

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION
January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

Sec. E-5. 38 MRSA §467, sub-§16, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Salmon Falls River, main stem.

(1) From the outlet of Great East Lake to tidewater, those waters lying within the State, including all impoundments - Class B.

Sec. E-6. 38 MRSA §468, sub-§8, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

8. Washington County. Those waters draining directly or indirectly into tidal waters of Washington County, including impoundments of the Pennamaquan River, with the exception of the Dennys River Basin, the East Machias River Basin, the Machias River Basin, the Narraguagus River Basin and the Pleasant River Basin - Class B unless otherwise specified.

A. Jonesboro.

(1) Chandler River and its tributaries above the highway bridge on Route 1 - Class A.

B. Whiting.

(1) Orange River and its tributaries above the highway bridge on Route 1 - Class A.

Sec. E-7. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all proceedings pending before the Department of Environmental Protection on or after March 29, 1992.

See title page for effective date.

CHAPTER 814

S.P. 882 - L.D. 2254

An Act to Facilitate Cooperative Agreements among Maine Hospitals

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

Sec. 1. 22 MRSA c. 405-D is enacted to read:

CHAPTER 405-D

HOSPITAL COOPERATION ACT

§1881. Short title

This chapter may be known and cited as the "Hospital Cooperation Act of 1992."

§1882. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Cooperative agreement. "Cooperative agreement" means an agreement among 2 or more hospitals for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals.

2. Hospital. "Hospital" means:

A. Any acute care institution required to be licensed as a hospital under section 1811; or

B. Any nonprofit parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services.

§1883. Certification for cooperative agreements

1. Authority. A hospital may negotiate and enter into cooperative agreements with other hospitals in the State if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

2. Application for certificate. Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the Attorney General and to the department at the same time.

3. Procedure for department review. The department shall review the application in accordance with the standards set forth in subsection 4 and may hold a public hearing in accordance with rules adopted by the department. The department shall grant or deny the applica-

tion within 90 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General and any intervenor.

4. Standards for certification. The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

A. In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

- (1) Enhancement of the quality of hospital and hospital-related care provided to Maine citizens;
- (2) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;
- (3) Gains in the cost efficiency of services provided by the hospitals involved;
- (4) Improvements in the utilization of hospital resources and equipment; and
- (5) Avoidance of duplication of hospital resources.

B. The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

- (1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;
- (2) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the hospital cooperative agreement;
- (3) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(4) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

5. Review by Attorney General. The department shall consult with the Attorney General regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

6. Certificate termination. If the department determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may initiate proceedings to terminate the certificate of public advantage in accordance with Title 5, chapter 375, subchapter IV.

7. Recordkeeping. The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within 30 days after termination.

§1884. Judicial review of department action

Any applicant or intervenor aggrieved by a decision of the department in granting or denying an application, refusing to act on an application or terminating a certificate is entitled to judicial review of the decision in accordance with the Maine Administrative Procedure Act.

§1885. Attorney General authority

1. Investigative powers. The Attorney General, at any time after an application is filed under section 1883, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are investigative records under Title 5, section 200-D. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

2. Court action; time limits. The Attorney General may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in Superior Court. The Attorney General may file an action before or after the department acts on the application for a certificate but, except as provided in subsection 5, the action must

be brought no later than 40 days following the department's approval of an application for a certificate of public advantage.

3. Automatic stay. Upon the filing of the complaint in an action under subsection 2, the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The Attorney General may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

4. Standard for adjudication. In any action brought under subsection 2, the applicants for a certificate bear the burden of establishing by clear and convincing evidence that, in accordance with section 1883, subsection 4, the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102.

5. Change of circumstances. If, at any time following the 40-day period specified in subsection 2, the Attorney General determines that as a result of changed circumstances the benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the Attorney General may file suit in the Superior Court seeking to cancel the certificate of public advantage. The standard for adjudication for an action brought under this subsection is as follows.

A. Except as provided in paragraph B, in any action brought under this subsection the Attorney General has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances, the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement.

B. In any action under this subsection, if the Attorney General first establishes by a preponderance of evidence that the department's certification was obtained as a result of material misrepresentation to the department or the Attorney General or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attrib-

utable to any reduction in competition resulting from the agreement.

6. Fees and costs. If the Attorney General prevails in an action under this section, the Department of the Attorney General is entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

7. Resolution by consent decree. The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order that with the consent of the parties, modifies the cooperative agreement. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 1886 and the cooperative agreement has the effectiveness specified in section 1886.

§1886. Effect of certification; applicability

1. Validity of certified cooperative agreements. Notwithstanding Title 10, section 1101 or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Title 10, section 1102 or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

2. Validity of cooperative agreements determined not in public interest. If the department or, in any action by the Attorney General, the Superior Court determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

3. Other laws specifically regulating hospitals. Nothing in this chapter exempts hospitals or other health care providers from compliance with laws governing certificates of need or hospital cost reimbursement.

4. Mergers and consolidations involving licensed hospitals. The provisions of this chapter do not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals.

5. Contract disputes. Any dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by normal principles of contract law.

§1887. Assessment

Except for state-operated mental health hospitals, all hospitals licensed by the department are subject to an annual assessment under this chapter. The department shall collect the assessment. The amount of the assessment must be based upon each hospital's gross patient service revenue. For any fiscal year, the aggregate amount raised by the assessment must be equal to the amount allocated by law to carry out the purposes of this chapter in that fiscal year. The department shall deposit funds collected under this section into a dedicated revenue account. Funds remaining in the account at the end of each fiscal year do not lapse but carry forward into subsequent years. Funds deposited into the account must be allocated to carry out the purposes of this chapter.

§1888. Review

The department may not accept any application under this chapter after June 30, 1995. By January 1, 1995, the Attorney General and the department shall submit recommendations, along with any necessary legislation, to the joint standing committee of the Legislature having jurisdiction over human resources matters regarding whether this chapter should be amended.

Sec. 2. Legislative findings. The Legislature finds as follows.

1. Technological and scientific developments in hospital care have enhanced the prospects for further improvement in the quality of care provided by Maine hospitals to Maine citizens.

2. The cost of improved technology and improved scientific methods for the provision of hospital care is in significant part responsible for the increasing cost of hospital care. Cost increases make it increasingly difficult for hospitals in rural parts of Maine to offer care.

3. Changes in federal and state regulations governing hospital operation and reimbursement have constrained the ability of hospitals to acquire and develop new and improved machinery and methods for the provision of hospital and hospital-related care.

4. Cooperative agreements among hospitals in the provision of hospital and hospital-related services may foster further improvements in the quality of health care for Maine citizens, moderate increases in cost, improve access to needed services in rural parts of Maine and enhance the likelihood that smaller hospitals in Maine will remain open in service to their communities.

5. Hospitals are in the best position to identify and structure voluntary cooperative arrangements that enhance quality of care, improve access and achieve cost-efficiency in the provision of care.

6. Because competition is important to the health care sector and some cooperative agreements may have anticompetitive effects that would operate to the detriment of the public, regulatory and judicial oversight of cooperative agreements is necessary to ensure that the benefits of agreements outweigh any disadvantages attributable to any reduction in competition likely to result from the agreements.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1992-93

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General

Positions - Other Count	(0.5)
Personal Services	\$24,257
All Other	2,000

Provides for the allocation of funds for one part-time Assistant Attorney General position and related costs to provide legal services under the Hospital Cooperation Act of 1992.

DEPARTMENT OF THE ATTORNEY GENERAL TOTAL

\$26,257

HUMAN SERVICES, DEPARTMENT OF

Health Planning and Development

Positions - Other Count	(1.0)
Personal Services	\$32,885
All Other	1,000

Provides for the allocation of funds for one part-time Comprehensive Health Planner II position and one part-time Clerk Typist II position to carry out responsibilities under the Hospital Cooperation Act of 1992.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	\$33,885

TOTAL ALLOCATIONS	\$60,142
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See title page for effective date.

CHAPTER 815

S.P. 889 - L.D. 2282

An Act to Require Insurance Companies to Honor Assignment of Medical Benefits for Clients of the Department of Human Services

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

Sec. 1. 22 MRSA §14, sub-§2-H is enacted to read:

2-H. Honoring of assignments. The following provisions apply to claims for payment submitted by the department or a health care provider.

A. Whenever a participating health care provider or the department submits claims to an insurer, as defined in Title 24-A, section 4, or to a health maintenance organization on behalf of a Medicaid or Maine Health Program recipient for whom an assignment of rights has been received, or whose rights have been assigned by the operation of law, the insurer or health maintenance organization doing business in the State must respond within 60 days of receipt of a claim by forwarding payment or issuing a notice of denial directly to the submitter of the claim.

B. Whenever a nonparticipating health care provider or the department on behalf of a nonparticipating provider submits claims to an insurer, as defined in Title 24-A, section 4, or a health maintenance organization that operates through a series of participation agreements on behalf of a Medicaid or Maine Health Program recipient for whom an assignment of rights has been received or whose rights have been assigned by the operation of law, the insurer or health maintenance organization doing business in the State must respond within 60 days of receipt of a claim by forwarding payment, issuing a notice of denial or issuing a copy of the explanation of benefits directly to the submitter of the claim.

See title page for effective date.

CHAPTER 816

H.P. 1536 - L.D. 2169

An Act to Ensure that Funds Collected from Restitution are Deposited in Interest-bearing Accounts

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

Sec. 1. 17-A MRSA §1326, as amended by PL 1991, c. 90, is further amended to read:

§1326. Time and method of restitution

When restitution is authorized, the time and method of payment or of the performance of the services must be specified. Except when the offender is placed on probation, monetary compensation may be ordered paid to the office of the prosecuting attorney who is prosecuting the case or to the clerk of the court. If the offender is placed on probation, the compensation may be ordered paid to the Department of Corrections, Division of Probation and Parole. The state agency receiving the restitution shall deposit any money received in the account maintained by the State Treasurer for deposit of state agency funds, from which funds are daily transferred to an investment account and invested. Interest accrued on that money is the property of and accrues to the State for deposit in the General Fund. The agency receiving the restitution shall make the disbursement to the victim or other authorized claimant as soon as possible after the agency receives the money.

See title page for effective date.

CHAPTER 817

H.P. 1502 - L.D. 2114

An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control

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

Whereas, serious inequities exist between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund statutes as a result of emergency legislation effective April 1990, which preclude the Department of Environmental Protection from dealing equitably with claimants with respect to medical expenses, drinking water and other issues; and