

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1487

H.P. 1043

House of Representatives, March 24, 2005

**An Act To Repeal Certificate of Need as It Applies to Hospitals,
Ambulatory Surgical Units and Physician Offices**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SHIELDS of Auburn.
Cosponsored by Senator TURNER of Cumberland and
Representatives: BOWLES of Sanford, DUGAY of Cherryfield, LEWIN of Eliot,
MARRACHÉ of Waterville, SAVIELLO of Wilton, Senators: DAVIS of Piscataquis, ROSEN
of Hancock, WESTON of Waldo.

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

2
3 **Sec. 1. 22 MRSA §328, sub-§2,** as enacted by PL 2001, c. 664,
4 §2, is repealed.

6 **Sec. 2. 22 MRSA §328, sub-§4.** as enacted by PL 2001, c. 664,
7 §2, is amended to read:

8 **4. Construction.** "Construction," when used in connection
10 with "~~health--care~~ nursing facility," means the establishment,
11 erection, building, purchase or other acquisition of a ~~health~~
12 ~~care~~ nursing facility.

14 **Sec. 3. 22 MRSA §328, sub-§8,** as amended by PL 2003, c. 469,
15 Pt. C, §3, is repealed.

16 **Sec. 4. 22 MRSA §328, sub-§14,** as enacted by PL 2001, c. 664,
18 §2, is repealed.

20 **Sec. 5. 22 MRSA §328, sub-§16,** as amended by PL 2003, c. 469,
21 Pt. C, §4, is repealed.

22 **Sec. 6. 22 MRSA §328, sub-§17,** as enacted by PL 2001, c. 664,
24 §2, is amended to read:

26 **17. Modification.** "Modification" means the alteration,
27 improvement, expansion, extension, renovation or replacement of a
28 ~~health-care~~ nursing facility or health maintenance organization
29 or portions thereof, including the initial equipment, and the
30 replacement of equipment or existing buildings.

32 **Sec. 7. 22 MRSA §328, sub-§17-A,** as corrected by RR 2003, c.
33 1, §15, are amended to read:

34 **17-A. New health service.** "New health service" means:

36 A. The obligation of any capital expenditures by or on
37 behalf of a ~~health-care~~ nursing facility of \$110,000 or more
38 that is associated with the addition of a health service
39 that was not offered on a regular basis by or on behalf of
40 the ~~health-care~~ nursing facility within the 12-month period
41 prior to the time the services would be offered; or

44 B. The addition of a health service that is to be offered
45 by or on behalf of a ~~health-care~~ nursing facility that was
46 not offered on a regular basis by or on behalf of the ~~health~~
47 ~~care~~ nursing facility within the 12-month period prior to
48 the time the services would be offered and that, for the 3rd
49 fiscal year of operation, including a partial first year
50 following addition of that service, is projected to entail

2 incremental annual operating costs directly attributable to
the addition of that health service of at least \$400,000, or.

4 C. ~~The addition in the private office of a health care~~
~~practitioner, as defined in Title 24, section 2502,~~
6 ~~subsection 1-A, of new technology that costs \$1,200,000 or~~
~~more. The department shall consult with the Maine Quality~~
8 ~~Forum Advisory Council established pursuant to Title 24-A,~~
~~section 6952, prior to determining whether a project~~
10 ~~qualifies as a new technology in the office of a private~~
~~practitioner. Beginning September 30, 2004 and annually~~
12 ~~thereafter, the threshold amount for review must be updated~~
~~by the commissioner to reflect the change in the Consumer~~
14 ~~Price Index medical index. With regard to the private~~
~~office of a health care practitioner, "new health service"~~
16 ~~does not include the location of a new practitioner in a~~
~~geographic area.~~

18 "New health service" does not include a health care nursing
20 facility that extends a current service within the defined
primary service area of the health care nursing facility by
22 purchasing within a 12-month time period new equipment costing in
the aggregate less than ~~the threshold provided in section 328,~~
24 ~~subsection 16~~ \$1,200,000;

26 **Sec. 8. 22 MRSA §328, sub-§§19 and 20,** as enacted by PL 2001,
c. 664, §2, are amended to read:

28 **19. Obligation.** An "obligation" for a capital expenditure
30 that is considered to be incurred by or on behalf of a health
care nursing facility:

32 A. When a contract, enforceable under the law of the State,
34 is entered into by or on behalf of the health care nursing
facility for the construction, acquisition, lease or
36 financing of a capital asset;

38 B. When the governing board of the health care nursing
40 facility takes formal action to commit its own funds for a
construction project undertaken by the health care nursing
42 facility as its own contractor; or

44 C. In the case of donated property, on the date on which
the gift is completed under the applicable law of the State.

46 **20. Offer.** "Offer," when used in connection with "health
48 services," means that the health care nursing facility or health
maintenance organization holds itself out as capable of providing
or having the means to provide a health service.
50

2 **Sec. 9. 22 MRSA §328, sub-§22, ¶C**, as enacted by PL 2001, c.
664, §2, is amended to read:

4 C. A ~~health--care~~ nursing facility, a health maintenance
6 organization or a health care practitioner that demonstrates
that it provides similar services or, by timely filing a
8 letter of intent with the department for inclusion in the
record, indicates an intention to provide similar services
10 in the future to patients residing in the health service
area and whose services would be directly and substantially
12 affected by the application under review;

14 **Sec. 10. 22 MRSA §328, sub-§23**, as enacted by PL 2001, c. 664,
§2, is amended to read:

16 **23. Predevelopment activity.** "Predevelopment activity"
18 means any appropriately capitalized expenditure by or on behalf
of a ~~health--care~~ nursing facility made in preparation for the
20 offering or development of a new health service for which a
certificate of need would be required and arrangements or
22 commitments made for financing the offering or development of the
new health service and includes site acquisitions, surveys,
24 studies, expenditures for architectural designs, plans, working
drawings and specifications.

26 **Sec. 11. 22 MRSA §329, sub-§1**, as enacted by PL 2001, c. 664,
§2, is amended to read:

28 **1. Transfer of ownership; acquisition by lease, donation,
30 transfer; acquisition of control.** Any transfer of ownership or
acquisition under lease or comparable arrangement or through
32 donation or any acquisition of control of a ~~health--care~~ nursing
facility under lease, management agreement or comparable
34 arrangement or through donation that would have required review
if the transfer or acquisition had been by purchase, except in
36 emergencies when that acquisition of control is at the direction
of the department;

38 **Sec. 12. 22 MRSA §329, sub-§3**, as amended by PL 2003, c. 469,
40 Pt. C, §7, is further amended to read:

42 **3. Capital expenditures.** Except as provided in subsection
6, the obligation by or on behalf of a ~~health--care~~ nursing
44 facility of any capital expenditure of \$2,400,000 or more.
Capital expenditures in the case of a natural disaster, major
46 accident or equipment failure for replacement equipment or for
parking lots and garages, information and communications systems
48 and physician office space do not require a certificate of need.
Beginning September 30, 2004 and annually thereafter, the

2 threshold amount for review must be updated by the commissioner
to reflect the change in the Consumer Price Index medical index;

4 **Sec. 13. 22 MRSA §329, sub-§5**, as enacted by PL 2001, c. 664,
§2, is repealed.

6 **Sec. 14. 22 MRSA §329, sub-§7, ¶A**, as enacted by PL 2001, c.
8 664, §2, is repealed.

10 **Sec. 15. 22 MRSA §329, sub-§8**, as enacted by PL 2001, c. 664,
§2, is repealed.

12 **Sec. 16. 22 MRSA §330, sub-§§1 and 2**, as enacted by PL 2001, c.
14 664, §2, are amended to read:

16 **1. Healing through prayer.** A ~~health-care~~ nursing facility
operated by a religious group relying solely on spiritual means
18 through prayer for healing;

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

28 **Sec. 17. 22 MRSA §330, sub-§4**, as enacted by PL 2001, c. 664,
§2, is amended to read:

30 **4. Hospice.** Hospice services and programs; and

32 **Sec. 18. 22 MRSA §330, sub-§5-A**, as enacted by PL 2003, c.
34 510, Pt. A, §15, is amended to read:

36 **5-A. Assisted housing.** Assisted housing programs and
services regulated under chapter 1664~~+~~.

38 **Sec. 19. 22 MRSA §330, sub-§6**, as enacted by PL 2001, c. 664,
40 §2, is repealed.

42 **Sec. 20. 22 MRSA §330, sub-§7**, as amended by PL 2003, c. 621,
§1, is repealed.

44 **Sec. 21. 22 MRSA §331, sub-§1, ¶¶D and E**, as enacted by PL
46 2001, c. 664, §2, are amended to read:

48 D. There is a change in the site or the location of the
proposed ~~health-care~~ nursing facility; or
50

2 E. There is a substantial change proposed in the design of
the ~~health-care~~ nursing facility or the type of construction.

4 **Sec. 22. 22 MRSA §336, sub-§§1 and 2**, as enacted by PL 2001, c.
664, §2, are amended to read:

6 **1. Maintenance projects.** The commissioner shall issue a
8 certificate of need for a project that primarily involves the
maintenance of a health nursing facility if the commissioner
10 determines that the project:

12 A. Will result in no or a minimal additional expense to the
public or to the ~~health-care~~ nursing facility's clients;

14 B. Will be in compliance with other applicable state and
16 local laws and regulations; and

18 C. Will significantly improve or, in the alternative, not
significantly adversely affect the health and welfare of any
20 person currently being served by the ~~health-care~~ nursing
facility.

22 **2. Life safety codes; previous certificate of need.** The
24 commissioner shall issue a certificate of need for a project that
is required solely to meet federal, state or local life safety
26 codes if the project involves a health nursing facility, ~~major~~
~~medical--equipment~~ or a new health service that has previously
28 received a certificate of need.

30 **Sec. 23. 22 MRSA §345**, as enacted by PL 2001, c. 664, §1, is
amended to read:

32 **§345. Division of project to evade cost limitation prohibited**

34 A ~~health-care~~ nursing facility or other party required to
36 obtain a certificate of need may not separate portions of a
single project into components, including, but not limited to,
38 site facility and equipment, to evade the cost limitations or
other requirements of section 329.

40 **Sec. 24. 22 MRSA §347**, as enacted by PL 2001, c. 664, §2, is
42 amended to read:

44 **§347. Withholding of license**

46 A new ~~health-care~~ nursing facility, as defined in section
328, is eligible to obtain a license under the applicable state
48 law if the facility has obtained a certificate of need as
required by this chapter. The license of any facility does not
50 extend to include and may not otherwise be deemed to allow the

2 delivery of any services, the use of any equipment that has been
4 acquired, the use of any portion of a facility or any other
6 change for which a certificate of need as required by this
8 chapter has not been obtained. Any unauthorized delivery of
services, use of equipment or a portion of a facility or other
change is in violation of the respective chapter under which the
facility is licensed.

10 **Sec. 25. 22 MRSA §348**, as corrected by RR 2001, c. 2, Pt. A,
§29, is amended to read:

12 **§348. Withholding of funds**

14 A ~~health--care~~ nursing facility or other provider may be
16 eligible to apply for or receive any reimbursement, payment or
18 other financial assistance from any state agency or other
20 3rd-party payor, either directly or indirectly, for any capital
22 expenditure or operating costs attributable to any project for
24 which a certificate of need is required by this chapter only if
the certificate of need has been obtained. For the purposes of
this section, the department shall determine the eligibility of a
facility to receive reimbursement for all projects subject to the
provisions of this chapter.

26 **Sec. 26. 38 MRSA §1310-X, sub-§4, ¶A**, as amended by PL 2003,
c. 551, §17, is further amended to read:

28 A. A commercial biomedical waste disposal or treatment
30 facility, if at least 51% of the facility is owned by a
32 ~~licensed hospital or hospitals as--defined--in--Title--22,~~
34 ~~section--328,--subsection--14~~ or a group of hospitals that are
licensed under Title 22 acting through a statewide
association of Maine hospitals or a wholly owned affiliate
of the association; and

36 **Sec. 27. MaineCare report on reimbursement methods.** The
38 Department of Health and Human Services shall conduct a review of
40 the current method of reimbursement to health care providers,
42 including physicians, and the rates of that reimbursement and
44 provide a comparison of the impact on the MaineCare program if
46 alternative methods of reimbursement are implemented, including,
48 but not limited to, reimbursement on a diagnostic-related
groupings, or DRG, basis. The review must include information on
the methods of reimbursement used by private health insurance
carriers and Medicare and other publicly funded programs. The
department shall submit a report detailing the review required by
this section to the Joint Standing Committee on Health and Human
Services by January 15, 2006. The Joint Standing Committee on
Health and Human Services may report out legislation to make

2 changes in how MaineCare reimburses health care providers to the
Second Regular Session of the 122nd Legislature.

4

6 SUMMARY

6

8 This bill removes hospitals, ambulatory surgical facilities,
physician offices and other health care facilities from the
certificate of need process. The bill retains certificate of
10 need for nursing facilities.

12 The bill also requires the Department of Health and Human
Services to submit a report on alternative methods of
14 reimbursement under the MaineCare program to the Legislature by
January 15, 2006.