MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

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

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

Sec. D-20. Effective date. Sections D-13 to D-15 of this Act take effect July 1, 1990.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved except as otherwise indicated.

Effective April 24, 1990, unless otherwise indicated.

CHAPTER 919

H.P. 1767 - L.D. 2435

An Act to Modify the Applicability of the Certificate of Need Program to Hospitals and to Exempt Certain Hospital Restructuring Activities from the Requirement of Approval by the Maine Health Care Finance Commission

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

Sec. 1. 4 MRSA §152, sub-§5, ¶¶P and Q, as enacted by PL 1989, c. 392, §1, are amended to read:

P. Actions to compel the compliance with court orders including the right to appoint persons to sign instruments as provided for in the Maine Rules of Civil Procedure; ~~and~~

Q. Actions in which the equitable relief is sought through an equitable defense, a counterclaim, a cross-claim or other responsive pleading or reply permitted by the Maine Rules of Civil Procedure~~.~~; and

Sec. 2. 4 MRSA §152, sub-§5, ¶R is enacted to read:

R. Actions to enforce access to health care under Title 22, section 1715.

Sec. 3. 22 MRSA §304-A, first ¶, as enacted by PL 1981, c. 705, Pt. V, §16, is amended to read:

No person may enter into any commitment for financing a project ~~which~~ that requires a certificate of need or incur an obligation for the project without having sought and received a certificate of need, except that this prohibition ~~shall~~ does not apply to commitments for financing conditioned upon the receipt of a certificate of need or to obligations for predevelopment activities of less than $150,000 for health care facilities other than hospitals or $250,000 for hospitals.

Sec. 4. 22 MRSA §304-A, sub-§2, as amended by PL 1987, c. 363, §§1 and 2, is further amended to read:

2. Acquisitions of major medical equipment. The following acquisitions:

A. The acquisition by any person other than a hospital of major medical equipment that will be owned by or located in a health care facility; ~~or~~

B. The acquisition by any person of major medical equipment not owned by or located in a health care facility if:

(1) The equipment will not be used to provide services for inpatients of a hospital, but the person fails to file a written notice of intent to acquire the equipment at least 60 days prior to entering into a contract to acquire the equipment; or

(2) The department finds, within 30 business days after the date it receives a written notice of intent to acquire the equipment, that the equipment will be used to provide services for inpatients of a hospital~~.~~ ; or

C. The acquisition by a hospital of major medical equipment with a cost of $1,000,000 or more that will be owned by or located in a health care facility and:

(1) Will be used to provide services for inpatients in at least 20% of the cases for which the equipment is utilized; or

(2) Will be used to provide services for inpatients in less than 20% of the cases for which the equipment is utilized and the hospital seeks recognition of additional financial requirements associated with such equipment.

This paragraph is repealed on October 1, 1995; or

D. Effective October 1, 1995, the acquisition by a hospital of major medical equipment with a cost of $1,000,000 or more.

There ~~shall be~~ is a waiver for the use of major medical equipment on a temporary basis as provided in section 308, subsection 4;

Sec. 5. 22 MRSA §304-A, sub-§3, as amended by PL 1987, c. 436, §1, is further amended to read:

3. Capital expenditures. The obligation by or on behalf of a health care facility, except a skilled or intermediate care facility or hospital, of any capital expenditure of $350,000 or more. Intermediate care and skilled nursing care facilities ~~shall~~ have a threshold of $500,000, except that any transfer of ownership ~~shall be~~ is reviewable;

Sec. 6. 22 MRSA §304-A, sub-§3-A is enacted to read:

3-A. Hospital capital expenditures. The obligation, by or on behalf of a hospital, of any capital expenditure of $1,000,000 or more related to the acquisition, construction or improvement of buildings or fixed equipment, except that any transfer of ownership of a hospital is reviewable;

Sec. 7. 22 MRSA §304-A, sub-§§5 and 6, as enacted by PL 1981, c. 705, Pt. V, §16, are amended to read:

5. Termination of a health service. The obligation of any capital expenditure by or on behalf of a health care facility ~~which~~ other than a hospital that is associated with the termination of a health service ~~which~~ that was previously offered by or on behalf of the health care facility;

6. Changes in bed complement. Any change in the existing bed complement of a health care facility other than a hospital, in any 2-year period, ~~which~~ that:

A. Increases or decreases the licensed or certified bed capacity of the health care facility by more than 10% or more than 5 beds, whichever is less;

B. Increases or decreases the number of beds licensed or certified by the department to provide a particular level of care by more than 10% of that number or more than 5 beds, whichever is less; or

C. Relocates more than 10% of the health care facility's licensed or certified beds or more than 5 beds, whichever is less, from one physical plant to another;

Sec. 8. 22 MRSA §304-A, sub-§6-A is enacted to read:

6-A. Increases in licensed bed capacity of a hospital. Any change in the existing bed complement of a hospital, in any 2-year period, that:

A. Increases the licensed or certified bed capacity of the hospital by more than 10% or more than 5 beds, whichever is less; or

B. Increases the number of beds licensed or certified by the department to provide a particular level of care by more than 10% of that number or more than 5 beds, whichever is less;

Sec. 9. 22 MRSA §304-A, sub-§7, as enacted by PL 1981, c. 705, Pt. B, §16, is amended to read:

7. Predevelopment activities. Any appropriately capitalized expenditure of $150,000 or more or, in the case of hospitals, $250,000 or more for predevelopment activities proposed to be undertaken in preparation for any project ~~which~~ that would itself require a certificate of need;

Sec. 10. 22 MRSA §382, sub-§9-A is enacted to read:

9-A. Outpatient services. "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.

Sec. 11. 22 MRSA §396-L, sub-§2, ¶B-1 is enacted to read:

B-1. As a result of its review of significant transactions reported pursuant to paragraph A, or its examination of significant transactions in the course of any proceeding to determine hospital financial requirements, the commission may, with respect to the significant transactions between hospitals and affiliated interests, establish reasonable limits on the actual prices paid by hospitals or charged by hospitals. The commission may not exercise this authority with respect to transfers and pledges that are exempt from commission review under subsection 4, paragraph F.

Sec. 12. 22 MRSA §396-L, sub-§4, as repealed and replaced by PL 1985, c. 778, §5, is amended by amending the first paragraph to read:

4. Hospital restructuring. Unless exempt by rule or order of the commission or by paragraph F or H, 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.

Sec. 13. 22 MRSA §396-L, sub-§4, ¶¶H and I are enacted to read:

H. A hospital participating in the rate per case payment system or a hospital-capitalized affiliate of a hospital participating in the rate per case payment system may engage in a hospital restructuring without commission approval unless:

(1) The hospital restructuring involves the transfer of an existing hospital patient care service, or the undertaking by an affiliated interest of a hospital patient care service that is not an outpatient service; or

(2) The hospital restructuring involves a transfer or pledge of assets that is not exempt from approval under paragraph F.

As a condition to the transfer of any hospital assets under this paragraph, and without regard to whether prior approval is necessary, the commission shall require that provision be made for a fair return on the hospital's investment. In cases of

transfers where prior commission approval is not required, the hospital shall file a notice setting forth the nature of the transfer and documentation of the provision of a fair return to the hospital.

In cases where a hospital previously participating in the rate per case payment system seeks entry into the total revenue system, the commission has the authority to review those hospital restructurings carried out pursuant to this paragraph that have not been reviewed and approved previously by the commission. As a consequence of that review, the commission may attach conditions to the transfer of the hospital to the total revenue system that it determines consistent with the interest of the people of the State. These conditions may include a condition requiring divestiture of affiliated interests created in accordance with this paragraph, or reinclusion of services provided by those affiliated interests into the hospital corporation.

I. No less than 10 days prior to the effective date of any hospital restructuring that is exempt from approval under paragraph H, each affected hospital shall file with the commission a notice including a description of the contemplated restructuring, the date on which it is expected to occur and other information the commission may reasonably require about the characteristics and expected effects of the restructuring. No more than 30 days after each restructuring described in a notice under this subsection occurs, each affected hospital shall file with the commission a report of the date on which the restructuring took place, any differences between the restructuring that occurred and the description furnished in the notice and any corrections or amendments of the other information in the notice that is necessary to reflect the results of the restructuring that actually took place.

Sec. 14. 22 MRSA §396-L, sub-§7 is enacted to read:

7. Cross-subsidy prohibited. Subsidy of affiliated interests by hospitals is limited in accordance with the following provisions.

A. No hospital or hospital-capitalized affiliate may transfer assets to or otherwise subsidize the operation of any affiliated interest, except to the extent that:

(1) The activities of the affiliated interest and any subsidies of them have been expressly approved by the commission in the course of a proceeding to approve an application for restructuring under subsection 4; or

(2) The transfer or pledge, as applicable, is exempt from commission review subject to subsection 4, paragraph F.

B. For purposes of this subsection, the term "otherwise subsidize" means:

(1) In the case of goods or services, leasehold interest, other property interests or other consideration provided by the affiliate to the hospital, that the payment or the consideration from the hospital to the affiliate exceeds the least of:

(a) The prices charged by the affiliate to other customers in arms-length transactions;

(b) The cost to the hospital of providing such goods or services directly; or

(c) The cost to the hospital of purchasing the goods, services, property interests or consideration from another entity; or

(2) In the case of goods or services, leasehold interests, other property interests or other consideration provided by the hospital to the affiliate, that the payment or other consideration from the affiliate to the hospital is less than the greater of:

(a) The prices charged by the hospital to other customers in arms-length transactions; or

(b) The cost to the hospital of providing such goods or services.

Sec. 15. 22 MRSA §1715 is enacted to read:

§1715. Access requirements applicable to certain health care providers

1. Access requirements. Any person, including, but not limited to an affiliated interest as defined in section 396-L, 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 396-F. 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;

B. Provides outpatient services as defined in section 382, subsection 9-A; 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

(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 outpatient 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.

This subsection does not apply to a service that was provided by a provider prior to July 1, 1990. This paragraph is repealed July 1, 1993.

2. Enforcement. The requirements of subsection 1 are enforced through the following mechanisms.

A. Any person who knowingly violates any provision of this section or any valid order or rule made or adopted pursuant to section 396-F, or who willfully fails, neglects or refuses to perform any of the duties imposed under this section, commits a civil violation for which a forfeiture of not less than $200 and not more than $500 per patient may be adjudged with respect to each patient denied access unless specific penalties are elsewhere provided. Any forfeiture imposed under this section may not exceed $5,000 in the case of the first judgment under this section against the provider, $7,500 in the case of a 2nd judgment against the provider or $10,000 in the case of the 3rd or subsequent judgment against the provider. The Attorney General is authorized to prosecute the civil violations.

B. Upon application of the Attorney General or any affected patient, the Superior Court or District Court has full jurisdiction to enforce the performance by providers of health care of all duties imposed upon them by this section and any valid rules adopted pursuant to section 396-F.

C. In any civil action under this section, the court, in its discretion, may allow the prevailing party, other than the Attorney General, reasonable attorney's fees and costs and the Attorney General is liable for attorney's fees and costs in the same manner as a private person.

D. It is an affirmative defense to any legal action brought under this section that the person subject to this section denied access to services on the grounds that the economic viability of the facility or practice would be jeopardized by compliance with this section.

Sec. 16. PL 1989, c. 588, Pt. A, §56, sub-§1, ¶B is amended by inserting after the 2nd sentence a new sentence to read:

Its study must also include evaluation of methods of sizing the Hospital Development Account.

Sec. 17. Study. The Commission to Study Certain Provisions of the Certificate of Need Law is established to carry out certain activities from July 1, 1994, through January 15, 1995.

1. Beginning after July 1, 1994, the study commission shall review the provisions of law relating to the acquisition of major medical equipment on the part of hospitals, and the use of that equipment to provide services on an inpatient or outpatient basis. In particular, the study commission shall review the impact of certain changes to the Maine Revised Statutes, Title 22, section

304-A, subsection 2, which is effective October 1, 1991, with respect to the coverage of major medical equipment and the exemption from review of certain equipment utilized principally for the provision of outpatient services. Its study must include an evaluation of and recommendation regarding the merit of extending regulatory treatment of outpatient equipment beyond October 1, 1995, the date on which a sunset revision is scheduled to occur pursuant to section 4 of this Act. The study commission shall also review the provisions of law relating to health services planning, including those portions of the certificate of need laws and the health care finance laws relating to the Hospital Development Account. This study must consider data available regarding the experiences of hospitals under these provisions during the first 2 years of their effectiveness. The study commission shall submit its recommendations, including any necessary implementing legislation, to the Joint Standing Committee on Human Resources by January 15, 1995.

2. The study commission is composed of 13 members. The President of the Senate shall appoint one Senator, one hospital official and one consumer member representing business. The Speaker of the House of Representatives shall appoint 2 members of the House of Representatives and one consumer member. The Governor shall appoint one representative of the Department of Human Services, one hospital official, one physician, one representative of a 3rd-party payor other than the Department of Human Services, one representative of the Maine Health Policy Advisory Council who is not a health care provider or representative of a health care provider and one consumer member representing labor. The chair of the Maine Health Care Finance Commission shall appoint one representative of the Maine Health Care Finance Commission. All appointments must be made on or before July 1, 1994. The chair of the Legislative Council shall call the first meeting of the commission. The members of the study commission shall elect a chair from among its members.

3. The Maine Health Care Finance Commission shall provide staff to the commission for the duration of the study.

4. The members of the commission who are Legislators are entitled to the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at commission meetings. All members who do not represent state agencies are entitled to expenses for attending meetings upon application to the Executive Director of the Legislative Council.

5. This section is repealed June 15, 1995.

Sec. 18. Effective date. Sections 1 to 15 and 17 of this Act take effect on October 1, 1991.

See title page for effective date, unless otherwise indicated.

CHAPTER 920

S.P. 973 - L.D. 2439

An Act to Increase the Bonding Limit for the Maine Court Facilities Authority

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

PL 1989, c. 501, Pt. P, §42 is amended to read:

42. Maine Court Facilities Authority; securities. Pursuant to the Maine Revised Statutes, Title 4, section 1606, subsection 1, the Maine Court Facilities Authority is authorized to issue securities, in its own name pursuant to existing statutory authority, in ~~the~~ an amount ~~of~~ ~~$6,500,000~~ up to $8,500,000 for the purpose of paying the cost of courthouse projects or parts of projects in West Bath, ~~Brunswick~~ Auburn, Presque Isle, Dover-Foxcroft, Machias and York County.

See title page for effective date.

CHAPTER 921

H.P. 1776 - L.D. 2444

An Act to Make Supplemental Allocations from the Highway Fund for the Fiscal Years Ending June 30, 1990, and June 30, 1991

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses will become due and payable immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Supplemental Allocation of Highway Fund. Income to the Highway Fund for the fiscal years ending June 30, 1990, and June 30, 1991, must be segregated, apportioned and disbursed as designated in the following schedule.