

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 939

S. P. 334

In Senate, February 23, 1981

Referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

Submitted by the Department of Human Services pursuant to Joint Rule 24.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Najarian of Cumberland.

Cosponsor: Representative Prescott of Hampden.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Maine Certificate of Need Act of 1978 to bring Nonconforming Provisions into Conformity with Federal Requirements and to make Technical Amendments.

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

Sec. 1. 22 MRSA § 303, sub-§ 7, first sentence, as enacted by PL 1977, c. 687, § 1, is amended to read:

“Health care facility” means any facility, whether public or private, proprietary or not for profit, required to obtain a certificate of need in accordance with federal laws and regulations under the National Health Planning and Resources Development Act of 1974, or any amendment, and shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers including free standing hemodialysis units, intermediate care facilities, **rehabilitation facilities**, ambulatory surgical facilities, home health care providers certifiable under Title XVIII of the ~~Federal~~ **United States Social Security Act of 1965**, as amended, and health maintenance organizations.

Sec. 2. 22 MRSA § 303, sub-§ 11-A is enacted to read:

11-A. Hospital. “Hospital” means an institution which primarily provides to

inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

Sec. 3. 22 MRSA § 303, sub-§ 12-A is enacted to read:

12-A. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs \$150,000 or more. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under the United States Social Security Act, Title XVIII, to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than \$150,000, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Sec. 4. 22 MRSA § 303, sub-§ 15, as enacted by PL 1977, c. 687, § 1, is amended to read:

15. Person. "Person" means an individual, trust or estate, partnership, corporation, including associations, joint stock companies and insurance companies, the State or a political subdivision or instrumentality, including a municipal corporation of the State, or and other legal entity recognized by state law.

Sec. 5. 22 MRSA § 303, sub-§ 17-A is enacted to read:

17-A. Rehabilitation facility. "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

Sec. 6. 22 MRSA § 303, sub-§ 21, as enacted by PL 1977, c. 687, § 1, is amended to read:

21. State health plan. "State health plan" means the plan prepared ~~annually~~ by the State Health Coordinating Council after consideration of the health systems plan and the preliminary state health plan prepared by the Bureau of Health Planning and Development.

Sec. 7. 22 MRSA § 303, sub-§ 22, as enacted by PL 1977, c. 687, § 1, is repealed.

Sec. 8. 22 MRSA § 304, as amended by PL 1979, c. 375, is further amended to read:

§ 304. Certificate of need required

A certificate of need from the department shall be required for:

1. Health service. Any new health service proposed to be offered or developed within the State. For the purposes of this Act, "new health service" shall include only the following:

A. The construction, development or other establishment of a new health care facility;

B. Any expenditure by or on behalf of a health care facility ~~in excess of~~ \$150,000 or more which, under generally accepted accounting principles consistently applied, is a capital expenditure. When a person makes an acquisition 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 by purchase, the acquisition shall be deemed a capital expenditure subject to review;

C. Any change in the existing bed complement of a health care facility, ~~in any 2-year period,~~ which:

(1) 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;

(2) 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

(3) 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; and

D. Health services which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through the health care facility within the 12-month period prior to the time the services would be offered. ~~and~~

2. Predevelopment activities. Any expenditure of \$150,000 or more for predevelopment activities proposed to be undertaken in preparation for any project which would itself require a certificate of need;

~~No person shall enter into any commitment for financing a project which 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 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.~~

3. Termination of health service. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the termination of a health service which was previously offered in or through the health care facility;

4. Acquisition of major medical equipment. The following acquisitions:

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

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 working 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; and

5. Proposed changes. The following proposed changes:

A. Any proposed change in a project associated with a capital expenditure for which the department has previously issued a certificate of need if the change is proposed within one year after the date the activity for which the expenditure was approved is undertaken. A review is required under this section whether or not a capital expenditure is associated with the proposed change. A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility, as described in subsection 1, paragraph C, and the addition or termination of a health service; and

B. Any proposed use of major medical equipment to serve inpatients of a hospital if the equipment is not located in a health care facility and was acquired without a certificate of need.

No person shall enter into any commitment for financing a project which 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 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.

Sec. 9. 22 MRSA § 306, sub-§ 4, as enacted by PL 1977, c. 687, § 1, is amended to read:

4. Application completeness declared. The department, after consultation with the Health Systems Agency, shall declare an application complete when the department is satisfied that all necessary information to commence review has been submitted. If applicable, necessary information may include the completion of all other applications to be grouped under section 307, provided that time limits on holding applications incomplete for the purpose of grouping are established by regulations. If in the judgment of the department an application is complete, but the Health Systems Agency determines that it requires additional information, the department shall so notify the applicant and shall allow the applicant at least

15 working days from the date of that notice ~~or any additional amount of time which the applicant may request~~ to submit the additional information prior to declaring the application complete. **This extension shall apply to all other applications which have been grouped with the application for which additional information is required.** Failure to submit additional information so requested may result in an unfavorable recommendation by the Health Systems Agency and may result in subsequent denial of the application by the department.

Sec. 10. 22 MRSA § 307, sub-§ 6, as enacted by PL 1977, c. 687, § 1, is repealed and the following enacted in its place:

6. **Schedule for submission of applications.** The department shall establish a schedule for submission and review of applications. The schedule must provide for the review of all completed applications pertaining to similar types of services, facilities or equipment affecting the same health service area to be considered in relation to each other at least twice a year. The schedule shall provide for the grouping of applications at least according to the following categories: General medical-surgical, psychiatric, obstetric, pediatric, skilled nursing facilities and intermediate care facilities. The department may establish additional categories for grouping of applications as it considers appropriate.

Sec. 11. 22 MRSA § 307, sub-§ 7 is enacted to read:

7. **Submission of additional information.** If, after a review has begun, the department or the Health Systems Agency requires the applicant to submit additional information, the department shall give the applicant at least 15 days to submit the information and, upon request of the applicant, the department shall extend its review period at least 15 days. This extension must apply to all other applications which have been grouped with the application for which additional information is required.

Sec. 12. 22 MRSA § 308, sub-§ 4 is enacted to read:

4. **Waiver of review of acquisitions of major medical equipment.** The department may waive the review of an acquisition or proposed use of major medical equipment required pursuant to section 304 if the equipment will be used to provide services to inpatients of a hospital only on a temporary basis in the case of:

- A. A natural disaster;
- B. A major accident; or
- C. Equipment failure.

Sec. 13. 22 MRSA § 309, sub-§ 1, ¶D, as enacted by PL 1977, c. 687, § 1, is amended to read:

D. That the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State and are in accordance with standards, criteria or plans adopted and approved pursuant to

the annual implementation plan, the health system plan and the state health plan ~~and the state medical facilities plan developed by the Health Systems Agency and the department~~

Sec. 14. 22 MRSA § 309, sub-§ 2, as enacted by PL 1977, c. 687, § 1, is repealed and the following enacted in its place:

2. **Criteria for certificate of need.** In the determination to issue or deny a certificate of need under subsection 1, the department shall, among other criteria, consider the following:

A. The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan and state health plan;

B. The relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;

C. The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated;

D. The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person providing the services;

E. The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low-income persons, racial and ethnic minorities, women, handicapped persons, and the elderly, are likely to have access to those services. In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, and the elderly, to obtain needed health care;

F. The contribution of the proposed service in meeting the health related needs of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable health systems plan, annual implementation plan and state health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the department shall consider:

(1) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

- (2) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service or access by minorities and handicapped persons receiving federal financial assistance;
 - (3) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and
 - (4) The extent to which the applicant offers a range of means by which a person will have access to its services;
- G. The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided;
- H. The availability of resources, including health personnel, management personnel and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or state health plan;
- I. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;
- J. The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which services are to be provided;
- K. If proposed health services are to be available in a limited number of facilities, the extent to which the health profession schools in the area will have access to the services for training purposes;
- L. The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities have located or in adjacent health service areas;
- M. The special needs and circumstances of health maintenance organizations;
- N. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;
- O. In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;
- P. The special circumstances of health care facilities with respect to the need for conserving energy;

Q. In accordance with the National Health Planning and Resources Development Act, section 1502(b), as amended, the factors which affect the effect of competition on the supply of the health services being reviewed;

R. Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with the National Health Planning and Resources Development Act, section 1502(b), as amended, and serve to promote quality assurance and cost effectiveness;

S. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

T. In the case of existing services or facilities, the quality of care provided by those facilities in the past; and

U. The need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients, including consideration of the proposal's impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels.

Sec. 15. 22 MRSA § 309, sub-§§ 3 and 4 are enacted to read:

3. Health maintenance organizations. Notwithstanding subsections 1 and 2, if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, the department shall issue a certificate of need if it finds that:

A. Approval of the application is required to meet the needs of the members of the health maintenance organization and of the new members which the organization can reasonably be expected to enroll; and

B. The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost effective manner which is consistent with the basic method of operation of the organization and which makes the services available on a long-term basis through physicians and other health professionals associated with it. In assessing the availability of the proposed health services from other providers, the department shall consider only whether the services from these providers:

- (1) Would be available under a contract of at least 5 years' duration;**
- (2) Would be available and conveniently accessible to physicians and other health professionals associated with the health maintenance organization;**
- (3) Would cost no more than if the services were provided by the health maintenance organization; and**
- (4) Would be available in a manner which is administratively feasible to the health maintenance organization.**

4. Required approvals. Approval of proposed capital expenditures shall comply with the following:

A. Except as provided in paragraph B, the department shall issue a certificate of need for a proposed capital expenditure if:

(1) The capital expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life-safety codes and regulations; to comply with state licensure standards; or to comply with accreditation or certification standards which must be met to receive reimbursement under the United States Social Security Act, Title XVIII, or payments under a state plan for medical assistance approved under Title XIX of that Act; and

(2) The department has determined that the facility or service for which capital expenditure is proposed is needed; the obligation of the capital expenditure is consistent with the state health plan; and the corrective action proposed by the applicant is the most cost effective alternative available under the circumstances;

B. Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with licensure, certification or accreditation standards are subject to review in accordance with the criteria established under section 312.

Sec. 16. 22 MRSA § 316, as enacted by PL 1977, c. 687, § 1, is repealed.

Sec. 17. 22 MRSA § 316-A is enacted to read:

§ 316-A. Exemptions

Except as otherwise specifically provided, nothing in this Act shall be construed to preempt, replace or otherwise negate the requirements of any other laws or regulations governing health care facilities. The requirements of this Act shall not apply with respect to:

1. Health care facilities. Any health care facility:

A. Operated by religious groups relying solely on spiritual means through prayer for healing; or

B. For which any construction, modification or other change subject to this Act has been reviewed and has received approval pursuant to the Federal Social Security Act, section 1122, from appropriate agencies prior to the effective date of this Act.

2. Activities and acquisitions. Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Planning and Resources Development Act of 1974, as amended, and its accompanying regulations.

Sec. 18. 22 MRSA § 317, as enacted by PL 1977, c. 687, § 1, is repealed.

Sec. 19. 22 MRSA § 317-A is enacted to read:

§ 317-A. Scope of certificate of need

1. Application determinative. A certificate of need shall be valid only for the defined scope, premises and facility or person named in the application and shall not be transferable or assignable.

2. Maximum expenditure. In issuing a certificate of need, the department shall specify the maximum capital expenditures which may be obligated under this certificate. The department shall, by regulation promulgated pursuant to section 312, prescribe the method to be used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under certificates and establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

3. Periodic review. After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need shall expire if the project for which the certificate has been issued is not commenced within 12 months following the issuance of the certificate. The department may grant an extension of a certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced. The department may require evidence of the continuing feasibility and availability of financing for a project as a condition for extending the life of a certificate. In addition, if on the basis of its periodic review of progress under the certificate, the department determines that the holder of a certificate is not otherwise meeting the timetable and is not making a good faith effort to meet it, the department may, after considering any recommendation made by the Health Systems Agency, withdraw the certificate of need. The department shall promulgate, in accordance with section 312, the necessary procedures for withdrawal of certificates of need.

STATEMENT OF FACT

This bill adds and amends definitions in order to clarify entities covered under the Maine Certificate of Need Act. It also deletes reference to the state medical facilities plan which is no longer required under federal law.

The bill clarifies that Maine Certificate of Need review is required for a change in certified beds as well as for a change in licensed beds. It also expands the scope of coverage under this Act to require review of certain terminations of health services, acquisitions of equipment by noninstitutional providers, and subsequent changes in proposed projects. Provision is made for waiver of review of equipment which is used in temporary emergency situations.

A requirement for the grouping of similar applications is added and current provisions pertaining to the application and review process are amended to accord with the grouping requirements.

The minimum criteria for determining the issuance or denial of a certificate of need are expanded and separate criteria for reviewing health maintenance organization activities established. Limitations are placed on the extent to which health maintenance organizations may be subject to review. Approval will also be required for certain proposed capital expenditures which are required to meet applicable safety, licensure and certification standards.

Provision has been made for the establishment of timetables for completion of projects and to provide for the withdrawal of certificates when there is an unjustified failure to meet the specified timetable.

The proposed amendments to the Maine Certificate of Need Law are needed to comply with the provisions of Public Law 96-79. Compliance assures continued eligibility of the State and its political subdivisions to receive federal funds appropriated under the Public Health Services Act and other Acts.