

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1395

H.P. 974

House of Representatives, April 2, 2009

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

(EMERGENCY)

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MILLER of Somerville.  
Cosponsored by Representative: PERRY of Calais, Senator: MARRACHÉ of Kennebec.

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 to ensure the availability of an orderly and  
6 efficient certificate of need procedure that supports effective health planning; and

7           **Whereas,** this legislation is necessary immediately to advance the development of  
8 health care services in the State; and

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

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

14           **Sec. 1. 22 MRSA §328, sub-§8, ¶C,** as enacted by PL 2003, c. 469, Pt. C, §3, is  
15 amended to read:

16           C. Waiting areas for ambulatory surgical facility patients; and

17           **Sec. 2. 22 MRSA §328, sub-§8, ¶C-1** is enacted to read:

18           C-1. Any space with major medical equipment; and

19           **Sec. 3. 22 MRSA §328, sub-§14,** as enacted by PL 2001, c. 664, §2, is amended  
20 to read:

21           **14. Hospital.** "Hospital" means an institution that primarily provides to inpatients,  
22 by or under the supervision of physicians, diagnostic services and therapeutic services for  
23 medical diagnosis, treatment and care of injured, disabled or sick persons or rehabilitation  
24 services for the rehabilitation of injured, disabled or sick persons. "Hospital" also  
25 includes psychiatric and tuberculosis hospitals and medical office buildings owned or  
26 subsidized by a hospital or a hospital's parent company.

27           **Sec. 4. 22 MRSA §328, sub-§16,** as amended by PL 2007, c. 681, §1, is further  
28 amended to read:

29           **16. Major medical equipment.** "Major medical equipment" means a single unit of  
30 medical equipment or a single system of components with related functions used to  
31 provide medical and other health services that costs \$1,200,000 or more. "Major medical  
32 equipment" does not include medical equipment acquired by or on behalf of a clinical  
33 laboratory to provide clinical laboratory services if the clinical laboratory is independent  
34 of a physician's office and a hospital and has been determined to meet the requirements of  
35 the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and  
36 11. In determining whether medical equipment costs more than the threshold provided in  
37 this subsection, the cost of studies, surveys, designs, plans, working drawings,

1 specifications and other activities essential to acquiring the equipment must be included.  
2 If the equipment is acquired for less than fair market value, the term "cost" includes the  
3 fair market value. ~~Beginning September 30, 2004 and annually thereafter through 2007,~~  
4 ~~the threshold amount for review must be updated by the commissioner to reflect the~~  
5 ~~change in the Consumer Price Index medical index. Beginning January 1, 2009 and~~  
6 ~~annually thereafter, the threshold amount for review must be updated by the~~  
7 ~~commissioner to reflect the change in the Consumer Price Index medical index, with an~~  
8 ~~effective date of January 1st each year.~~

9 **Sec. 5. 22 MRSA §328, sub-§17-A, ¶C**, as amended by PL 2007, c. 681, §2, is  
10 further amended to read:

11 C. The addition in the private office of a health care practitioner, as defined in Title  
12 24, section 2502, subsection 1-A, of new technology that costs \$1,200,000 or more.  
13 The department shall consult with the Maine Quality Forum Advisory Council  
14 established pursuant to Title 24-A, section 6952, prior to determining whether a  
15 project qualifies as a new technology in the office of a private practitioner.  
16 ~~Beginning September 30, 2004 and annually thereafter through 2007, the threshold~~  
17 ~~amount for review must be updated by the commissioner to reflect the change in the~~  
18 ~~Consumer Price Index medical index. Beginning January 1, 2009 and annually~~  
19 ~~thereafter, the threshold amount for review must be updated by the commissioner to~~  
20 ~~reflect the change in the Consumer Price Index medical index, with an effective date~~  
21 ~~of January 1st each year.~~ With regard to the private office of a health care  
22 practitioner, "new health service" does not include the location of a new practitioner  
23 in a geographic area.

24 **Sec. 6. 22 MRSA §328, sub-§26**, as enacted by PL 2001, c. 664, §2, is repealed.

25 **Sec. 7. 22 MRSA §329, sub-§2-A, ¶B**, as enacted by PL 2007, c. 440, §3, is  
26 repealed and the following enacted in its place:

27 B. The use of major medical equipment on a temporary basis in the case of a natural  
28 disaster, major accident or major medical equipment failure does not require a  
29 certificate of need.

30 **Sec. 8. 22 MRSA §329, sub-§3**, as amended by PL 2007, c. 681, §3, is further  
31 amended to read:

32 **3. Capital expenditures.** Except as provided in subsection 6, the obligation by or  
33 on behalf of a health care facility of any capital expenditure of ~~\$2,400,000~~ \$2,000,000 or  
34 more. Capital expenditures in the case of a natural disaster, major accident or equipment  
35 failure ~~for replacement equipment~~ or for parking lots and garages, information and  
36 communications systems ~~and or~~ or physician office space owned and operated by a  
37 physician or physician's group do not require a certificate of need. ~~Beginning September~~  
38 ~~30, 2004 and annually thereafter through 2007, the threshold amount for review must be~~  
39 ~~updated by the commissioner to reflect the change in the Consumer Price Index medical~~  
40 ~~index. Beginning January 1, 2009 and annually thereafter, the threshold amount for~~  
41 ~~review must be updated by the commissioner to reflect the change in the Consumer Price~~  
42 ~~Index medical index, with an effective date of January 1st each year;~~

1           **Sec. 9. 22 MRSA §333, sub-§4**, as enacted by PL 2001, c. 664, §2, is amended to  
2 read:

3           **4. Rulemaking.** Rules adopted pursuant to this section are ~~major substantive routine~~  
4 technical rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

5           **Sec. 10. 22 MRSA §334-A, sub-§3, ¶A**, as enacted by PL 2007, c. 440, §13, is  
6 amended to read:

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

9           **Sec. 11. 22 MRSA §334-A, sub-§3, ¶B**, as enacted by PL 2007, c. 440, §13, is  
10 amended to read:

11           B. Exclude the projected incremental cost associated with replacement of  
12 equipment; and

13           **Sec. 12. 22 MRSA §334-A, sub-§3, ¶C** is enacted to read:

14           C. Exclude the incremental cost of energy-efficient improvements as defined in the  
15 rules governing MaineCare reimbursement for nursing facilities.

16           **Sec. 13. 22 MRSA §334-A, sub-§4** is enacted to read:

17           **4. Cost associated with energy-efficient improvements.** The cost associated with  
18 energy-efficient improvements in nursing facilities, as set forth in rules governing special  
19 reimbursement provisions for energy-efficient improvements adopted by the department,  
20 must be included in the cost of a project in determining whether the project is subject to  
21 review.

22           **Sec. 14. 22 MRSA §335, sub-§6**, as amended by PL 2007, c. 440, §19, is further  
23 amended to read:

24           **6. Maintenance of the record.** The record created pursuant to subsection 5-A first  
25 opens on the day the department receives a ~~letter of intent~~ certificate of need application.  
26 From that day, all of the record is a public record, and any person may examine that  
27 record and purchase copies of any or all of that record during the normal business hours  
28 of the department.

29           The department must receive public comments and additional information from the  
30 applicant for a period of 30 days after the public informational meeting held under section  
31 337, subsection 5, or the public hearing held under section 339, subsection 2, whichever  
32 is later. The record will then close until public notice that the preliminary staff analysis  
33 has been made part of the record.

34           The record will reopen for 10 business days following the publication that the preliminary  
35 staff review is complete and will close 10 business days after a public notice of the  
36 closing of the record has been published in a newspaper of general circulation in  
37 Kennebec County, in a newspaper published within the service area of the project and on  
38 the department's publicly accessible site on the Internet, as long as the notice is not

1 published until after the preliminary staff analysis of the application is made part of the  
2 record.

3 The department may also determine to reopen the record in other circumstances that it  
4 determines to be appropriate for a limited time to permit submission of additional  
5 information, as long as the department gives public notice consistent with the provisions  
6 of this subsection.

7 **Sec. 15. 22 MRSA §337, sub-§2, ¶B**, as enacted by PL 2001, c. 664, §2, is  
8 amended to read:

9 B. Within 30 days of filing the letter of intent, the applicant shall ~~meet~~ schedule a  
10 meeting with the department staff in order to assist the department in understanding  
11 the application and to receive technical assistance concerning the nature, extent and  
12 format of the documentary evidence, statistical data and financial data required for  
13 the department to evaluate the proposal. The department may not accept an  
14 application for review until the applicant has satisfied this technical assistance  
15 requirement.

16 **Sec. 16. 22 MRSA §337, sub-§5**, as enacted by PL 2001, c. 664, §2, is amended  
17 to read:

18 **5. Public notice; public informational meeting.** Within 5 10 business days of the  
19 filing of a certificate by an applicant that a complete certificate of need application is on  
20 file with the department, public notice that the application has been filed and that a public  
21 informational meeting must be held regarding the application must be given by  
22 publication in a newspaper of general circulation in Kennebec County and in a newspaper  
23 published within the service area in which the proposed expenditure will occur. The  
24 notice must also be provided to all persons who have requested notification by means of  
25 asking that their names be placed on a mailing list maintained by the department for this  
26 purpose. This notice must include:

27 A. A brief description of the proposed expenditure or other action;

28 B. A description of the review process and schedule;

29 C. A statement that any person may examine the application, submit comments in  
30 writing to the department regarding the application and examine the entire record  
31 assembled by the department at any time from the date of publication of the notice  
32 until the application process is closed for comment; and

33 D. The time and location of the public informational meeting and a statement that  
34 any person may appear at the meeting to question the applicant regarding the project  
35 or the department regarding the conditions that the applicant must satisfy in order to  
36 receive a certificate of need for the project.

37 The department shall make an electronic or stenographic record of the public  
38 informational meeting.

39 A public informational meeting is not required for the simplified review and approval  
40 process in section 336.

41 **Sec. 17. 22 MRSA §339, sub-§2, ¶D** is enacted to read:

1 D. A public hearing is not required for the simplified review and approval process  
2 set forth in section 336.

3 **Sec. 18. 22 MRSA §350**, as enacted by PL 2001, c. 664, §2, is repealed and the  
4 following enacted in its place:

5 **§350. Penalty**

6 **1. Violation.** An individual, partnership, association, organization, corporation or  
7 trust that violates any provision of this chapter or any rate, rule or regulation pursuant to  
8 this chapter is subject to a civil fine payable to the State of not more than \$50,000. The  
9 department may hold these funds in a special revenue account that may be used only to  
10 support certificate of need reviews, such as for hiring expert analysts on a short-term  
11 consulting basis.

12 **2. Appeal.** To appeal the imposition of a fine under this section, the individual,  
13 partnership, association, organization, corporation or trust shall submit to the department  
14 a written request for an administrative hearing within 10 days of notice of imposition of a  
15 fine pursuant to this section.

16 **Sec. 19. 22 MRSA §350-A**, as amended by PL 2007, c. 681, §7, is repealed.

17 **Sec. 20. 22 MRSA §1844, sub-§2, ¶E** is enacted to read:

18 E. Notwithstanding any other provision of this chapter, applicants seeking both a  
19 certificate of public advantage under this section and a certificate of need under  
20 chapter 103-A shall submit a department-approved combined application format, and  
21 the certificate of need timelines in chapter 103-A and rules adopted pursuant to that  
22 chapter apply to this combined application. After review of the combined application  
23 and based on the relevant statutes and rules, the commissioner shall render a decision  
24 on the application for a certificate of public advantage and a separate decision on the  
25 application for a certificate of need. Rules adopted pursuant to this subsection are  
26 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

27 **Sec. 21. Application.** Notwithstanding the limitations of the capital investment  
28 fund established pursuant to the Maine Revised Statutes, Title 2, section 102, the  
29 approval of certificates of need for those projects or activities that require a certificate of  
30 need as a result of the changes enacted in this Act are not subject to the limitations  
31 established under the capital investment fund until the certificate of need review cycle  
32 that begins January 1, 2013.

33 **Sec. 22. Cost associated with energy-efficient improvements.** For purposes  
34 of the Maine Revised Statutes, Title 9-B, section 334-A, subsection 4, the rules governing  
35 special reimbursement provisions for energy-efficient improvements are set forth in the  
36 Department of Health and Human Services MaineCare Benefits Manual, Chapter III,  
37 Section 67, subsection 44.2.4.

38 **Emergency clause.** In view of the emergency cited in the preamble, this  
39 legislation takes effect when approved.

## SUMMARY

1  
2 This bill clarifies that a portion of an ambulatory surgical facility functioning as the  
3 office of a health care practitioner that contains major medical equipment is considered to  
4 be a health care facility.

5 This bill adds medical office buildings owned or subsidized by a hospital or a  
6 hospital's parent company to the definition of "hospital" and deletes the definition of  
7 "replacement equipment."

8 This bill eliminates indexing and changes the capital expenditure threshold from  
9 \$2,400,000 to \$2,000,000.

10 This bill eliminates the exemption of replacement equipment from the certificate of  
11 need requirements.

12 This bill changes the category of rules adopted for procedures after voluntary nursing  
13 facility reductions from major substantive to routine technical rules.

14 This bill exempts energy-efficient improvements in nursing facilities from MaineCare  
15 neutrality calculations. This bill includes the cost of energy-efficient improvements in  
16 nursing facilities in the overall improvement cost when determining whether the  
17 thresholds are triggered.

18 This bill states that the certificate of need record opens on the day the Department of  
19 Health and Human Services receives a certificate of need application instead of the day  
20 the department receives a letter of intent.

21 This bill requires the certificate of need applicant to schedule a meeting within 30  
22 days of filing a letter of intent, instead of requiring the meeting to occur within 30 days.  
23 The department is required to give public notice that there will be a public informational  
24 meeting within 10 business days, instead of 5, of receipt of an applicant's certificate that  
25 the complete certificate of need application is on file with the department.

26 This bill eliminates the requirement for a public informational meeting and a public  
27 hearing for simplified reviews.

28 This bill authorizes the department to collect fines without a civil court action and  
29 gives the recipient of the notice of imposition of a fine an opportunity to request an  
30 administrative hearing on the matter. This bill increases the civil fine from a maximum  
31 of \$5,000 to not more than \$50,000.

32 This bill removes redundancies and aligns the procedural timelines when applicants  
33 seek both a certificate of public advantage and a certificate of need.

34 This bill specifies that activity newly subject to certificate of need as a result of this  
35 Act is not subject to the capital investment fund until the certificate of need review cycle  
36 beginning January 1, 2013.