

MAINE STATE LEGISLATURE

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Date: 6/4/9

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 879, L.D. 1260, Bill, "An Act To Amend the Certificate of Need Act of 2002 for Nursing Facility Projects"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 22 MRSA §329, sub-§6, as enacted by PL 2001, c. 664, §2, is repealed and the following enacted in its place:

6. Nursing facilities. The obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$510,000 or more and beginning January 1, 2010, the obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$1,000,000 or more.

A certificate of need is not required for the following:

- A. A nursing facility converting beds used for the provision of nursing services to beds to be used for the provision of residential care services.
B. Capital expenditures in the case of a natural disaster, major accident or equipment failure.
C. Replacement equipment, other than major medical equipment as defined in section 328, subsection 16; and
D. Information systems, communication systems, parking lots and garages.

Sec. 2. 22 MRSA §333-A, sub-§1, as enacted by PL 2007, c. 440, §11, is amended to read:

1. Nursing facility MaineCare funding pool. Savings Except as set forth in subsection 3 and section 334-A, savings to the MaineCare program as a result of

COMMITTEE AMENDMENT

1 delicensing of nursing facility beds on or after July 1, 2005, including savings from
2 lapsed beds but excluding savings from reserved beds, must be credited to the nursing
3 facility MaineCare funding pool, which must be maintained by the department to provide
4 for the development of new beds or other improvements requiring a certificate of need.
5 The balance of the nursing facility MaineCare funding pool, as adjusted to reflect current
6 costs consistent with the rules and statutes governing reimbursement of nursing facilities,
7 serves as a limit on the MaineCare share of all incremental 3rd-year operating costs of
8 nursing facility projects requiring review under this chapter, except as set forth in
9 subsection 3 and section 334-A, subsection 2.

10 **Sec. 3. 22 MRSA §334-A, sub-§1**, as enacted by PL 2007, c. 440, §13, is
11 repealed and the following enacted in its place:

12 **1. Projects that expand current bed capacity.** Nursing facility projects that
13 propose to add new nursing facility beds to the inventory of nursing facility beds within
14 the State may be grouped for competitive review purposes consistent with funds available
15 from the nursing facility MaineCare funding pool. Such projects may not be grouped for
16 competitive review if approved under paragraph B or C. A nursing facility project that
17 proposes to add new beds is subject to review. Any related renovation, replacement or
18 other actions may also be subject to review if such actions are above the applicable
19 thresholds for review. Such projects may be approved only if:

20 A. Sufficient funds are available from the nursing facility MaineCare funding pool or
21 are added to the pool by an act of the Legislature, except that the department may
22 approve, without available funds from the pool, projects to reopen beds previously
23 reserved by a nursing facility through a voluntary reduction pursuant to section 333 if
24 the annual total of reopened beds approved does not exceed 100;

25 B. The petitioner, or one or more nursing facilities under common ownership or
26 control, has agreed to delicense a sufficient number of beds from the total number of
27 currently licensed or reserved beds, or is otherwise reconfiguring its operations, so
28 that the MaineCare savings associated with such actions are sufficient to fully offset
29 any incremental MaineCare costs that would otherwise arise from implementation of
30 the certificate of need project and, as a result, there are no net incremental MaineCare
31 costs arising from implementation of the certificate of need project; or

32 C. The petitioner, or one or more nursing facilities under common ownership or
33 control, has acquired bed rights from another nursing facility or facilities that agree to
34 delicense beds or that are ceasing operations or otherwise reconfiguring their
35 operations, and that the MaineCare revenues associated with these acquired bed
36 rights and related actions are sufficient to cover the additional requested MaineCare
37 costs associated with the project.

38 Certificate of need projects described in this subsection are not subject to or limited by
39 the nursing facility MaineCare funding pool.

40 **Sec. 4. 22 MRSA §334-A, sub-§2**, as enacted by PL 2007, c. 440, §13, is
41 amended to read:

42 **2. Projects to relocate beds.** Nursing facility projects that do not add new nursing
43 facility beds to the inventory of nursing facility beds within the State, but instead propose

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1 to relocate beds from one ~~facility to another~~ or more nursing facilities to one or more
2 existing or new ~~facility~~ nursing facilities:

3 A. May also propose renovation, replacement or other actions requiring certificate of
4 need review; and

5 B. May be approved by the department upon a showing by the petitioner that the
6 petitioner has acquired bed rights from another nursing facility or facilities that agree
7 to delicense beds, or that are ceasing operations or otherwise reconfiguring their
8 operations, and that the MaineCare revenues associated with these acquired bed
9 rights and related actions are sufficient to cover the additional requested MaineCare
10 costs associated with the project.

11 Certificate of need projects described in this subsection are not subject to or limited by
12 the nursing facility MaineCare funding pool.

13 **Sec. 5. 22 MRSA §334-A sub-§2-A** is enacted to read:

14 **2-A. Other types of certificate of need projects.** Other types of nursing facility
15 projects that do not add new nursing facility beds to the inventory of nursing facility beds
16 within the State and do not propose to relocate beds from one facility to another existing
17 or new facility and that propose any renovation, replacement or other actions requiring
18 certificate of need review, such as capital expenditures for equipment and renovations
19 that are above applicable thresholds, or that propose actions that do not require a
20 certificate of need, such as the addition of residential care beds to be funded by the
21 MaineCare program, may be approved by the department upon a showing that:

22 A. The petitioner, or one or more nursing facilities under common ownership or
23 control, has agreed to delicense a sufficient number of beds from the total number of
24 currently licensed or reserved beds, or is otherwise reconfiguring its operations, so
25 that the MaineCare savings associated with such actions are sufficient to fully offset
26 any incremental MaineCare costs that would otherwise arise from implementation of
27 the certificate of need project and, as a result, there are no net incremental MaineCare
28 costs arising from implementation of the certificate of need project; or

29 B. The petitioner, or one or more nursing facilities under common ownership or
30 control, has acquired bed rights from another nursing facility or facilities that agree to
31 delicense beds or that are ceasing operations or otherwise reconfiguring their
32 operations, and that the MaineCare revenues associated with these acquired bed
33 rights and related actions are sufficient to cover the additional requested MaineCare
34 costs associated with the project.

35 Certificate of need projects described in this subsection are not subject to or limited by
36 the nursing facility MaineCare funding pool.

37 **Sec. 6. Review of flexibility in MaineCare budget neutrality**
38 **requirements.** The Department of Health and Human Services shall work with
39 stakeholders to identify possible methods for creating more flexibility in the laws
40 governing nursing facility projects that are subject to MaineCare budget neutrality
41 requirements, including, but not limited to, the conversion of nursing facility beds to
42 residential care facility beds, transfers between nursing facilities and residential care
43 facilities and transfers of ownership. In conducting this review the department shall

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1 consider the available data and information on the adequacy of existing nursing facilities,
2 residential care facilities and long-term care facilities. The department shall report
3 recommendations, including any necessary legislation, to the Joint Standing Committee
4 on Health and Human Services no later than February 15, 2010. The Joint Standing
5 Committee on Health and Human Services is authorized to submit legislation related to
6 the recommendations to the Second Regular Session of the 124th Legislature.'

7 **SUMMARY**

8 This amendment replaces the bill and amends the Certificate of Need Act of 2002.
9 Beginning January 1, 2010, it increases the threshold amount for nursing facility projects
10 to \$1,000,000. It exempts from the full certificate of need approval certain nursing
11 facility projects including capital expenditures under limited circumstances, nonmedical
12 replacement equipment, information systems, communication systems, parking lots and
13 garages. It changes the nursing facility MaineCare funding pool to create certain
14 exceptions to the constraints of the pool. It permits certificate of need approval of
15 different types of nursing facility projects as long as MaineCare neutrality is
16 demonstrated. It permits nursing facilities to satisfy MaineCare neutrality requirements
17 for projects that do not involve relocation of beds from one facility to another or a new
18 facility when the entity proposing the changes is able to satisfy MaineCare neutrality
19 requirements by delicensing beds under common ownership or acquiring beds from other
20 nursing facilities. It charges the Department of Health and Human Services with working
21 with stakeholders to identify possible methods for creating more flexibility in the laws
22 governing nursing facility projects that are subject to MaineCare budget neutrality
23 requirements.

FISCAL NOTE REQUIRED
(See attached)



124th MAINE LEGISLATURE

LD 1260

LR 1508(02)

An Act To Amend the Certificate of Need Act of 2002 for Nursing Facility Projects

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Health and Human Services
Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - General Fund

Fiscal Detail and Notes

The bill's provisions increasing the certificate of need threshold for nursing facility projects and increasing the nursing facility projects and capital expenditures that are exempt from certificate of need could increase MaineCare nursing facility costs because additional costs would not be subject to the certificate of need MaineCare cost neutrality requirements. The number and costs of the additional projects and expenditures cannot be determined at this time.

PL 2009, c. 213 (the 2010-2011 Biennial Budget) deappropriated \$300,000 in each of 2009-10 and 2010-11 in baseline funding that would have been available in the nursing facility MaineCare funding pool intended for the development of new beds or other improvements requiring certificate of need.