

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

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APPENDIX

SENATE

January 16, 1978

Senate called to Order by the President.

Prayer by the Honorable Gerard P. Conley of Portland.

Mr. CONLEY: Heavenly Father, the Senate joins me today, to ask you to grant eternal rest to the soul of our departed Hubert H. Humphrey. A former Vice-President served his country well, he often said that "Life was not something to be endured, but life was joyful for everyone." We ask that you grant him eternal peace. We ask that you show us wisdom to follow the examples that he dedicated to this country. Amen.

Reading of the Journal of yesterday.

Papers from the House
Joint Orders

An Expression of Legislative Sentiment recognizing that:

The Mylykowski Corporation is about to acquire Madison Paper Corporation, an acquisition which will bring increased employment and prosperity to the Madison area, (H. P. 1971)

Comes from the House, Read and Passed.
Which was Read and Passed in concurrence.

Joint Order

Ordered, the Senate concurring, that the Joint Standing Committee on Local and County Government shall report out a bill revising the salaries of county officers; and be it further

Ordered, that the committee shall report out a resolve or resolves for laying of the county taxes for the year 1978. (H. P. 1986)

Comes from the House, Read and Passed.
Which was Read and Passed in concurrence.

Papers from the House
House Papers

Bills received requiring reference to Committee were acted upon in concurrence.

SECOND READERS

The Committee on Bills in the Second Reading reported the following:

House

Bill, An Act to Authorize Magalloway Plantation to Raise Funds for Secondary School Board for the 1977-78 School Year in Excess of Statutory Maximums. (Emergency) (H. P. 1865) (L. D. 1915)

Which was Read a Second Time and Passed to be Engrossed in concurrence.

Bill, An Act to Provide Transition Provisions Covering the Recent Amendments to Article 9 of the Uniform Commercial Code. (Emergency) (H. P. 1956) (L. D. 2038)

Which was Read a Second Time.

On Motion of Mr. Speers of Kennebec, Tabled until later in Today's Session, pending passage to be engrossed.

Senate

Bill, An Act Providing that Student Scholarships Under the Maine Student Incentive Scholarship Program Shall Not be Lowered from one School Year to the next and Appropriating Funds to Carry Out That Intent. (Emergency) (S. P. 627) (L. D. 1959)

Which was Read a Second Time and Passed To Be Engrossed.

Sent down for concurrence.

Senate - As Amended

Bill, An Act to Amend the Appeal Procedures in the Employment Security Law. (S. P. 628) (L. D. 1960)

Which was Read a Second Time and Passed To Be Engrossed, as amended.

Sent down for concurrence.

ORDERS OF THE DAY

The President laid before the Senate:

SENATE REPORTS - from the Committee on Health and Institutional Services - Bill, "An Act Relating to Certificate of Need." (S. P.

384) (L. D. 1358) MAJORITY REPORT - Ought to Pass in New Draft under Same Title (S. P. 652) (L. D. 2013); MINORITY REPORT - Ought to Pass in New Draft under Same Title (S. P. 653) (L. D. 2014)

Tabled - January 13, 1978 by Senator Speers of Kennebec

Pending - Acceptance of Either Report

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe.

Mrs. SNOWE: Mr. President, I move the acceptance of the Majority Ought to Pass Report. I would also request the Secretary read the Report of the Committee.

The PRESIDENT: The Secretary will read the Committee Report.

Which Report was Read.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin Senator Snowe.

Mrs. SNOWE: Mr. President and Members of the Senate, as you may recall last Session we were considering two pieces of Legislation on Certificate of Need. The Committee on Health and Institutional Services Committee decided at that point in time that perhaps we should carry over the pieces of legislation to the next Session since there were many differences. During the interim, the Committee on Health and Institutional Services did consider the two Certificate in Need Legislation and I am pleased to report that during our many deliberations we were able to narrow the differences between the two pieces of legislation and so we narrow the differences to one which I will explain a little bit later on.

It comes as no surprise that the 108th Legislature is confronted with the issue of Certificate of Need. Since who can ignore the magnitude of health care problems besetting this state and country? The trauma of health care costs is being felt across this nation. Even President Carter was asking the Congress to impose a government ceiling on rapidly rising hospital costs. The vital importance of this issue can't be overstated and the legislature will be playing a central role in formulating the type of policy that Maine will pursue. It's no wonder we have reached this point, for what is happening in Maine is a measure of what is occurring throughout the country. Consider, for instance, that Nationally health care costs have risen approximately 50% faster than have the other items on the consumer price index. The nation's total health care costs increased \$1 billion a month over corresponding months last year and it is anticipated that the costs will rapidly increase in the next five years to \$280 billion from the current costs of \$93 billion. Health Care Industry is the second largest industry in this nation. In a recent Harris Poll, it showed that Americans are more worried about the high cost of medical care than any other single consumer issue.

Concern about the rise in health care costs has therefore taken on a new urgency and now pursuant to the National Health Planning and Resources Development Act of 1974, each state is required to develop and implement a program which will require a definite need to be documented prior to construction of institutional facilities or the purchase of new equipment. Unless an adequate Certificate of Need program meeting the minimum Federal requirements is in place by July 1, 1978, the State of Maine could lose a substantial amount of Federal health monies.

The philosophy underlying a Certificate of Need program is that the distribution and capacity of the services provided by health care institutions should be based on a demonstrated need.

The basic assumptions behind a Certificate of Need program and other regulatory programs in the health industry is that an open market system in health care ceases to be a reality when third party payments - particularly public funds - become the dominant source of

payment for the development construction and payment of services provided by most health care institutions.

The Certificate of Need legislation is largely in response to problems which currently exist within the Health Care System and which are well documented. They include:

Rapidly rising costs for health care today
The unnecessary duplication of costly equipment and services

The oversupply of beds

Overutilization of inpatient facilities, and maldistribution of services

The objectives of Certificate of Need Program, therefore, are aimed at planning, cost containment and regulating the development of New Health Services, reduces excess capacity and thus constrains inflationary costs of health care.

The impetus for the Certificate of Need approach also was generated from the public's concern about escalating health care costs, and a desire to improve the efficiency, effectiveness and accessibility of our Health Care Delivery System.

In scope, both reports conform to the minimum standards established by Federal regulations.

Thus I would like to explain a few of the provisions that are contained in the Bill.

As I said, Certificate of Need is a review process carried out by the Department of Human Services with consultation from the Health Systems Agency to determine whether a New Health Service or certain changes in existing services are needed. For those facilities covered by this law, this review will be required before the development of the service or the establishment of a new health facility which costs \$150,000 or more.

Health Facilities covered by the Certificate of Need include:

1. Hospitals,
2. Skilled Nursing Facilities
3. Intermediate Care Facilities
4. Kidney Disease Treatment Centers
5. Ambulatory Surgical Facilities
6. Home Health Care Providers
7. Health Maintenance Organizations

Also within the Bill, it contains an application process which begins with a letter of intent by the facility at least 60 days prior to application.

The application is declared complete by the department with consultation from the Health Systems Agency. Also included in the Certificate of Need is the review process is to take no longer than 90 days unless it is not practicable. An extension of 60 days is allowable. Of this time period allotted for review, and the HSA will have at least 70 days or 2/3 of the time to complete its review.

There is also a provision which provides for a waiver of review for certain emergency conditions.

Another provision is for guidelines and criteria for what constitutes need for a New Facility or Health Service.

The rest of the Bill covers such items as Reconsideration of the Department's Decision, The Appeals Process, Public Information, Exemptions, and the penalty for failure to obtain a Certificate of Need.

As I mentioned before, the one difference between the Majority and Minority Reports is in Section 304 Requirement for Certificate of Need Review where the Majority Report excludes the requirement for a Certificate of Need review for the acquisition of any equipment by any Person which involves a capital expenditure of \$75,000 or more. The Minority Report favors such a requirement.

The position of the Majority of the Committee was that there wasn't any evidence to document that individuals were purchasing unnecessary equipment. The expansion of the Federal Minimum Requirements, we concluded, is a prime example of overregulation

by government: We don't believe that we should expand the minimum level of coverage required by the Federal Government until it has been demonstrated that regulating the acquisition of any equipment by any person will not only improve health care in Maine, but will be cost effective. The need for Certificate of Need legislation was largely due to the excessive cost in the hospital field. Thus, the Certificate of Need Program is directed toward controlling hospital expenditures since hospital costs represent 40% of the annual Health Bill and government pays a good percentage of it.

Since it is apparent that we are increasing governmental control over an industry, we should adopt a minimal, competent program, monitor its performance, and then only respond to necessary and warranted revisions.

The Certificate of Need legislation has been enacted in 36 states, only 4 of which include the provision favored by the Minority Report. Most Certificate of Need Programs are too new to evaluate their effectiveness in achieving their objectives and many have encountered problems in administering their programs.

Let the process work before we attempt to broaden the definition and go beyond the minimum requirements established by the Federal Government. I think the approach we should take should be a reasonable one and not an overly ambitious. The majority report reflects the proper application of the Certificate of Need process as it was intended by the Federal Government.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, I rise to oppose the acceptance of the majority report and urge the Senate to accept the minority report. The Majority Report has a basic loophole in a law which allows Doctors and clinics, groups of doctors, to purchase expensive equipment when our institutions might not be able to purchase that equipment, and therefore, in a way get a monopoly in certain instances in the medical field.

I agree with the concept of the Certificate of Need and that the Legislation is designed to contain Health Care Costs per requiring review and approval of major capital expenditures for expansion of health services.

We know that the cost of a hospital stay has increased dramatically over the past 10 years, but so have the costs of the physician services. During the last year we spent \$8.4 million for physician services under Medicaid. Where the total bill in 1972 was \$5.5 million, 52% increase attributable to physician charges to Medicaid alone. We estimate an additional \$20 million is paid to physicians by Medicare. As I mentioned, LD 213 has a major loophole and under the provisions of this act, the majority report, the physicians single or in groups would not be required to apply for approval to purchase major pieces of equipment.

I can envision a situation in the future where a hospital was denied permission to purchase a major piece of equipment, yet a doctor who resides in the same community has no such restraint. It is important to note that everyone has access to the local hospital, but may not have access to that doctor. Not only is this loophole unfair to the hospital but it defeats the entire purpose of the legislation.

I have an amendment tomorrow, which if the minority report is accepted, which I will introduce would effect the purchase of major pieces of equipment by physicians only for public assistance patients. The results if the physician expects to be paid by public monies primarily by Medicare and Medicaid, he or she must get approval for these major expenditures. If the physician as a businessman wants to purchase this equipment for his private patients only, there is no penalty, but the department may choose not to reimburse for services to public assisted patients.

In either case, if you select L. D. 214, the Ma-

jority Report in its original form, over the amendment, you will be closing a major loophole contained in L. D. 213. Make no mistake L. D. 214 does not limit where a physician can locate his or her practice. It does not cover the construction of medical office buildings. It does not cover the establishment of a new practice. It covers the purchases or major purchases of highly technical medical equipment, costing \$75,000 or more and is contained on a list maintained by the Department of Human Services.

I received some letters, I have some letters here that I received and I think that many of you have received, from the medical profession. One says, "The minority report is contrary to and destructive of the concept of the free enterprise system, and it is an incursion into private enterprise." Another letter here I have, "Medican has recently in the last 10 to 15 years has been contaminated by government intervention." Lets talk about these two statements here. The issue is that I believe and I think everyone knows in the Senate that I have defended free enterprise to the utmost. And I will try to limit government bureaucracy. However, here we are not talking about free enterprise any more in the medical profession, when probably over and I do not know the exact figures but I would estimate probably over 50% of physician's fees are being subsidized by public monies, state tax dollars, federal tax dollars. If we are going to pass a meaningful Certificate of Need legislation then doctors should be included in this also.

Let me go back in the history of these three things, Portland, Waterville, and Bangor years ago, all applied to the State Health Planning Agency for a catscanner which is a very expensive piece of equipment. The price at the time was approximately \$500,000 dollars, half a million. A committee from the State Health Planning Agency was appointed to determine if there was a need for three catscanners in the State of Maine. Now while the hospitals went through the process of applying, unknown to the Eastern Maine Medical Center, a group of neurologists bought a catscanner with the intent to put it in a private office. It was suggested then by the State Health Planning Agency that it be put in the hospital, and the equipment was finally put into the hospital where the doctors leased space in the hospital. Now, public funds go to pay those physician's fees. Eventually, they will pay the amortizing costs of the catscanner, and then what happens? Then this group of neurologists have a monopoly. They have the only machine in the area owned by this group, and it is very possible under the majority report that is the hospital tried to apply for its own catscanner, what would happen is that they would be turned down because the doctors already have one.

So essentially we are possibly setting up a monopoly here. Secondly as I understand from one neurologist in Bangor and I have a letter here, that catscanner was purchased very quickly and during the last couple of years could not be adapted to body use, in other words to scan the body, but just the head. So anyway, if more time had been allowed it is possible that the Eastern Maine Medical Center could have gotten a catscanner, which would have been adaptable to the body itself.

So anyway, I feel strongly that there is a principle involved here that if public monies are going to be used to subsidize physician's fees or subsidize fees to cover the use of very expensive equipment, if we deny the hospital the use of a piece of equipment, or purchase of a piece of equipment, then we should also deny it, the subsidization of fees for the use of a private physician. So I hope that the Senate would not go along with the Majority Report, but would adopt the Minority Report.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe.

Mrs. SNOWE: Mr. President and Members of the Senate. In response to the suggestion made by Senator Trotzky of Penobscot, that there exists a loophole in the Majority Report, such a loophole does not exist. If one reads on page 4 of the bill, under Section 304 where a Certificate of Need is required it states, "Any expenditure by or on behalf of the Health Care Facility in excess of \$150,000 or more which under general accepted accounting principles constantly applied is a capitol expenditure. When a person makes an acquisition for, by or on behalf of a Health Care Facility under lease or comparable arrangement or through donation which would have required review if the acquisition had been made by purchase, the acquisition shall be deemed a capitol expenditure subject to review." The example that Senator Trotzky did mention certainly did occur last year and we were aware of that in the Committee and both reports contained that provision. So in this case doctors can not circumvent the intent of Certificate of Need by purchasing equipment and then leasing it to another health care facility, such as a hospital.

Secondly and most importantly, there is a significant difference in the reimbursement to hospitals and reimbursement to doctors. Hospitals are reimbursed on reasonable costs. Therefore, if the hospital does not have an incentive not to buy equipment. They will purchase equipment and then the government does pay back to the hospital a reasonable portion of the cost of that equipment. In the case of a physician, it is somewhat different. A physician is only reimbursed on the basis of the service that he performs. In other words, if the doctor goes out and purchases a catscanner for \$200,000 dollars, and he only uses that catscanner twice and the use of that catscanner cost a \$100,00 per use, then the doctor is only going to be reimbursed \$200,00. So really it isn't incumbent upon a doctor to go out and just buy equipment for the sake of buying equipment, he will only buy equipment if there is a demonstrated need.

Now in our Committee we, have never had any evidence to show that physicians have gone out and bought unnecessary equipment. If that had been the case, I think the Federal Government would have included physicians in their minimal federal government requirements, they didn't. The Federal Government Health Care Budget is approximately \$200 billion. It seems to me that the Federal Government has a larger stake than anyone else, and they would have included physicians if there had been an abuse of purchasing equipment by physicians. For those reasons, I urge you to support the Majority Report.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate, I would also urge you to adopt the Majority Report. As a Member of the National Council on State Legislature Human Resources Committee. This issue has been discussed at the several meetings which I have had the privilege to attend and I believe at this time that if we accept the regulations of the Federal Government that that is the first step in Maine's Certificate of Need Program. If later on we find out that there are other needs that are required they can be added to the legislation, but I think at the present time we should accept the Majority Report and send this Certificate of Need Program on its way.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, the Senator from Androscoggin mentions that the Government put through minimum regulations, but I think everyone should also be aware that one of the biggest lobbies in Washington, is the American Medical Association. In Massachusetts when the Massachusetts House Committee on Health Care looked at this Bill it came out favorably to include Doctors with only one descending vote.

And then through the political process, the Committee was reversed on the floor in Massachusetts. So I think there is a very strong lobby involved here. However, the Majority Report, L. D. 213, I still cannot see whereby it says that a physician cannot go out and buy a piece of equipment that a doctor is not allowed to have and can still be reimbursed by public funds. And that is what the issue is here, it is the issue of where public funds should go.

THE PRESIDENT: The Senator from Androscoggin, Senator Snowe, has moved that the Senate accept the Majority Ought to Pass in New Draft Report of the Committee. Is it the pleasure of the Senate? It is a vote.

The Bill Read Once. Tomorrow assigned for Second Reading.

Bill, An Act to Provide Transition Provisions Covering the Recent Amendments to Article 9 of the Uniform Commercial Code. (Emergency) (H. P. 1956) (L. D. 2038)

Tabled earlier in the day's Session by the Senator from Kennebec, Senator Speers pending passage to be engrossed.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I present an Amendment under filing S 430, and move its passage.

THE PRESIDENT: The Senator from Kennebec, Senator Speers, now offers Senate Amendment A to L. D. 2038, and moves its adoption. The Secretary will read Senate Amendment A.

Senate Amendment A (S430) Read.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, this is not the Amendment that may have been contemplated by the Minority Leader of this Body, it is however, a purely technical Amendment changing erroneous reference when his Amendment came out of the research office, finding it necessary to change that reference.

Senate Amendment A Adopted.

(At Ease)

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I offer Senate Amendment B to L. D. 2038 and move its adoption.

THE PRESIDENT: The Senator from Cumberland, Senator Merrill, now offers Senate Amendment B to L. D. 2038 and moves its adoption.

The Secretary will read Senate Amendment B.

Senate Amendment B (S431) Read.

On Motion of Mr. Pierce of Kennebec, Tabled for One Legislative Day, pending adoption of Senate Amendment B.

Out of order and under suspension of the rules, the Senate voted to consider the following:

Paper from the House

Joint Resolution

JOINT RESOLUTION IN MEMORY OF
THE HONORABLE

HUBERT HORATIO HUMPHREY, JR.
UNITED STATES SENATOR

AND

FORMER VICE-PRESIDENT OF THE
UNITED STATES

Whereas, the Legislature has learned with deep regret of the death of the Honorable Hubert Horatio Humphrey, Jr., of Minnesota, former Vice-President of the United States; and

Whereas, "the happy warrior" was not only a great American, but a humanitarian of huge proportions who lived to enjoy rather than to endure life; and

Whereas, his life's work involved many victories and occasional setbacks which he always accepted with inspiring grace; and

Whereas, the citizens of Maine are truly saddened by the loss of the distinguished and honored public servant; and

Whereas, the Senate and House of Representatives are joined in understanding and prayer with the citizens of this State and Nation; and

Whereas, When the Legislature adjourns this date, it will do so in honor and in lasting tribute to the deceased; now, therefore, be it

Resolved: That we, the members of the 108th Legislature, now assembled, pause to inscribe this token of enduring affection and esteem for his memory and extend our deepest sympathy to his family and our understanding to all others who share this loss; and be it further

Resolved: That a copy of this joint Resolution, suitably engrossed, be transmitted forthwith by the Secretary of State to his dear wife, Muriel, and their four children in token of our esteem.

(H. P. 2000)

Comes from the House, Read and Adopted. Which was Read and Adopted in concurrence.

On Motion of Mr. Huber of Cumberland, Adjourned until 10 o'clock in the morning, Tuesday, January 17, 1978.