

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1260

H.P. 879

House of Representatives, March 31, 2009

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

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Senator MARRACHÉ of Kennebec and
Representatives: CAIN of Orono, CLARK of Millinocket, HASKELL of Portland, WALSH
INNES of Yarmouth, PRIEST of Brunswick, WHEELER of Kittery, Senators: BRANNIGAN
of Cumberland, JACKSON of Aroostook.

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

2 **Sec. 1. 22 MRSA §329, sub-§6**, as enacted by PL 2001, c. 664, §2, is amended to
3 read:

4 **6. Nursing facilities.** The obligation by a nursing facility, when related to nursing
5 services provided by the nursing facility, of any capital expenditures of \$510,000 or
6 more.

7 A certificate of need is not required for a nursing facility to convert beds used for the
8 provision of nursing services to beds to be used for the provision of residential care
9 services. If such a conversion occurs, MaineCare and other public funds are may not be
10 obligated for payment of services provided in the converted beds unless approved by the
11 department pursuant to the provisions of sections 333-A and 334-A;

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

14 **1. Nursing facility MaineCare funding pool.** Savings Except as set forth in
15 subsections 1-A and 3 and section 334-A, savings to the MaineCare program as a result
16 of delicensing of nursing facility beds on or after July 1, 2005, including savings from
17 lapsed beds but excluding savings from reserved beds, must be credited to the nursing
18 facility MaineCare funding pool, which must be maintained by the department to provide
19 for the development of new beds or other improvements requiring a certificate of need.
20 The balance of the nursing facility MaineCare funding pool, as adjusted to reflect current
21 costs consistent with the rules and statutes governing reimbursement of nursing facilities,
22 erves as a limit on the MaineCare share of all incremental 3rd-year operating costs of
23 nursing facility projects requiring review under this chapter, except as set forth in
24 subsections 1-A and 3 and section 334-A, subsection 2.

25 **Sec. 3. 22 MRSA §333-A, sub-§1-A** is enacted to read:

26 **1-A. Transfers between nursing facilities and residential care facilities.** Nursing
27 facilities may delicense and sell or transfer beds to residential care facilities for the
28 purpose of permitting the residential care facilities to add MaineCare funded beds or
29 carry out renovation or expansion projects. Such transfers are subject to prior approval of
30 the department. Beds and resources transferred pursuant to this subsection are not subject
31 to the MaineCare funding pool.

32 **Sec. 4. 22 MRSA §334-A**, as enacted by PL 2007, c. 440, §13, is repealed and the
33 following enacted in its place:

34 **§334-A. Nursing facility projects**

35 **1. Projects that expand current bed capacity.** Nursing facility projects that
36 propose to add new nursing facility beds to the inventory of nursing facility beds within
37 the State may be grouped for competitive review purposes consistent with funds available
38 from the nursing facility MaineCare funding pool. Such projects may not be grouped for
39 competitive review if approved under paragraph B or C. A nursing facility project that

1 proposes to add new beds is subject to review. Any related renovation, replacement or
2 other actions may also be subject to review if such actions are above the applicable
3 thresholds for review. Such projects may be approved only if:

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

9 B. The petitioner, or a nursing facility or residential care facility under common
10 ownership or control; has agreed to delicense a sufficient number of beds, including
11 either nursing facility beds or residential care facility beds, from the total number of
12 currently licensed or reserved beds, or is otherwise reconfiguring its operations, so
13 that the MaineCare savings associated with such actions are sufficient to fully offset
14 any incremental MaineCare costs that would otherwise arise from implementation of
15 the certificate of need project and, as a result, there are no net incremental MaineCare
16 costs arising from implementation of the certificate of need project; or

17 C. The petitioner, or a nursing facility or residential care facility under common
18 ownership or control, has acquired bed rights from another facility or facilities,
19 including both nursing facilities and residential care facilities, that agree to delicense
20 beds or that are ceasing operations and the MaineCare revenues associated with these
21 acquired bed rights are sufficient to cover the additional requested MaineCare costs
22 associated with the project.

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

25 **2. Projects to relocate beds.** Nursing facility projects that do not add new nursing
26 facility beds to the inventory of nursing facility beds within the State, but instead propose
27 to relocate beds from one facility to another existing or new facility:

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

30 B. May be approved by the department upon a showing by the petitioner that the
31 petitioner has acquired bed rights from another facility or facilities, including either
32 nursing facilities and residential care facilities or both, that agree to delicense beds, or
33 that are ceasing operations, and that the MaineCare revenues associated with these
34 acquired bed rights are sufficient to cover the additional requested MaineCare costs
35 associated with the project.

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

38 **2-A. Other types of certificate of need projects.** Other types of nursing facility
39 projects that do not add new nursing facility beds to the inventory of nursing facility beds
40 within the State and do not propose to relocate beds from one facility to another existing
41 or new facility and that propose any renovation, replacement or other actions requiring
42 certificate of need review such as capital expenditures for equipment and renovations that
43 are above applicable thresholds or that propose actions that do not require a certificate of

1 need, such as the addition of residential care beds to be funded by the MaineCare
2 program may be approved by the department upon a showing that:

3 A. The petitioner, or a nursing facility or residential care facility under common
4 ownership or control, has agreed to delicense a sufficient number of beds, including
5 either nursing facility beds or residential care facility beds, from the total number of
6 currently licensed or reserved beds, or is otherwise reconfiguring its operations, so
7 that the MaineCare savings associated with such actions are sufficient to fully offset
8 any incremental MaineCare costs that would otherwise arise from implementation of
9 the certificate of need project and, as a result, there are no net incremental MaineCare
10 costs arising from implementation of the certificate of need project; or

11 B. The petitioner, or a nursing facility or residential care facility under common
12 ownership or control, has acquired bed rights from another facility or facilities,
13 including both nursing facilities and residential care facilities, that agree to delicense
14 beds, or that are ceasing operations, and that the MaineCare revenues associated with
15 these acquired bed rights are sufficient to cover the additional requested MaineCare
16 costs associated with the project.

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

19 **2-B. Projects for transfers of ownership.** The department may approve nursing
20 facility certificate of need applications that propose transfers of ownership or control as
21 long as:

22 A. Such projects do not increase MaineCare costs;

23 B. Any increases in MaineCare costs are approved pursuant to subsection 1, 2 or
24 2-A; or

25 C. Any increases in MaineCare costs are limited to changes in fixed cost
26 reimbursement due either to changes in approved financing or to changes in
27 applicable depreciation schedules and the seller satisfied depreciation recapture
28 obligations from the sale proceeds.

29 Certificate of need projects described in this subsection are not subject to or limited by
30 the nursing facility MaineCare funding pool, and any accompanying increases in
31 MaineCare costs may be approved by the department as long as the project fulfills all
32 other pertinent requirements.

33 **3. Evaluating costs.** In evaluating whether a project will increase MaineCare
34 expenditures for a nursing facility for the purposes of this section, the department shall:

35 A. Allow gross square footage per licensed bed of not less than 500 square feet
36 unless the applicant specifies a smaller allowance for the project; and

37 B. Exclude the projected incremental cost associated with replacement of equipment.

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SUMMARY

2 This bill amends the Certificate of Need Act of 2002 governing the conversion of
3 nursing facility beds to residential care beds to permit such conversions as long as the
4 terms of the conversion are approved by the Department of Health and Human Services
5 under applicable provisions permitting transfers that are MaineCare-neutral in their
6 overall impact.

7 The bill also amends provisions governing the nursing facility MaineCare funding
8 pool to create certain exceptions to the constraints of the pool. A provision is enacted to
9 permit the transfers of beds and other nursing facility resources to residential care
10 facilities and to exclude such beds and resources from the pool if prior approval is
11 obtained from the department.

12 The bill also changes the provisions governing nursing facility projects in several
13 respects:

14 1. To permit certificate of need approval of different types of nursing facility projects
15 as long as MaineCare neutrality is demonstrated and to permit transfers of MaineCare
16 resources between nursing facilities and residential care facilities to satisfy these
17 requirements;

18 2. To permit the exchange of bed rights between nursing facilities and residential
19 care facilities in order to permit nursing facilities to satisfy MaineCare neutrality
20 requirements;

21 3. To permit nursing facilities to satisfy MaineCare neutrality requirements for
22 projects that do not involve relocation of beds from one facility to another or a new
23 facility when the entity proposing the changes is able to satisfy MaineCare neutrality
24 requirements by delicensing beds under common ownership or acquiring beds from other
25 facilities including residential care facilities; and

26 4. To permit approval of nursing facility projects that propose transfers of ownership
27 when any increases in MaineCare costs are offset by transfers of bed rights or the
28 increase in MaineCare costs is limited to changes in fixed-costs reimbursement due to
29 changes in approved financing or applicable depreciation schedules.