

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1264

6
7 S.P. 461

In Senate, April 9, 1985

8 Submitted by the Department of Human Services pursuant to Joint Rule
9 24.

10 Reference to the Committee on Human Resources suggested and ordered
11 printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsored by Senator Najarian of Cumberland and Representative
12 Brodeur of Auburn.
13

14 STATE OF MAINE
15
16

17 IN THE YEAR OF OUR LORD
18 NINETEEN HUNDRED AND EIGHTY-FIVE
19

20 AN ACT to Amend the Maine Certificate of Need
21 Act to Correct Inconsistencies Related
22 to Other Statutory Provisions and to
23 Ensure Cost-effective Development of
Services Requiring Acquisition of
Major Medical Equipment.

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

26 Sec. 1. 22 MRSA §303, sub-§§2, 10 and 11, as en-
27 acted by PL 1977, c. 687, §1, are repealed.

28 Sec. 2. 22 MRSA §303, sub-§11-A, as enacted by
29 PL 1981, c. 705, Pt. V, §6, is amended to read:

30 11-A. Home health care provider. "Home health
31 care provider" means any business entity or subdivi-
32 sion thereof, whether public or private, proprietary
33 or not for profit, which is engaged in providing
34 acute, restorative, rehabilitative, maintenance, pre-
35 ventive or health promotion services through profes-

1 sional nursing and at least one other therapeutic
2 service, such as physical therapy, occupational
3 therapy, speech pathology, home health aides, nurse
4 assistants, medical social work and nutritionist ser-
5 vices, either directly or through contractual agree-
6 ment, in a client's place of residence. This term
7 does not apply to any sole practitioner providing
8 private duty nursing services or other restorative,
9 rehabilitative, maintenance, preventive or health
10 promotion services in a client's place ~~or~~ of resi-
11 dence.

12 Sec. 3. 22 MRSA §303, sub-§21, as enacted by PL
13 1977, c. 687, §1, is amended to read:

14 21. State health plan. "State health plan"
15 means the plan prepared annually by the State Health
16 Coordinating Council after consideration of ~~the~~
17 ~~health systems plan and~~ the preliminary state health
18 plan prepared by the ~~Bureau~~ Office of Health Planning
19 and Development, within the Bureau of Medical
20 Services.

21 Sec. 4. 22 MRSA §304-A, sub-§2, as enacted by PL
22 1981, c. 705, Pt. V, §16, is repealed.

23 Sec. 5. 22 MRSA §304-A, sub-§2-A is enacted to
24 read:

25 2-A. Acquisitions of major medical equipment.
26 The acquisition by any person of major medical equip-
27 ment that costs \$300,000 or more, as defined in sec-
28 tion 303, subsection 12-A.

29 There shall be a waiver for the use of major medical
30 equipment on a temporary basis as provided in section
31 308, subsection 4;

32 Sec. 6. 22 MRSA §304-A, sub-§9, ¶B, as amended
33 by PL 1983, c. 579, §8, is further amended to read:

34 B. If a person adds a health service not subject
35 to review under subsection 4, paragraph A or C
36 and which was not deemed subject to review under
37 subsection 4, paragraph B at the time it was es-
38 tablished and which was not reviewed and approved
39 prior to establishment at the request of the ap-

1 plicant, and its actual 3rd fiscal year operating
2 cost, as adjusted by an appropriate inflation
3 deflator promulgated by the department, after
4 consultation with the ~~commission~~, Maine Health
5 Care Finance Commission, exceeds the expenditure
6 minimum for annual operating cost in the 3rd fis-
7 cal year of operation following addition of these
8 services.

9 Sec. 7. 22 MRSA §304-B, sub-§2, as enacted by PL
10 1981, c. 705, Pt. V, §17, is amended to read:

11 2. Procedures for subsequent review. Any person
12 proposing to undertake any activity requiring subse-
13 quent review and approval shall file with the depart-
14 ment, within 30 days of the time that person first
15 has actual knowledge of the circumstances requiring
16 subsequent review, a notice setting forth the follow-
17 ing information:

18 A. The nature of the proposed change;

19 B. The rationale for the change including, where
20 appropriate, an explanation of why the change was
21 not set forth in the original application or let-
22 ter of intent; and

23 C. Other pertinent detail subject to the proce-
24 dures and criteria set forth in section 309.

25 The department shall, within 30 days of receipt of
26 the information, advise that person in writing wheth-
27 er the proposed change is approved. If not approved,
28 the application shall be treated as incomplete and
29 reviewed in accordance with the application proce-
30 dures in section 306-A, subsection 4. If approved,
31 the department shall amend the certificate of need as
32 appropriate. ~~In either case, the department shall~~
33 ~~consult with the Health Systems Agency-~~

34 Sec. 8. 22 MRSA §306-A, as enacted by PL 1981,
35 c. 705, Pt. V, §19, is amended to read:

36 §306-A. Application process for a certificate of
37 need

1 1. Letter of intent. Prior to filing an appli-
2 cation for a certificate of need, an applicant shall
3 file a letter of intent with the department no less
4 than 30 days prior to the date on which the applica-
5 tion is to be filed. The letter of intent shall form
6 the basis for determining the applicability of this
7 chapter to the proposed expenditure or action. A
8 letter of intent shall be deemed withdrawn one year
9 after receipt by the department, unless sooner super-
10 seded by an application; provided that the applicant
11 shall not be precluded from resubmitting the same
12 letter of intent.

13 2. Application filed. Upon a determination by
14 the department, ~~after consultation with the Health~~
15 ~~Systems Agency,~~ that a certificate of need is re-
16 quired for a proposed expenditure or action, an ap-
17 plication for a certificate of need shall be filed
18 with the department if the applicant wishes to pro-
19 ceed with the project. ~~Upon receipt of an applica-~~
20 ~~tion, the department shall immediately transmit a~~
21 ~~copy of the application to the Health Systems Agency-~~

22 3. Additional information required. Additional
23 information may be required or requested as follows.

24 A. If, after receipt of an application, the de-
25 partment ~~or the Health Systems Agency~~ determines
26 that additional information is necessary before
27 the application can be considered complete, the
28 department may:

29 (1) Require the applicant to respond to 2
30 sets of requests for additional information
31 from the department, ~~the Health Systems~~
32 ~~Agency or both,~~ provided that a 2nd request
33 is directly related to the first information
34 request or to the information provided in
35 response to the first request; and

36 (2) Request, but not require, the applicant
37 to respond to additional sets of requests
38 for information, provided that each request
39 is directly related to the last request or
40 to the information provided in response to
41 the last request.

1 B. The department shall immediately transmit the
2 response to any request for information to the
3 Health Systems Agency. The Health Systems Agency
4 shall have 10 business days from the date on
5 which the application or response to any informa-
6 tion request is filed with the department in
7 which to comment to the department upon the com-
8 pleteness of the application, indicating specific-
9 ally and in writing any additional information
10 which the Health Systems Agency requires before
11 it can consider the application complete.

12 C. Within 15 business days after the filing of
13 an application or response to any information re-
14 quest, whichever is applicable, with the depart-
15 ment, the department shall, after considering the
16 requirements of the Health Systems Agency, notify
17 the applicant in writing that:

18 (1) The application contains all necessary
19 information required and is complete; or

20 (2) Additional information is required by
21 the department or by the Health Systems
22 Agency. If, after receipt of the appli-
23 cant's response to the 2nd or any subsequent
24 request, the department determines that ad-
25 ditional information is required, the noti-
26 fication shall also include a statement of
27 the basis and rationale for that determina-
28 tion.

29 4. Review of incomplete application. Upon re-
30 ceipt of the 3rd or any subsequent notice described
31 in subsection 3, paragraph C, subparagraph 2, the ap-
32 plicant must notify the department in writing that:

33 A. It will provide the additional information
34 requested by the department. Following comple-
35 tion, it shall be entered into the next review
36 cycle; or

37 B. That it is not able to or does not intend to
38 provide the information requested and requests
39 the application be entered into the next appro-
40 priate review cycle. In that case, the applicant
41 shall be prohibited from submitting the informa-

1 tion it had declined to provide into the record
2 after the 25th day of the review cycle and the
3 information shall not be considered in the deter-
4 mination to issue or to deny a certificate of
5 need. If the applicant provides the information
6 requested prior to the 25th day of the review cy-
7 cle, the application may, at the discretion of
8 the department, be returned to the beginning of
9 the review cycle. Failure to submit additional
10 information requested by ~~the Health Systems Agen-~~
11 ~~ey or~~ the department may result in an unfavorable
12 recommendation by ~~the Health Systems Agency~~ and
13 may result in subsequent denial of the applica-
14 tion by the department, as long as the denial is
15 related to applicable criteria and standards.

16 5. Competitive reviews. In cases of competitive
17 reviews, applicants shall submit additional informa-
18 tion requested by ~~the Health Systems Agency or~~ the
19 department within 30 business days or within a longer
20 period of time, provided that the department and all
21 competing applicants agree.

22 6. Automatic withdrawal. Any incomplete appli-
23 cation shall be deemed withdrawn if the applicant
24 fails to respond to a request for additional required
25 information within one year of the date such request
26 was forwarded by the department.

27 Sec. 9. 22 MRSA §307, sub-§3, as enacted by PL
28 1977, c. 687, §1, is amended to read:

29 3. Reviews. To the extent practicable, a review
30 shall be completed and the department shall make its
31 decision within 90 days after the date of notifica-
32 tion under subsection 1. The department, ~~after con-~~
33 ~~sulting with the Health Systems Agency,~~ shall estab-
34 lish criteria for determining when it is not practi-
35 cable to complete a review within 90 days. Whenever
36 it is not practicable to complete a review within 90
37 days, the department, ~~after consultation with the~~
38 ~~Health Systems Agency,~~ may extend the review period
39 up to an additional 60 days. Any review period may be
40 extended with the written consent of the applicant.

41 Sec. 10. 22 MRSA §307, sub-§4, as enacted by PL
42 1977, c. 687, §1, is repealed.

1 Sec. 11. 22 MRSA §307, sub-§5-A, ¶¶B and C, as
2 enacted by PL 1981, c. 705, Pt. V, §27, are amended
3 to read:

4 B. After reviewing each application, the commis-
5 sioner shall make a decision either to issue a
6 certificate of need or to deny the application
7 for a certificate of need. The decision of the
8 commissioner shall be based on the informational
9 record developed in the course of review as spec-
10 ified in paragraph C. Notice of the decision
11 shall be sent to the applicant, and the committee
12 ~~and the Health Systems Agency~~. This notice shall
13 incorporate written findings which state the ba-
14 sis of the decision, including the findings re-
15 quired by section 309, subsection 1. If the de-
16 cision is not consistent with the recommendations
17 of ~~the Health Systems Agency~~ or the Certificate
18 of Need Advisory Committee, the commissioner
19 shall provide a detailed statement of the reasons
20 for the inconsistency.

21 C. For purposes of this subsection, "informa-
22 tional record developed in the course of review"
23 includes the following:

24 (1) All applications, filings, correspon-
25 dence and documentary material submitted by
26 applicants, and interested or affected per-
27 sons, ~~or the Health Systems Agency~~ prior to
28 the termination of the public comment period
29 under subsection 2-B, paragraph F or, if no
30 hearing is held, prior to the 80th day of a
31 90-day review cycle and prior to the 140th
32 day of a 150-day review cycle;

33 (2) All documentary material reflecting in-
34 formation generated by the department prior
35 to termination of the public comment period
36 or, if no hearing is held, prior to the 80th
37 day of a 90-day review cycle and prior to
38 the 140th day of a 150-day review cycle;

39 (3) Stenographic or electronic recording of
40 any public hearing or meeting held during
41 the course of review, whether or not tran-
42 scribed;

1 (4) All material submitted or obtained in
2 accordance with the procedures in subsection
3 2-B, paragraph G;

4 (5) The staff report of the agency, the
5 preliminary staff report of the department
6 and the recommendations of the committee;

7 (6) Officially noticed facts; and

8 (7) The final staff report of the depart-
9 ment.

10 Documentary materials may be incorporated in the
11 record by reference, provided that registered af-
12 fected persons are afforded the opportunity to
13 examine the materials.

14 Sec. 12. 22 MRSA §307, sub-§6-A, as enacted by
15 PL 1981, c. 705, Pt. V, §29, is amended to read:

16 6-A. Review cycles. The department shall estab-
17 lish review cycles for the review of applications.
18 There shall be at least 6 review cycles for each cal-
19 endar year, the dates for which shall be published at
20 least 3 months in advance. An application shall be
21 reviewed during the next scheduled review cycle fol-
22 lowing the date on which the application is either
23 declared complete or submitted for review pursuant to
24 section 306-A, subsection 4, paragraph B. The de-
25 partment may group certain types of proposals for a
26 similar category of projects, to be batched for con-
27 current review at least once annually, and assigned
28 to the appropriate review cycle or cycles. The de-
29 partment may hold an application for up to 90 days
30 following the commencement of the next scheduled re-
31 view cycle if, on the basis of one or more letters of
32 intent on file at the time the application is either
33 declared complete or submitted for review pursuant to
34 section 306-A, subsection 4, paragraph B, the depart-
35 ment expects to receive within the additional 90 days
36 one or more other applications pertaining to similar
37 types of services, facilities or equipment affecting
38 the same health service area. Pertinent health ser-
39 vice areas shall be defined in regulations promul-
40 gated by the department pursuant to section 312,
41 based on recommendations by the State Health Coordi-
42 nating Council.

1 Sec. 13. 22 MRSA §308, sub-§1, as enacted by PL
2 1977, c. 687, §1, is amended to read:

3 1. Waiver of full review. The department may
4 waive otherwise applicable requirements and establish
5 a simplified review process for projects which do not
6 warrant a full review. Procedures for conducting
7 these reviews shall be established by the department
8 in its rules and regulations. These procedures shall
9 provide for a shortened review by the Health Systems
10 Agency and for a public hearing to be held during the
11 course of a review, if requested by any person di-
12 rectly affected by the review. In order to waive re-
13 quirements for a full review, the department, ~~after~~
14 ~~consulting with the Health Systems Agency,~~ shall find
15 that the proposed project:

16 A. Meets an already demonstrated need as estab-
17 lished by applicable state health plans or by the
18 rules and regulations of the department;

19 B. Is a part of a minor modernization or re-
20 placement program which is an integral part of an
21 institutional health care facility's health ser-
22 vices or capital expenditures¹ expenditures plans
23 required by section 305; and

24 C. Is required to meet federal, state or local
25 life safety codes or other applicable require-
26 ments.

27 Sec. 14. 22 MRSA §308, sub-§2, as repealed and
28 replaced by PL 1979, c. 601, §1, is amended to read:

29 2. Waiver of other requirements. In order to
30 expedite the review of an application submitted in
31 response to an emergency situation, the department,
32 ~~after consultation with the Health Systems Agency,~~
33 may:

34 A. Waive the requirement that an applicant shall
35 file a letter of intent with the department no
36 less than ~~60~~ 30 days prior to the date on which
37 an application is to be filed; and

38 B. Limit the period within which the Health Sys-
39 tems Agency may comment on the completeness of an

1 application to less than 10 working days from the
2 date on which it was filed with the department,
3 and

4 C. Establish a schedule for the review of an ap-
5 plication which commences on a day other than the
6 first day of an established review cycle and re-
7 quires the Health Systems Agency to submit its
8 recommendations and comments to the department in
9 less than 70 days from the day on which the re-
10 view period commenced; provided that the Health
11 Systems Agency shall be afforded no less than 2/3
12 of the time the department has allotted for the
13 completion of its review.

14 Sec. 15. 22 MRSA §309, sub-§1, as amended by PL
15 1981, c. 705, Pt. V, §31, is further amended to
16 read:

17 1. Determinations for issue of certificate. A
18 certificate of need shall be issued whenever the de-
19 partment, after considering the findings and recom-
20 mendations of the Health Systems Agency, determines:

21 A. That the applicant is fit, willing and able
22 to provide the proposed services at the proper
23 standard of care;

24 B. That economic feasibility of the proposed
25 services is demonstrated in terms of: Effect on
26 the existing and projected operating budget of
27 the applicant; the applicant's ability to estab-
28 lish and operate the facility or services in ac-
29 cordance with licensure regulations promulgated
30 under pertinent state laws; and the projected im-
31 pact on the facility's costs and rates and the
32 total health care expenditures in the community
33 and the State;

34 C. That there is a public need for the proposed
35 services; and

36 D. That the proposed services are consistent
37 with the orderly and economic development of
38 health facilities and health resources for the
39 State and are in accordance with standards, cri-
40 teria or plans adopted and approved pursuant to

1 the annual implementation plan, the health sys-
2 tems plan and the state health plan developed by
3 the Health Systems Agency and the department.

4 Sec. 16. 22 MRSA §309, sub-§2, ¶A, as amended by
5 PL 1981, c. 705, Pt. V, §32, is further amended to
6 read:

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

10 Sec. 17. 22 MRSA §309, sub-§4, ¶A, as enacted by
11 PL 1981, c. 705, Pt. V, §33, is amended to read:

12 A. Except as provided in paragraph B, the de-
13 partment shall issue a certificate of need for a
14 proposed capital expenditure if:

15 (1) The capital expenditure is required to
16 eliminate or prevent imminent safety haz-
17 ards, as defined by applicable fire, build-
18 ing or life-safety codes and regulations; to
19 comply with state licensure standards; or to
20 comply with accreditation or ~~certificate~~
21 certification standards which must be met to
22 receive reimbursement under the United
23 States Social Security Act, Title XVIII, or
24 payments under a state plan for medical as-
25 sistance approved under Title XIX of that
26 Act; and

27 (2) The department has determined that the
28 facility or service for which capital ex-
29 penditure is proposed is needed; the obliga-
30 tion of the capital expenditure is consist-
31 ent with the state health plan; and the cor-
32 rective action proposed by the applicant is
33 the most cost effective alternative availa-
34 ble under the circumstances.

35 Sec. 18. 22 MRSA §314, as amended by PL 1979, c.
36 734, §9, is further amended to read:

37 §314. Conflict of interest

1 In addition to the limitations of Title 5, sec-
2 tion 18, a member or employee of the Department of
3 Human Services or Health Systems Agency Certificate
4 of Need Advisory Committee who has a substantial eco-
5 nomic or fiduciary interest which would be affected
6 by a recommendation or decision to issue or deny a
7 certificate of need, or who has a close relative or
8 economic associate whose interest would be so af-
9 fected shall be ineligible to participate in the re-
10 view, recommendation or decision making process with
11 respect to any application for which the conflict of
12 interest exists.

13 Sec. 19. 22 MRSA §317-A, sub-§3, as enacted by
14 PL 1981, c. 705, Pt. V, §38, is amended to read:

15 3. Periodic review. After the issuance of a
16 certificate of need, the department shall periodical-
17 ly review the progress of the holder of the certifi-
18 cate in meeting the timetable for making the service
19 or equipment available or for completing the project
20 specified in the approved application. A certificate
21 of need shall expire if the project for which the
22 certificate has been issued is not commenced within
23 12 months following the issuance of the certificate.
24 The department may grant an extension of a certifi-
25 cate for an additional specified time not to exceed
26 12 months if good cause is shown why the project has
27 not commenced. The department may require evidence
28 of the continuing feasibility and availability of fi-
29 nancing for a project as a condition for extending
30 the life of certificate. In addition if on the basis
31 of its periodic review of progress under the certifi-
32 cate, the department determines that the holder of a
33 certificate is not otherwise meeting the timetable
34 and is not making a good faith effort to meet it, the
35 department may, ~~after considering any recommendation~~
36 ~~made by the Health Systems Agency,~~ and after a hear-
37 ing, withdraw the certificate of need. The depart-
38 ment shall in accordance with section 312 promulgate
39 the necessary procedures for withdrawal of certifi-
40 cates of need.

41 Sec. 20. 22 MRSA §319, as enacted by PL 1977, c.
42 687, §1, is amended to read:

43 §319. Withholding of funds

1 No health care facility or other provider shall
2 may be eligible to apply for or receive any reim-
3 bursement, payment or other financial assistance from
4 any state agency person, either directly or indirect-
5 ly, for any capital expenditure or operating costs
6 attributable to any project for which a certificate
7 of need as required by this Act has not been ob-
8 tained. For the purposes of this section, the depart-
9 ment shall determine the manner of computing the eli-
10 gibility of a facility to receive public funds, using
11 generally accepted accounting principles reimburse-
12 ment for all projects subject to the provisions of
13 this Act.

14 Sec. 21. 22 MRSA §322, as enacted by PL 1977, c.
15 687, §1, is amended to read:

16 §322. Implementation reports

17 The holder of a certificate of need shall make a
18 written report at the end of each 6-month period fol-
19 lowing its issuance regarding implementation activi-
20 ties, obligations incurred and expenditures made and
21 any other matters as the department may require. A
22 final summary report shall be made when the service
23 or services for which the certificate of need was is-
24 sued becomes operational. For a period of one year
25 following the implementation of the service or ser-
26 vices for which the certificate of need was granted,
27 the provider shall file, at 6-month intervals, re-
28 ports concerning the costs and utilization. The de-
29 partment, in its rules and regulations, shall pre-
30 scribe the form and contents of the reports. Any
31 holder of a certificate of need which has been issued
32 for the construction or modification of a facility or
33 portion thereof shall file final plans and specifica-
34 tions therefor with the department within 6 months,
35 or any other time that the department may allow, fol-
36 lowing the issuance of the certificate for review by
37 the department to determine that the plans and speci-
38 fications are in compliance with the certificate of
39 need which has been issued therefor and are in com-
40 pliance with applicable licensure, life safety code
41 and accreditation standards. The department may re-
42 voke any certificate of need it has issued when the
43 person to whom it has been issued fails to file re-
44 ports or plans and specifications required by this
45 section on a timely basis.

1 Sections 8 to 11 remove reference to the Health
2 Systems Agency, which no longer exists.

3 Section 12 makes explicit the department's au-
4 thority to batch for concurrent review proposals of a
5 similar category. Such an approach is necessary, for
6 example, to provide fair treatment to hospital pro-
7 posals subject to the annual Certificate of Need De-
8 velopment Account limit set by the Health Care Fi-
9 nance Commission under the Maine Revised Statutes,
10 Title 22, chapter 107, section 396-K.

11 Sections 13 and 14 remove references to the
12 Health Systems Agency, which no longer exists and
13 section 13 also corrects a typographical error.

14 Sections 15 and 16 remove references to the
15 Health Systems Agency, which no longer exists and to
16 documents formerly produced by the Health Systems
17 Agency.

18 Section 17 corrects a typographical error.

19 Section 18 removes a reference to the Health Sys-
20 tems Agency, which no longer exists, and substitutes
21 the name of the Certificate of Need Advisory Commit-
22 tee which now performs the public hearing responsi-
23 bilities formerly carried out by the Health Systems
24 Agency. The purpose of the substitution, in this
25 section only, is to clarify that conflict of interest
26 provisions which apply to a specific body within the
27 department which has a key role in the review and
28 recommendation process.

29 Section 19 removes a reference to the Health Sys-
30 tems Agency, which no longer exists.

31 Section 20 extends to all payors the ability to
32 withhold payments for services implemented without a
33 required certificate of need.

34 Section 21 adds a requirement that a provider,
35 once a certificate of need has been implemented, file
36 reports concerning the costs and utilization of the
37 project at 6-month intervals during the first year of
38 operation.

1 Section 22 removes a reference to the Health Sys-
2 tems Agency, which no longer exists.

3 Section 23 removes a reference to the Bureau of
4 Health Planning and Development.

5

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