

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2008

Legislative Document

No. 2301

H.P. 1659

House of Representatives, April 4, 2008

An Act To Amend the Maine Certificate of Need Act of 2002

(EMERGENCY)

Reported by Representative PERRY of Calais for the Joint Standing Committee on Health and Human Services pursuant to Resolve 2007, chapter 110.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the Maine Certificate of Need Act of 2002 is an important tool in the
4 planning and development of affordable health care services in the State; and

5 **Whereas,** this legislation is necessary immediately for the enhancement of the
6 strength and clarity of the Maine Certificate of Need Act of 2002; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

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

12 **Sec. 1. 22 MRSA §328, sub-§16,** as amended by PL 2003, c. 469, Pt. C, §4, is
13 further amended to read:

14 **16. Major medical equipment.** "Major medical equipment" means a single unit of
15 medical equipment or a single system of components with related functions used to
16 provide medical and other health services that costs \$1,200,000 or more. "Major medical
17 equipment" does not include medical equipment acquired by or on behalf of a clinical
18 laboratory to provide clinical laboratory services if the clinical laboratory is independent
19 of a physician's office and a hospital and has been determined to meet the requirements of
20 the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and
21 11. In determining whether medical equipment costs more than the threshold provided in
22 this subsection, the cost of studies, surveys, designs, plans, working drawings,
23 specifications and other activities essential to acquiring the equipment must be included.
24 If the equipment is acquired for less than fair market value, the term "cost" includes the
25 fair market value. Beginning ~~September 30, 2004~~ January 1, 2009 and annually
26 thereafter, the threshold amount for review must be updated by the commissioner to
27 reflect the change in the Consumer Price Index, medical index.

28 **Sec. 2. 22 MRSA §328, sub-§17-A, ¶C,** as corrected by RR 2003, c. 1, §15, is
29 amended to read:

30 C. The addition in the private office of a health care practitioner, as defined in Title
31 24, section 2502, subsection 1-A, of new technology that costs \$1,200,000 or more.
32 The department shall consult with the Maine Quality Forum Advisory Council
33 established pursuant to Title 24-A, section 6952, prior to determining whether a
34 project qualifies as a new technology in the office of a private practitioner.
35 Beginning ~~September 30, 2004~~ January 1, 2009 and annually thereafter, the threshold
36 amount for review must be updated by the commissioner to reflect the change in the
37 Consumer Price Index medical index. With regard to the private office of a health
38 care practitioner, "new health service" does not include the location of a new
39 practitioner in a geographic area.

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

3 **3. Capital expenditures.** Except as provided in subsection 6, the obligation by or
4 on behalf of a health care facility of any capital expenditure of \$2,400,000 or more.
5 Capital expenditures in the case of a natural disaster, major accident or equipment failure
6 for replacement equipment or for parking lots and garages, information and
7 communications systems and physician office space do not require a certificate of need.
8 Beginning ~~September 30, 2004~~ January 1, 2009 and annually thereafter, the threshold
9 amount for review must be updated by the commissioner to reflect the change in the
10 Consumer Price Index medical index;

11 **Sec. 4. 22 MRSA §333-A, sub-§2**, as enacted by PL 2007, c. 440, §11, is
12 amended to read:

13 **2. Procedure.** The balance of the nursing facility MaineCare funding pool must be
14 used for development of additional nursing facility beds in areas of the State where
15 additional beds are needed to meet the community need. The department must assess
16 needs throughout the State and issue requests for proposals for the development of
17 additional beds in areas where need has been identified by the department, except in the
18 event of an emergency, when the department may use a sole source process. Proposals
19 must be evaluated based on consideration of quality of care and cost, and preference must
20 be given to existing nursing facilities in the identified need area that may increase
21 licensed capacity by adding on to or renovating the existing facility. Projects that exceed
22 the review thresholds require a certificate of need, but no additional assessment of need
23 will be conducted as part of that process. Except as set forth in section 334-A, subsection
24 2, a project requiring certificate of need approval may not increase MaineCare costs
25 beyond the total amount appropriated for nursing facility care plus the available balance
26 of the nursing facility MaineCare funding pool.

27 **Sec. 5. 22 MRSA §333-A, sub-§3**, as enacted by PL 2007, c. 440, §11, is
28 repealed and the following enacted in its place:

29 **3. Emergencies and necessary renovations.** The department may determine an
30 emergency exists and may approve a necessary nursing facility certificate of need
31 application, as described in paragraph A, that is not limited by the nursing facility
32 MaineCare funding pool set forth in subsection 1.

33 A. The department may approve a nursing facility certificate of need application
34 when the applicant proposes capital expenditures for renovations and improvements
35 that are necessary:

- 36 (1) To achieve compliance with code and related regulatory requirements;
37 (2) To comply with the federal Health Insurance Portability and Accountability
38 Act of 1996 and related patient privacy standards;
39 (3) To address other patient safety requirements and standards, consistent with
40 the priorities set forth in the current State Health Plan; or



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LD 2301

LR 3602(01)

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Fiscal Note for Original Bill
Committee: Health and Human Services
Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$0	\$0	\$27,518	\$27,518
Appropriations/Allocations				
General Fund	\$0	\$0	\$27,518	\$27,518
Federal Expenditures Fund	\$0	\$0	\$47,483	\$27,518

Fiscal Detail and Notes

Assumes the bill will result in one additional nursing facility project being approved at an annual cost beginning in fiscal year 2009-10 of approximately \$75,000 in combined state and federal funds.