

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

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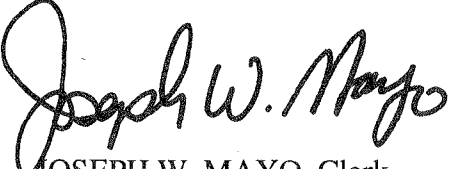
H.P. 1633

House of Representatives, March 6, 1998

**An Act to Implement the Recommendations of the Commission to Study
the Certificate of Need Laws.**

Reported by Representative QUINT for the Commission to Study the Certificate of Need
Laws, pursuant to Resolve 1997, chapter 82

Reference to the Joint Standing Committee on Health and Human Services suggested and
printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§38, as enacted by PL 1987, c. 786, §5, is amended to read:

38.	Certificate	\$25/DAY	22 MRSA
Human	of Need		§307
Services:	Advisory		§306-B
Health Facili-	Committee		
ties			

Sec. A-2. 22 MRSA §253, sub-§3, as enacted by PL 1995, c. 653, Pt. C, §1 and affected by §3, is amended to read:

3. Public hearings; consultation with Certificate of Need Advisory Committee. Prior to adopting the state health plan and in reviewing the state health plan, the department shall conduct public hearings in different regions of the State on the proposed state health plan. Interested persons must be given the opportunity to submit oral and written testimony. Not less than 30 days before each hearing, the department shall publish in a newspaper of general circulation in the region the time and place of the hearing, the place where interested persons may review the plan in advance of the hearing and the place to which and period during which written comment may be directed to the department. Prior to adopting the state health plan and in reviewing the state health plan, the department shall provide copies to and shall meet and consult with the Certificate of Need Advisory Committee as provided in section 306-B, subsection 2, paragraph A.

PART B

Sec. B-1. 22 MRSA §302, sub-§2, as enacted by PL 1977, c. 687, §1, is amended to read:

2. Purposes. The purposes of this chapter are to:

A. ~~Promote~~ Support effective health planning;

B. ~~Assist-in-providing~~ Support the provision of quality health care at-the-lowest-possible-cost in a manner that ensures access to cost-effective services;

C. ~~Avoid-unnecessary-duplication-in-health-facilities-and health-services-and-ensure-that-only-those-facilities-that are-needed-will-be-built-or-modified;~~

2 C-1. Support reasonable choice in health care services
3 while avoiding excessive duplication;

4 D. Assure Ensure that state funds are not used to support
5 unnecessary capital expenditures made by or on behalf of
6 prudently in the provision of health care facilities
7 services;

8 E. ~~Provide an orderly method of resolving questions~~
9 ~~concerning the need for health care facilities and health~~
10 ~~services which are proposed to be developed;~~

11 F. ~~Permit consumers of health services to participate~~
12 Ensure public participation in the process of determining
13 the array, distribution, quantity, quality and cost of these
14 services; and

15 G. ~~Provide for a certificate of need program which meets~~
16 ~~the requirements of the National Health Planning and~~
17 ~~Resources Development Act of 1974, Public Law 93-641 and its~~
18 ~~accompanying regulations.~~

19 H. Improve the availability of health care services
20 throughout the State;

21 I. Support the development and availability of health care
22 services regardless of the consumer's ability to pay; and

23 J. Seek a balance, to the extent a balance assists in
24 achieving the purposes of this subsection, between
25 competition and regulation in the provision of health care.

26 **Sec. B-2. 22 MRSA §303, sub-§3-A, as enacted by PL 1983, c.**
27 **579, §6, is repealed.**

28 **Sec. B-3. 22 MRSA §303, sub-§6-A, as enacted by PL 1981, c.**
29 **705, Pt. V, §4, is repealed and the following enacted in its**
30 **place:**

31 **6-A. Expenditure minimum for annual operating costs. The**
32 **"expenditure minimum for annual operating costs" is, for services**
33 **commenced after October 1, 1998, \$350,000 for the 3rd fiscal**
34 **year, including a partial first year, as adjusted pursuant to**
35 **section 305-A.**

36 **Sec. B-4. 22 MRSA §303, sub-§7, as amended by PL 1995, c. 696,**
37 **Pt. A, §2, is repealed and the following enacted in its place:**

2 7. Health care facility. "Health care facility" means a
4 hospital, psychiatric hospital, nursing facility, kidney disease
6 treatment center including free-standing hemodialysis facility,
8 rehabilitation facility, ambulatory surgical facility,
independent radiological service center, independent cardiac
catheterization center or cancer treatment center. The term does
not include the office of a private physician or physicians,
whether in individual or group practice.

10 **Sec. B-5. 22 MRSA §303, sub-§§8 and 9,** as enacted by PL 1977,
12 c. 687, §1, are amended to read:

14 **8. Health maintenance organization.** "Health maintenance
16 organization" means a public or private organization which that:

18 A. Provides or otherwise makes available to enrolled
20 participants health care services, including at least the
22 following basic health services: Usual physician services,
24 hospitalization, laboratory, x-ray, emergency and preventive
26 health services and out-of-area coverage;

28 B. Is compensated, except for copayments, for the provision
30 of the basic health services to enrolled participants on a
32 predetermined periodic rate basis; and

34 C. Provides physicians' services primarily through
36 physicians who are either employees or partners of the
38 organization or through arrangements with individual
40 physicians or one or more groups of physicians.

42 **9. Health services.** "Health services" means clinically
44 related services, that is, are diagnostic, treatment or,
46 rehabilitative services or nursing services provided by a nursing
48 facility, and includes alcohol, drug abuse and mental health
50 services.

52 **Sec. B-6. 22 MRSA §303, sub-§12-A,** as enacted by PL 1981, c.
54 705, Pt. V, §7, is amended to read:

56 **12-A. Major medical equipment.** "Major medical equipment"
58 means a single unit of medical equipment or a single system of
60 components with related functions which--is used to provide
62 medical and other health services and which that costs \$300,000
64 \$1,000,000 or more. This term does not include medical equipment
66 acquired by or on behalf of a clinical laboratory to provide
68 clinical laboratory services, if the clinical laboratory is
70 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 Section 1861 (s), paragraphs
10 and 11 of that Act. In determining whether medical equipment

2 costs more than ~~\$300,000~~ \$1,000,000, the cost of studies,
surveys, designs, plans, working drawings, specifications and
4 other activities essential to acquiring the equipment shall must
be included. If the equipment is acquired for less than fair
6 market value, the term "cost" includes the fair market value.

8 **Sec. B-7. 22 MRSA §303, sub-§17**, as repealed and replaced by
PL 1983, c. 579, §7, is amended to read:

10 **17. Project.** "Project" means any acquisition, capital
expenditure, new health service, ~~termination~~ or change in a
12 health service, predevelopment activity or other activity ~~which~~
that requires a certificate of need under section 304-A.

14 **Sec. B-8. 22 MRSA §303, sub-§17-B** is enacted to read:

16 **17-B. Replacement equipment.** "Replacement equipment" means
18 a piece of capital equipment that replaces another piece of
capital equipment that performs essentially the same functions as
20 the replaced equipment.

22 **Sec. B-9. 22 MRSA §303, sub-§18**, as amended by PL 1981, c.
705, Pt. V, §13, is repealed.

24 **Sec. B-10. 22 MRSA §304-A**, as amended by PL 1997, c. 242, §1,
26 is further amended to read:

28 **§304-A. Certificate of need required**

30 No person may enter into any commitment for financing a
project that requires a certificate of need or incur an
32 obligation expenditure for the project without having sought and
received a certificate of need, except that this prohibition does
34 not apply to ~~commitments~~ obligations for financing conditioned
upon the receipt of a certificate of need or to obligations for
36 predevelopment activities ~~of less than \$150,000 for health care~~
~~facilities other than hospitals or \$250,000 for hospitals.~~

38 Except as provided in ~~sections 304-D and~~ section 304-E, a
40 certificate of need from the department ~~shall be~~ is required for:

42 **1. Transfer of ownership; acquisition by lease, donation,**
transfer; acquisition of control. Any transfer of ownership or
44 acquisition by or on behalf of a health care facility under lease
or comparable arrangement or through donation, ~~which or any~~
46 acquisition of control of a health care facility under lease,
management agreement or comparable arrangement or through
48 donation that would have required review if the transfer or
acquisition had been by purchase, except in emergencies when that
50 acquisition of control is at the direction of the department;

2 ~~1-A.--Acquisition-of-control.--Any-acquisition-of-control-of~~
4 ~~a--health-care-facility-under-lease,--management--agreement--or~~
6 ~~comparable--arrangement--or--through--donation--that--would--have~~
8 ~~required--review--if--the--acquisition--of--control--had--been--by~~
10 ~~purchase,--except-in-emergencies-when-such-acquisition-of-control~~
12 ~~is-at-the-direction-of-the-department;~~

2. Acquisitions of certain major medical equipment.
10 Acquisitions of major medical equipment with a cost in the
12 aggregate of \$1,000,000 or more, as adjusted pursuant to section
14 305-A. There is a waiver for the use of major medical
16 equipment on a temporary basis as provided in section 308,
subsection 4 in the case of a natural disaster, major accident or
equipment failure and the use of replacement equipment does not
require a certificate of need;

18 ~~2-A.--Acquisitions-of-major-medical-equipment-with-a-cost-in~~
20 ~~the--aggregate--of--\$1,000,000--or--more.--Acquisitions--of--major~~
22 ~~medical-equipment-with-a-cost-in-the-aggregate-of-\$1,000,000-or~~
24 ~~more--by--ambulatory--surgical--centers,--independent--cardiac~~
~~catheterization--centers,--independent--radiologic--service--centers~~
~~and--centers--providing--endoscopy,--sigmoidoscopy,--colonoscopy--or~~
~~other-similar-procedures-associated-with-gastroenterology;~~

26 3. Capital expenditures. The Except as provided in
28 subsection 8-A, the obligation by or on behalf of a health care
30 facility, except a hospital, of any capital expenditure of
32 \$500,000 \$2,000,000 or more, except that any transfer of
34 ownership is reviewable as adjusted pursuant to section 305-A.
Capital expenditures in the case of a natural disaster, major
accident or equipment failure for replacement equipment or for
parking lots and garages, information and communications systems
and physician office space do not require a certificate of need;

36 ~~3-A.--Hospital-capital-expenditures.--The-obligation,--by--or~~
38 ~~on-behalf-of-a-hospital,--of-any-capital-expenditure-of-\$2,000,000~~
~~or-more,--except-that;~~

40 ~~A.--A-capital-expenditure-for-the-purpose-of-acquiring-major~~
42 ~~medical-equipment-is-reviewable-only-to-the-extent-provided~~
~~in-subsection-2,--and~~

44 ~~B.--Any-transfer-of-ownership-of-a-hospital-is-reviewable.~~

46 4. New health service. The offering or development of any
48 new health service. For purposes of this section, "new health
services service" includes only the following:

2 A. The obligation of any capital expenditures by or on
behalf of a health care facility of \$100,000 or more, as
4 adjusted pursuant to section 305-A, that is associated with
the addition of a health service that was not offered on a
6 regular basis by or on behalf of the facility within the
12-month period prior to the time the services would be
offered; or

8
10 B. The addition of a health service that is to be offered
by or on behalf of a health care facility that was not
12 offered on a regular basis by or on behalf of the facility
within the 12-month period prior to the time the services
14 would be offered, and that, for the 3rd fiscal year of
operation, including a partial first year, following
addition of that service, ~~absent any adjustment for~~
16 ~~inflation,~~ is projected to entail annual operating costs of
at least ~~the expenditure minimum for annual operating costs;~~
18 or \$350,000, as adjusted pursuant to section 305-A.

20 ~~C. The addition of a health service that falls within a~~
~~category of health services that are subject to review~~
22 ~~regardless of capital expenditure or operating cost and~~
~~which category the department has defined through~~
24 ~~regulations promulgated pursuant to section 312.~~

26 ~~This subsection does not prohibit a nursing facility from~~
~~converting beds used for the provision of nursing services to~~
28 ~~beds to be used for the provision of residential care services.~~
~~If such a conversion occurs, public funds are not obligated for~~
30 ~~payment of services provided in the converted beds;~~

32 A certificate of need is not required for a health care facility
that extends a current service within the defined primary service
34 area of the facility by purchasing within a 12-month time period
new equipment costing in the aggregate less than \$1,000,000, as
36 adjusted pursuant to section 305-A;

38 ~~5. Termination of a health service. The obligation of any~~
~~capital expenditure by or on behalf of a health care facility~~
40 ~~other than a hospital that is associated with the termination of~~
~~a health service that was previously offered by or on behalf of~~
42 ~~the health care facility; except, neither the conversion of~~
~~licensed nursing facility beds to residential care beds nor a~~
44 ~~decrease in the licensed or certified bed capacity of a nursing~~
~~facility may be considered a termination of a health service;~~

46
48 6. Changes in bed complement. Any change increase in the
existing licensed bed complement or any increase in the licensed
bed category of a health care facility other than a hospital,
50 except that a decrease in the licensed or certified bed capacity

2 of a nursing facility is not subject to review so long as any
capital expenditure incurred in the decrease does not trigger
4 review under subsection 3;

6 **6-A. Increases in licensed bed capacity of a hospital.** Any
change in the existing bed complement of a hospital, in any
8 2-year period, that:

10 A. Increases the licensed or certified bed capacity of the
hospital by more than 10% or more than 5 beds, whichever is
12 less; or

14 B. Increases the number of beds licensed or certified by
the department to provide a particular level of care by more
16 than 10% of that number or more than 5 beds, whichever is
less;

18 **7. Predevelopment activities.** Any appropriately
capitalized expenditure of \$150,000 or more or, in the case of
20 hospitals, \$250,000 or more for predevelopment activities
proposed to be undertaken in preparation for any project that
22 would itself require a certificate of need;

24 **8. New health care facilities.** The construction,
development or other establishment of a new health care facility;
26 and

28 **8-A. Nursing facilities.** The obligation by a nursing
facility, when related to nursing services provided by the
30 nursing facility, of any capital expenditures of \$500,000 or
more, as adjusted pursuant to section 305-A.

32 A certificate of need is not required for a nursing facility to
34 convert beds used for the provision of nursing services to beds
to be used for the provision of residential care services. If
36 such a conversion occurs, public funds are not obligated for
payment of services provided in the converted beds; and

38 **9. Other circumstances.** In the following circumstances:

40 A. Any proposed use of major medical equipment to serve
42 inpatients of a hospital, if the equipment is not located in
a health care facility and was acquired without a
44 certificate of need, except acquisitions waived under
46 section 308, subsection 4 exempt from review under
subsection 2 or 3; or

48 B. If a person adds a health service not subject to review
50 under subsection 4, paragraph A or C and which was not
deemed subject to review under subsection 4, paragraph B at

2 the time it was established and ~~which~~ was not reviewed and
3 approved prior to establishment at the request of the
4 applicant, and its actual 3rd fiscal year operating cost, as
5 adjusted by an appropriate inflation deflator promulgated by
6 the department, ~~after consultation with the Maine Health~~
7 ~~Care-Finance-Commission~~, exceeds the expenditure minimum for
8 annual operating cost in the 3rd fiscal year of operation
following addition of these services.

10 **Sec. B-11. 22 MRSA §304-B, sub-§1**, as enacted by PL 1981, c.
11 705, Pt. V, §17, is amended to read:

12 **1. Criteria for subsequent review.** The following activities
13 require subsequent review and approval, if the department has
14 previously issued a certificate of need and if within ~~one-year~~ 3
15 years after the approved activity is undertaken:

18 A. There is a significant change in financing;

20 B. There is a change affecting the licensed or certified
21 bed capacity as approved in the certificate of need;

22 C. There is a change involving the addition or termination
23 of the health services proposed to be rendered by ~~the~~
24 ~~facility~~;

26 D. There is a change in the site or the location of the
27 proposed facility; or

30 E. There is a substantial change proposed in the design of
31 the facility or the type of construction.

32 **Sec. B-12. 22 MRSA §304-D**, as amended by PL 1995, c. 696, Pt.
33 A, §§15 and 16, is repealed.

36 **Sec. B-13. 22 MRSA §304-E, sub-§§1 and 6**, as enacted by PL
37 1987, c. 725, §2, are amended to read:

38 **1. Request for waiver.** An applicant for a project
39 requiring a certificate of need, ~~other than a project related to~~
40 ~~acute patient care or a project that could affect the financial~~
41 ~~requirements of a hospital under chapter 107~~, may request a
42 waiver of the review requirements under this chapter. The
43 applicant shall submit, with the request, sufficient written
44 documentation to demonstrate that the proposed project meets the
45 conditions of this section and that sufficient public notice of
46 the proposed waiver has been given.

48 **6. Report to Legislature.** The department shall submit an
49 annual report to the joint standing committee of the Legislature
50

2 having jurisdiction over health and human resources services
3 matters on the implementation and operation of this section no
4 later than February 15th of each year.

6 **Sec. B-14. 22 MRSA §304-F, sub-§1**, as enacted by PL 1995, c.
696, Pt. A, §17, is amended to read:

8 **1. Procedures.** A nursing home facility that voluntarily
9 reduces the number of its licensed beds for any reason except to
10 create private rooms may convert the beds back and thereby
11 increase the number of nursing facility beds to no more than the
12 previously licensed number of nursing facility beds, after
13 obtaining a certificate of need in accordance with this section,
14 provided the facility has been in continuous operation and has
15 not been purchased or leased. To convert beds back to nursing
16 facility beds under this subsection, the nursing facility must:

18 A. Give notice of its intent to preserve conversion options
19 to the department no later than 30 days after the effective
20 date of the license reduction; and

22 B. Obtain a certificate of need to convert beds back under
23 section 309, except that if no construction is required for
24 the conversion of beds back, the application must be
25 processed in accordance with subsection 2.

26 **Sec. B-15. 22 MRSA §304-G** is enacted to read:

28 **§304-G. Addition of nursing facility beds**

30 Nursing facility projects that propose to add new nursing
31 facility beds to the inventory of nursing facility beds within
32 the State may be grouped for competitive review purposes
33 consistent with appropriations made available for that purpose by
34 the Legislature. A nursing facility project that proposes
35 renovation, replacement or other actions that will increase
36 Medicaid costs may be approved only if appropriations have been
37 made by the Legislature expressly for the purpose of meeting
38 those costs, except that the department may approve, without a
39 prior appropriation for the express purpose, projects to reopen
40 beds previously reserved by a nursing facility through a
41 voluntary reduction pursuant to section 304-F, if the annual
42 total of reopened beds approved does not exceed 100.

44 **Sec. B-16. 22 MRSA §305**, as enacted by PL 1977, c. 687, §1,
45 is repealed.

48 **Sec. B-17. 22 MRSA §305-A** is enacted to read:

50 **§305-A. Annual proposal to adjust for inflation**

2 By December 1st annually, the department shall submit to the
4 joint standing committee of the Legislature having jurisdiction
6 over health and human services matters proposed legislation to
adjust the monetary figures contained in this chapter to reflect
changes in the Consumer Price Index medical index.

8 **Sec. B-18. 22 MRSA §306-A, sub-§5-A is enacted to read:**

10 5-A. Public informational meeting. Within 30 days of the
12 filing of an application, the department shall advertise and
14 conduct in a location convenient to the proposal location a
public informational meeting at which the applicant shall present
information about the proposal.

16 **Sec. B-19. 22 MRSA §306-A, sub-§8, ¶¶B and C, as enacted by PL**
18 **1995, c. 696, Pt. A, §19, are amended to read:**

20 B. If the approved capital expenditure or operating cost
22 upon which the fees were based is higher than the initially
24 proposed capital expenditure, then the filing fee must be
recalculated and the difference in fees, if any, must be
paid before the certificate of need may be issued.

26 C. Rules adopted pursuant to this subsection are major
28 substantive routine technical rules as defined by Title 5,
chapter 375, subchapter II-A.

30 **Sec. B-20. 22 MRSA §306-B is enacted to read:**

32 **§306-B. Certificate of Need Advisory Committee**

34 The Certificate of Need Advisory Committee, established by
36 Title 5, section 12004-I, subsection 38 and referred to in this
section as the "committee," shall participate with the department
in the public hearing process under section 307, subsection 2-B.

38 1. Appointment. The members of the Certificate of Need
40 Advisory Committee are appointed according to this subsection.

42 A. The committee is composed of 10 members, 9 of whom are
44 appointed by the Governor. The commissioner shall name a
46 person employed by the department as the commissioner's
designee to serve as an ex officio, nonvoting member of the
committee. The 9 members appointed by the Governor must be
selected in accordance with the following requirements.

48 (1) Four members must be appointed as follows:

50 (a) One member must represent the hospitals;

2 (b) One member must represent the nursing home
3 industry;

4 (c) One member must represent major 3rd-party
5 payors; and

6 (d) One member must represent providers.

7
8
9
10 In appointing these representatives, the Governor shall
11 consider recommendations made by the Maine Hospital
12 Association, the Maine Health Care Association, the
13 Maine Medical Association, the Maine Osteopathic
14 Association and other representative organizations.

15 (2) Five public members must be appointed as consumers
16 of health care. One of these members must be
17 designated on an annual basis by the Governor as chair
18 of the committee. Neither the public members nor their
19 spouses or children may, within 12 months preceding the
20 appointment, have been affiliated with, employed by or
21 have had any professional affiliation with any health
22 care facility or institution or nursing facility,
23 health product manufacturer or corporation or insurer
24 providing coverage for hospital or medical care;
25 however, neither membership in or subscription to a
26 service plan maintained by a nonprofit hospital and
27 medical service organization, nor enrollment in a
28 health maintenance organization, nor membership as a
29 policy holder in a mutual insurer or coverage under
30 such a policy, nor the purchase of or coverage under a
31 policy issued by a stock insurer may disqualify a
32 person from serving as a public member.

33
34
35 B. Appointed members of the committee serve for terms of 4
36 years. Members are limited to 2 4-year terms.

37 C. Vacancies among appointed members must be filled by
38 appointment by the Governor for the unexpired term. A
39 vacancy in the office of the chair must be filled by the
40 Governor, who shall designate a new chair for the balance of
41 the member's term as chair. The Governor may remove any
42 appointed member who becomes disqualified by virtue of the
43 requirements of paragraph A or for neglect of any duty
44 required by law or for incompetency or dishonorable conduct.

45 D. Each appointed member of the committee is entitled to
46 compensation according to Title 5, chapter 379.

2 E. Five members of the committee constitute a quorum.
3 Actions of the committee must be by majority vote.

4 2. Duties. The committee shall perform the following
5 duties:

6 A. Review proposed rules, criteria, standards and
7 procedures for the certificate of need process and the state
8 health plan prior to their adoption, review the annual
9 certificate of need report prepared by the department and
10 advise the commissioner with regard to certificate of need;
11 and

12 B. Conduct the public hearing required under section 307,
13 subsection 2-B.

14 **Sec. B-21. 22 MRSA §307, sub-§2-A,** as amended by PL 1995, c.
15 696, Pt. A, §20, is repealed.

16 **Sec. B-22. 22 MRSA §307, sub-§6-A,** as amended by PL 1995, c.
17 696, Pt. A, §24, is further amended to read:

18 **6-A. Review cycles.** The department shall establish review
19 cycles for the review of applications. There must be at least
20 one review cycle for each type or category of project each
21 calendar year, the dates for which must be published at least 3
22 months in advance. An application must be reviewed during the
23 next scheduled review cycle following the date on which the
24 application is either declared complete or submitted for review
25 pursuant to section 306-A, subsection 4, paragraph B. Nursing
26 ~~home projects that propose to add new nursing home beds to the~~
27 ~~inventory of nursing home beds within the State may be grouped~~
28 ~~for competitive review purposes consistent with appropriations~~
29 ~~made available for that purpose by the Legislature. A nursing~~
30 ~~home project that proposes renovation, replacement or other~~
31 ~~actions that will increase Medicaid costs may be approved only if~~
32 ~~appropriations have been made by the Legislature expressly for~~
33 ~~the purpose of meeting those costs, except that the department~~
34 ~~may approve, without a prior appropriation for the express~~
35 ~~purpose, projects to reopen beds previously reserved by a nursing~~
36 ~~facility through a voluntary reduction pursuant to section 304-F,~~
37 ~~provided that the annual total of reopened beds approved does not~~
38 ~~exceed 100.~~ The department may hold an application for up to 90
39 days following the commencement of the next scheduled review
40 cycle if, on the basis of one or more letters of intent on file
41 at the time the application is either declared complete or
42 submitted for review pursuant to section 306-A, subsection 4,
43 paragraph B, the department expects to receive within the
44 additional 90 days one or more other applications pertaining to
45 similar types of services, facilities or equipment affecting the

2 same health service area. Pertinent health service areas must be
3 defined in rules adopted by the department pursuant to section
4 312.

5 **Sec. B-23. 22 MRSA §308, sub-§1, ¶A,** as amended by PL 1985, c.
6 418, §11, is further amended to read:

7 A. Meets an already demonstrated need as established by
8 applicable state health plans or by the rules of the
9 department; and

10 **Sec. B-24. 22 MRSA §308, sub-§1, ¶B,** as amended by PL 1985, c.
11 418, §11, is repealed.

12 **Sec. B-25. 22 MRSA §308, sub-§1-A,** as enacted by PL 1997, c.
13 242, §2, is amended to read:

14 **1-A. Acquisition of control.** The department shall waive
15 the requirements of section 309, subsection 1, paragraphs C and D
16 and conduct a simplified review process in accordance with this
17 section for an acquisition of control of health care facilities
18 pursuant to section 304-A, subsection 1-A 1, if the acquisition
19 consists of a management agreement or similar arrangement and
20 primarily involves day-to-day operation of the facility in its
21 current form. The department shall complete its review of
22 arrangements qualifying for simplified review within 45 days of
23 the filing of a completed application.

24 **Sec. B-26. 22 MRSA §308, sub-§3,** as enacted by PL 1979, c.
25 601, §2, is amended to read:

26 **3. Emergency certificate of need.** The department shall
27 determine that an emergency situation exists whenever it finds
28 that an applicant has demonstrated:

29 A. The necessity for immediate or temporary relief due to
30 natural disaster, fire, unforeseen safety consideration,
31 major accident, equipment failure, foreclosure, receivership
32 or action of the department or other circumstances
33 determined appropriate by the department;

34 B. The serious adverse effect of delay on the applicant and
35 the community that would be occasioned by compliance with
36 the regular requirements of this chapter and the rules and
37 regulations-premulgated adopted by the department; and

38 C. The lack of substantial change in the facility or
39 services which that existed before the emergency situation.

2 In an emergency situation the department may waive in writing any
3 penalties for failure to receive a certificate of need for an
4 otherwise reviewable project. After the emergency is resolved
5 the department shall review the action to determine whether any
6 additional review is required.

7 **Sec. B-27. 22 MRSA §308, sub-§4, as enacted by PL 1981, c.**
8 **705, Pt. V, §30, is repealed.**

9 **Sec. B-28. 22 MRSA §308, sub-§5, as enacted by PL 1987, c.**
10 **436, §5, is repealed.**

11 **Sec. B-29. 22 MRSA §309, sub-§5, as enacted by PL 1981, c.**
12 **705, Pt. V, §33, is amended to read:**

13 **5. Standards applied in certificate of need.** The
14 commissioner shall, in issuing a certificate of need, make his
15 the decision, to the maximum extent practicable, directly related
16 to criteria established under federal laws and standards or
17 criteria prescribed in ~~regulations--premulgated~~ rules adopted by
18 the department pursuant to subsections 1 to 4 and section 312.

19 The commissioner shall ~~may~~ not deny issuance of a certificate of
20 need, or make his the decision subject to fulfillment of a
21 condition on the part of the applicant, except ~~where~~ when the
22 denial or condition directly relates to criteria established
23 under federal laws and standards or criteria prescribed in
24 ~~regulations--premulgated~~ rules adopted by the department in
25 accordance with subsections 1 to 4 and section 312, ~~which that~~
26 are pertinent to the application.

27 **Sec. B-30. 22 MRSA §309, sub-§6, as amended by PL 1995, c.**
28 **696, Pt. A, §29, is repealed.**

29 **Sec. B-31. 22 MRSA §311, 3rd ¶, as enacted by PL 1985, c. 701,**
30 **is amended to read:**

31 In civil actions involving competitive reviews of proposals
32 to construct new nursing home facility beds, the court shall
33 require the party seeking judicial review to give security in
34 such sums as the court deems proper, for the payment of such
35 costs and damages as may be incurred or suffered by any other
36 party who is found to have been wrongfully delayed or restrained
37 from proceeding to implement the certificate of need, provided
38 that for good cause shown and recited in the order, the court may
39 waive the giving of security. A surety upon a bond or undertaking
40 under this paragraph submits himself the surety to the
41 jurisdiction of the court and irrevocably appoints the clerk of
42 the court as his the agent for the surety upon whom any papers
43 affecting his liability on the bond or undertaking may be served.
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2 ~~His~~ The liability of the surety may be enforced on motion without
4 the necessity of an independent action. The motion and such
6 notice of the motion as the court prescribes may be served on the
8 clerk of the court who shall forthwith mail copies to the persons
10 giving the security if their addresses are known.

12 **Sec. B-32. 22 MRSA §312**, as amended by PL 1981, c. 705, Pt.
14 V, §34, is further amended to read:

16 **§312. Rules**

18 The department shall adopt any rules, regulations,
20 standards, criteria ~~or~~ plans or procedures that may be necessary
22 to carry out the provisions and purposes of this Act. The
24 department shall, to the extent applicable, take into
26 consideration recommendations contained in the state health plan
28 ~~as approved by the Governor~~ and the recommendations of the
30 Certificate of Need Advisory Committee under section 306-A,
32 subsection 2, paragraph A. The department shall provide for
34 public notice and hearing on all proposed rules, regulations,
36 standards, criteria, plans, procedures or schedules pursuant to
38 Title 5, chapter 375. Unless otherwise provided by this chapter,
40 rules adopted pursuant to this chapter are routine technical
42 rules as defined by Title 5, chapter 375, subchapter II-A. The
44 department is authorized to accept any federal funds to be used
46 for the purposes of carrying out this chapter.

48 **Sec. B-33. 22 MRSA §316-A**, as amended by PL 1983, c. 200, §§1
to 3, is further amended to read:

§316-A. Exemptions

Except as otherwise specifically provided, nothing in this
Act shall ~~may~~ 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 do 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 United States Social Security Act,
Section 1122, from appropriate agencies prior to the
effective date of this Act;~~

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

9 **3. Home health care services.** Home health care services
10 offered by a home health care provider ~~prior to 90 days after~~
11 ~~adjournment of the Second Regular Session of the 110th~~
12 ~~Legislature;~~ and

13 **5. Hospice.** Hospice services and programs.

14 **6. Assisted living.** Assisted living programs and services
15 regulated under chapter 1665;

16 **7. Existing capacity.** The use by an ambulatory surgical
17 facility licensed on January 1, 1998 of capacity in existence on
18 January 1, 1998;

19 **Sec. B-34. 22 MRSA §317-A, sub-§2,** as enacted by PL 1981, c.
20 705, Pt. V, §38, is amended to read:

21 **2. Maximum expenditure.** In issuing a certificate of need,
22 the department shall specify the maximum capital expenditures
23 which ~~that~~ may be obligated under this certificate. The
24 department shall, by ~~regulations--promulgated rules adopted~~
25 pursuant to section 312, prescribe the method to be used to
26 determine capital expenditure maximums, establish procedures to
27 monitor capital expenditures obligated under certificates and
28 establish procedures to review projects for which the capital
29 expenditure maximum is exceeded or expected to be exceeded.
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31 **Sec. B-35. 22 MRSA §317-A, sub-§3,** as amended by PL 1985, c.
32 418, §17, is further amended to read:

33 **3. Periodic review.** After the issuance of a certificate of
34 need, the department shall periodically review the progress of
35 the holder of the certificate in meeting the timetable for making
36 the service or equipment available or for completing the project
37 specified in the approved application. A certificate of need
38 ~~shall expire~~ expires if the project for which the certificate has
39 been issued is not commenced within 12 months following the
40 issuance of the certificate. The department may grant an
41 extension of a certificate for an additional specified time not
42 to exceed 12 months if good cause is shown why the project has
43 not commenced. The department may require evidence of the
44 continuing feasibility and availability of financing for a
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2 project as a condition for extending the life of certificate. In
3 addition if on the basis of its periodic review of progress under
4 the certificate, the department determines that the holder of a
5 certificate is not otherwise meeting the timetable and is not
6 making a good faith effort to meet it, the department may, after
7 a hearing, withdraw the certificate of need. The department
8 shall in accordance with section 312 ~~promulgate the necessary~~
procedures adopt rules for withdrawal of certificates of need.

10 **Sec. B-36. 22 MRSA §323**, as enacted by PL 1981, c. 705, Pt.
11 v, §39, is repealed.

12 **Sec. B-37. 22 MRSA §324**, as repealed and replaced by PL 1995,
13 c. 696, Pt. A, §31, is amended to read:

14 **§324. Review**

15 The department shall convene meetings of the public,
16 providers and consumers of health care, state agencies, insurers
17 and managed care entities, the Certificate of Need Advisory
18 Committee and interested parties to examine the operation of the
19 certificate of need laws, rules, standards, criteria and
20 procedures and shall report to the legislative joint standing
21 committee of the Legislature having jurisdiction over health and
22 institutional human services matters not later than January 31,
23 1999 2001 on the continuing feasibility of this chapter.

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28 **PART C**

29 **Sec. C-1. Adoption of rules, standards, criteria and procedures.**

30 Beginning November 1, 1998, the Department of Human Services
31 shall adopt new rules, standards, criteria and procedures for the
32 certificate of need process, consistent with the Maine Revised
33 Statutes, Title 22, chapter 103, as amended, in accordance with
34 the requirements of Title 5, chapter 375, subchapter II.

35 **Sec. C-2. Effective date.** This Act takes effect October 1, 1998.

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39 **SUMMARY**

40 This bill simplifies the certificate of need process for
41 health care facilities and health care services.
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