing the following subjects:

A. The nature and format of applications for hospital restructuring;

B. The content of requests for advance determinations under subsection 4, paragraph E, and the procedure governing such determinations;

C. A mechanism for providing and updating a list of entities or corporations to which the significant transactions reporting requirements in subsection 2, paragraph A, apply;

D. The information filings referred to in subsection 4, paragraph C; and

E. The filing of corporate plans under subsection 2, paragraph C.

Sec. 6. 22 MRSA §396-P, sub-§5 is enacted to read:

5. Participation in rulemaking. The chairman of each of the 3 advisory committees or another committee member designated by the chairman shall be entitled to participate, in the manner of an ex officio nonvoting member, solely with respect to deliberations and actions of the commission directly related to the formulation and adoption of rules, but including neither deliberations and actions which are properly conducted in executive session nor deliberations and actions with respect to which the commission determines that one or more of the advisory committee chairmen has a conflict of interest. This section may not be construed to authorize participation in deliberations and actions of the commission related to the application or enforcement of rules.

Sec. 7. 22 MRSA §398, sub-§4 is enacted to read:

4. Informal participation in commission deliberations on rulemaking. The commission, in its discretion, shall permit informal participation of members of the public and representatives of affected groups in its deliberations relating to rulemaking. This participation is limited solely to matters which clarify the deliberations.

Effective July 16, 1986.

CHAPTER 779

H.P. 1694 - L.D. 2385

AN ACT to Change the Name of the University of Maine.

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

Sec. 1. 1 MRSA §402, sub-§2, ¶B, as amended by PL 1977, c. 164, §1, is further amended to read:

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees