

MAINE STATE LEGISLATURE

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L.D. 572

(Filing No. S-270)

STATE OF MAINE
SENATE
112TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 214, L.D. 572,
Bill, "AN ACT to Amend the Maine Certificate of Need
Act to Require More Timely Decision Making on the
Part of the Department of Human Services."

Amend the bill by striking out all of the title
and inserting in its place the following:

'AN ACT to Amend the Maine Certificate of Need
Act to Clarify the Provision to Mutually Extend the
Review Period for Certificate of Need Review and to
Make the Reconsideration Hearing Optional and Estab-
lish a Time Limit for Decisions After a Reconsidera-
tion Hearing.'

Further amend the bill by striking out everything
after the enacting clause and inserting in its place
the following:

'Sec. 1. 22 MRSA §307, sub-§3, as enacted by PL
1977, c. 687, §1, is repealed and the following en-
acted in its place:

3. Reviews. To the extent practicable, a review
shall be completed and the department shall make its
decision within 90 days after the date of notifica-
tion under subsection 1. The department shall estab-
lish criteria for determining when it is not practi-
cable to complete a review within 90 days. Whenever
it is not practicable to complete a review within 90
days, the department may extend the review period up
to an additional 60 days.

Any review period may be extended with the written
consent of the applicant. The request to extend the
review period may be initiated by the applicant or
the department. If the request is initiated by the

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1 department, it shall not be effective unless con-
2 sent to by the applicant in writing. If the re-
3 quest is initiated by the applicant, the department
4 shall agree to the requested extension if it deter-
5 mines that the request is for good cause. The de-
6 partment shall acknowledge the extension of the re-
7 view period in writing.

8 Sec. 2. 22 MRSA §310, as enacted by PL 1977, c.
9 687, §1, is amended to read:

10 §310. Reconsideration

11 Any person directly affected by a review may, for
12 good cause shown, request in writing a hearing for
13 the purposes of reconsideration of the decision of
14 the department to issue or to deny a certificate of
15 need. The department, if it determines that good
16 cause has been demonstrated, shall hold a hearing to
17 reconsider its decision. To be effective, a request
18 for the hearing shall be received within 30 days of
19 the department's decision. If the Department of Human
20 Services determines that good cause for a hearing has
21 been demonstrated, the hearing shall commence within
22 30 days of receipt of the request. A decision shall
23 be rendered within 60 days of the commencement of the
24 hearing. The decision may be rendered beyond this
25 time period by mutual consent of the parties. For
26 purposes of this section, a request for a hearing
27 shall be deemed to have shown good cause if it:

28 1. New information. Presents significant, rele-
29 vant information not previously considered by the de-
30 partment;

31 2. Changes in circumstances. Demonstrates that
32 there have been significant changes in factors or
33 circumstances relied upon by the department in reach-
34 ing its decision;

35 3. Failure to follow procedures. Demonstrates
36 that the department has materially failed to follow

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1 its adopted procedures in reaching its decision; or

2 4. Other bases. Provides other bases for a hear-
3 ing that the department has determined constitutes
4 good cause.

5 No person directly affected by a review need go
6 through a reconsideration procedure as a requirement
7 for appealing a decision of the department to the ap-
8 propriate court.

9 Sec. 3. 22 MRSA §311, as enacted by PL 1977, c.
10 687, §1, is amended to read:

11 §311. Remedy

12 Any person aggrieved by a final decision of the
13 department made under the provisions of this Act
14 shall be entitled to review in accordance with Title
15 5, chapter 375, subchapter VII, of the Administrative
16 Procedure Act. A decision of the department to issue
17 a certificate of need or to deny an application for a
18 certificate of need shall not be considered final un-
19 til the department has taken final action on a re-
20 quest for reconsideration under section 310 or when
21 the applicant exercises his option to waive the re-
22 consideration hearing and proceed directly to a re-
23 view under this section.'

24 STATEMENT OF FACT

25 This amendment replaces the original bill. Sec-
26 tion 1 deletes an obsolete reference to the Health
27 Systems Agency. It also elaborates on the provisions
28 which mutually extend the period of review for a cer-
29 tificate of need application beyond the 150 day lim-
30 it.

31 Sections 2 and 3 allow a certificate of need ap-
32 plicant to bypass the reconsideration hearing com-

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1 pletely and seek direct review of a certificate of
2 need decision in Superior Court. If the applicant
3 chooses a reconsideration hearing, section 2 further
4 requires that the decision must be reached within 60
5 days of the commencement of the hearing.

6 4254061085

Reported by the Majority for the Committee on Human
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