

# MAINE STATE LEGISLATURE

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Minority

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Date: 6/14/11

L.D. 360

(Filing No. H-626)

Minority

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 286, L.D. 360, Bill, "An Act To Repeal the Maine Certificate of Need Act of 2002"

Amend the bill by striking out the title and substituting the following:

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

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

**'PART A**

**Sec. A-1. 22 MRSA §328, sub-§16**, as amended by PL 2009, c. 383, §3, is further amended to read:

**16. Major medical equipment.** "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs ~~\$1,600,000~~ \$3,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and 11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

**Sec. A-2. 22 MRSA §328, sub-§17-A**, as amended by PL 2009, c. 383, §4, is further amended to read:

**COMMITTEE AMENDMENT**

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COMMITTEE AMENDMENT "B" to H.P. 286, L.D. 360

- 1           **17-A. New health service.** "New health service" means:
- 2           A. The obligation of any capital expenditures by or on behalf of a new or existing
- 3           health care facility of ~~\$110,000~~ \$1,000,000 or more that is associated with the
- 4           addition of a health service that was not offered on a regular basis by or on behalf of
- 5           the health care facility within the 12-month period prior to the time the services
- 6           would be offered;
- 7           B. The addition of a health service that is to be offered by or on behalf of a new or
- 8           existing health care facility that was not offered on a regular basis by or on behalf of
- 9           the health care facility within the 12-month period prior to the time the services
- 10           would be offered and that, for the 3rd fiscal year of operation, including a partial first
- 11           year following addition of that service, is projected to entail incremental annual
- 12           operating costs directly attributable to the addition of that health service of at least
- 13           ~~\$400,000~~ \$1,000,000. For the purposes of this paragraph, the compensation
- 14           attributable to the health care practitioner is not included in the calculation of 3rd-
- 15           year operating costs; or
- 16           C. The addition in the private office of a health care practitioner, as defined in Title
- 17           24, section 2502, subsection 1-A, of new technology that costs ~~\$1,600,000~~
- 18           \$3,200,000 or more. The department shall consult with the Maine Quality Forum
- 19           Advisory Council established pursuant to Title 24-A, section 6952, prior to
- 20           determining whether a project qualifies as a new technology in the office of a private
- 21           practitioner. With regard to the private office of a health care practitioner, "new
- 22           health service" does not include the location of a new practitioner in a geographic
- 23           area.

24           Beginning January 1, 2013 and annually thereafter, the threshold amounts for review in

25           paragraphs A, B and C must be updated by the commissioner to reflect the change in the

26           United States Department of Labor, Bureau of Labor Statistics Consumer Price Index

27           medical care services index, with an effective date of January 1st each year.

28           "New health service" does not include a health care facility that extends a current service

29           within the defined primary service area of the health care facility by purchasing within a

30           12-month time period new equipment costing in the aggregate less than the threshold

31           provided in ~~section 328~~, subsection 16;

32           **Sec. A-3. 22 MRSA §329, sub-§2-A, ¶B,** as amended by PL 2009, c. 383, §5, is

33           further amended to read:

34           B. The following acquisitions of major medical equipment do not require a

35           certificate of need:

- 36           (1) Major medical equipment being replaced by the owner, ~~as long as the~~
- 37           ~~replacement cost is less than \$2,000,000;~~ and
- 38           (2) The use of major medical equipment on a temporary basis in the case of a
- 39           natural disaster, major accident or major medical equipment failure.

40           **Sec. A-4. 22 MRSA §329, sub-§3,** as amended by PL 2009, c. 383, §6 and

41           affected by §16, is further amended to read:

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1                    **3. Capital expenditures.** Except as provided in subsection 6, the obligation by or  
2 on behalf of a new or existing health care facility of any capital expenditure of  
3 ~~\$3,100,000~~ \$10,000,000 or more. Capital expenditures in the case of a natural disaster,  
4 major accident or equipment failure or for replacement equipment that is not major  
5 medical equipment as defined in section 328, subsection 16 or for parking lots and  
6 garages, information and communications systems or physician office space or projects  
7 directed solely at reducing energy costs through energy efficiency, renewable energy  
8 technology or smart grid technology and that have been certified as likely to be  
9 cost-effective by the Efficiency Maine Trust pursuant to Title 35-A, section 10122 do not  
10 require a certificate of need. Beginning January 1, 2013 and annually thereafter, the  
11 threshold amount for review must be updated by the commissioner to reflect the change  
12 in the United States Department of Labor, Bureau of Labor Statistics Consumer Price  
13 Index medical care services index, with an effective date of January 1st each year;

14                    **Sec. A-5. 22 MRSA §329, sub-§4-A**, as enacted by PL 2007, c. 440, §4, is  
15 amended to read:

16                    **4-A. New health care facility.** The construction, development or other  
17 establishment of a new health care facility. The following requirements apply to  
18 certificate of need for new health care facilities.

19                    A. A new health care facility that is a nursing facility must obtain a certificate of  
20 need:

21                    (1) If it requires a capital expenditure of more than \$5,000,000; or

22                    (2) If it proposes to add new nursing facility beds to the inventory of nursing  
23 facility beds within the State, in which case it must satisfy all applicable  
24 requirements of section 334-A.

25                    B. A new health care facility other than a nursing facility must obtain a certificate of  
26 need:

27                    (1) If it requires a capital expenditure of more than \$10,000,000; or

28                    (2) If it is a new health service;

29                    **Sec. A-6. 35-A MRSA §10122** is enacted to read:

30                    **§10122. Health care facility program**

31                    The trust shall develop and implement a process to review projects undertaken by  
32 health care facilities that are directed solely at reducing energy costs through energy  
33 efficiency, renewable energy technology or smart grid technology and to certify those  
34 projects that are likely to be cost-effective. If a project is certified as likely to be  
35 cost-effective by the trust, the review process serves as an alternative to the certificate of  
36 need process established pursuant to Title 22, section 329, subsection 3.

37                    **PART B**

38                    **Sec. B-1. 22 MRSA §329, sub-§6**, as repealed and replaced by PL 2009, c. 652,  
39 Pt. A, §29, is amended to read:

1           **6. Nursing facilities.** The obligation by a new or existing nursing facility, when  
 2 related to nursing services provided by the nursing facility, of any capital expenditures of  
 3 ~~510,000~~ 5,000,000 or more and, ~~beginning January 1, 2010, the obligation by a nursing~~  
 4 ~~facility, when related to nursing services provided by the nursing facility, of any capital~~  
 5 ~~expenditures of \$1,000,000 or more. Beginning January 1, 2013 and annually thereafter,~~  
 6 the threshold amount for review must be updated by the commissioner to reflect the  
 7 change in the United States Department of Labor, Bureau of Labor Statistics Consumer  
 8 Price Index medical care services index, with an effective date of January 1st each year.

9 A certificate of need is not required for the following:

10           A. A nursing facility converting beds used for the provision of nursing services to  
 11 beds to be used for the provision of residential care services. If such a conversion  
 12 occurs, MaineCare and other public funds may not be obligated for payment of  
 13 services provided in the converted beds unless approved by the department pursuant  
 14 to the provisions of sections 333-A and 334-A;

15           B. Capital expenditures in the case of a natural disaster, major accident or equipment  
 16 failure;

17           C. Replacement equipment, other than major medical equipment as defined in  
 18 section 328, subsection 16;

19           D. Information systems, communication systems, parking lots and garages; and

20           E. Certain energy-efficient improvements, as described in section 334-A, subsection  
 21 4.

22           **Sec. B-2. 22 MRSA §333, sub-§1, ¶A-1,** as enacted by PL 2007, c. 440, §8, is  
 23 amended to read:

24           A-1. Beginning with anniversary dates occurring after July 1, 2007, annually provide  
 25 notice to the department no later than 30 days after the anniversary date of the  
 26 effective date of the license reduction of the nursing facility's intent to retain these  
 27 reserved beds, ~~subject to the time limitations set forth in subsection 2, paragraph B;~~  
 28 and

29           **Sec. B-3. 22 MRSA §333, sub-§1, ¶B,** as enacted by PL 2001, c. 664, §2, is  
 30 amended to read:

31           B. Obtain a certificate of need to convert beds back under section 335, except that, if  
 32 no construction is required for the conversion of beds back, the application must be  
 33 processed in accordance with subsection 2. The department in its review shall  
 34 evaluate the impact that the nursing facility beds to be converted back would have on  
 35 those existing nursing facility beds and facilities within 30 miles of the applicant's  
 36 facility and shall determine whether to approve the request based on current  
 37 certificate of need criteria and methodology.

38           **Sec. B-4. 22 MRSA §333, sub-§2, ¶B,** as amended by PL 2007, c. 440, §9, is  
 39 further amended to read:

40           ~~B. Conversion of beds back under this section must be requested within 4 years of~~  
 41 ~~the effective date of the license reduction.~~ If the nursing facility fails to provide the  
 42 annual notices required by subsection 1, paragraph B, the nursing facility's ability to

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1 convert beds back under this section lapses, and the beds must be treated as lapsed  
2 beds for purposes of this section and sections 333-A and 334-A.

3 **Sec. B-5. 22 MRSA §333-A, sub-§1**, as amended by PL 2009, c. 429, §2, is  
4 further amended to read:

5 **1. Nursing facility MaineCare funding pool.** Except as set forth in subsection 3  
6 ~~3-A~~ and section 334-A, savings to the MaineCare program as a result of delicensing of  
7 nursing facility beds on or after July 1, 2005, including savings from lapsed beds but  
8 excluding savings from reserved beds, must be credited to the nursing facility MaineCare  
9 funding pool, which must be maintained by the department to provide for the  
10 development of new beds or other improvements requiring a certificate of need. The For  
11 those nursing facility projects that propose to add new nursing facility beds to the  
12 inventory of beds within the State, the balance of the nursing facility MaineCare funding  
13 pool, as adjusted to reflect current costs consistent with the rules and statutes governing  
14 reimbursement of nursing facilities, serves as a limit on the MaineCare share of all  
15 incremental 3rd-year operating costs of nursing facility such projects requiring review  
16 under this chapter, except as set forth in subsection 3 and unless such projects are  
17 approved under applicable provisions of section 334-A. Nursing facility projects that do  
18 not add new nursing facility beds to the inventory of beds within the State are not subject  
19 to the nursing facility MaineCare funding pool.

20 **Sec. B-6. 22 MRSA §333-A, sub-§2**, as amended by PL 2007, c. 681, §4, is  
21 further amended to read:

22 **2. Procedure.** The balance of the nursing facility MaineCare funding pool must be  
23 used for development of additional nursing facility beds in areas of the State where  
24 additional beds are needed to meet the community need. The department must assess  
25 needs throughout the State and issue requests for proposals for the development of  
26 additional beds in areas where need has been identified by the department, except in the  
27 event of an emergency, when the department may use a sole source process. Proposals  
28 must be evaluated based on consideration of quality of care and cost, and preference must  
29 be given to existing nursing facilities in the identified need area that may increase  
30 licensed capacity by adding on to or renovating the existing facility. ~~Projects that exceed~~  
31 ~~the review thresholds require a certificate of need, but no additional assessment of need~~  
32 ~~will be conducted as part of that process. Except as set forth in section 334-A, subsection~~  
33 ~~2, a project requiring certificate of need approval may not increase MaineCare costs~~  
34 ~~beyond the total amount appropriated for nursing facility care plus the available balance~~  
35 ~~of the nursing facility MaineCare funding pool.~~

36 **Sec. B-7. 22 MRSA §333-A, sub-§3**, as amended by PL 2011, c. 90, Pt. J, §4, is  
37 repealed.

38 **Sec. B-8. 22 MRSA §333-A, sub-§3-A** is enacted to read:

39 **3-A. Transfers between nursing facility and residential care facility.** A nursing  
40 facility may delicense and sell or transfer beds to a residential care facility for the purpose  
41 of permitting the residential care facility to add MaineCare-funded beds to meet identified  
42 needs for such beds. Such a transfer does not require a certificate of need but is subject to  
43 prior approval of the department on an expedited basis. When the average then current  
44 occupancy rate for existing state-funded residential care beds within 30 miles of the

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applicant facility is 80% or less, the department in its review under section 335 shall evaluate the impact that the proposed additional state-funded residential care beds would have on these existing state-funded residential care beds and facilities. Beds and MaineCare resources transferred pursuant to this subsection are not subject to the nursing facility MaineCare funding pool.

**Sec. B-9. 22 MRSA §334-A, sub-§1**, as repealed and replaced by PL 2009, c. 429, §3, is repealed.

**Sec. B-10. 22 MRSA §334-A, sub-§1-A** is enacted to read:

**1-A. Projects that expand current bed capacity.** Nursing facility projects that propose to add new nursing facility beds to the inventory of nursing facility beds within the State may be considered under either of the following 2 options:

A. These projects may be grouped for competitive review purposes consistent with funds available from the nursing facility MaineCare funding pool and may be approved if sufficient funds are available from the nursing facility MaineCare funding pool or are added to the pool by an act of the Legislature, except that the department may approve, without available funds from the pool, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 333 if the annual total of reopened beds approved does not exceed 100; or

B. Petitioners proposing such projects may elect not to participate in a competitive review under paragraph A and the projects may be approved if:

(1) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has agreed to delicense a sufficient number of beds from the total number of currently licensed or reserved beds, or is otherwise reconfiguring the operations of such facilities, so that the MaineCare savings associated with such actions are sufficient to fully offset any incremental MaineCare costs that would otherwise arise from implementation of the certificate of need project and, as a result, there are no net incremental MaineCare costs arising from implementation of the certificate of need project; or

(2) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has acquired bed rights from another nursing facility or facilities or residential care facility or facilities or combinations thereof that agree to delicense beds or that are ceasing operations or otherwise reconfiguring their operations, and the MaineCare revenues associated with these acquired bed rights and related actions are sufficient to cover the additional requested MaineCare costs associated with the project.

With respect to the option described in this paragraph, when the average then current occupancy rate for existing nursing facility beds at facilities within 30 miles of the applicant facility exceeds 85%, the department in its review under section 335 shall evaluate the impact that the proposed additional nursing facility beds would have on those existing nursing facility beds and facilities and shall determine whether to approve the request based on current certificate of need criteria and methodology.

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1 Certificate of need projects described in this paragraph are not subject to or limited  
2 by the nursing facility MaineCare funding pool.

3 **Sec. B-11. 22 MRSA §334-A, sub-§2, ¶B**, as amended by PL 2009, c. 429, §4,  
4 is further amended to read:

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~~ fulfills all pertinent requirements and the review  
11 criteria set forth in section 335.

12 **Sec. B-12. 22 MRSA §334-A, sub-§2-A**, as enacted by PL 2009, c. 429, §5, is  
13 amended 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, transfer of ownership or  
18 other actions requiring certificate of need review, such as capital expenditures for  
19 equipment and renovations that are above applicable thresholds, ~~or that propose actions~~  
20 ~~that do not require a certificate of need, such as the addition of residential care beds to be~~  
21 ~~funded by the MaineCare program,~~ may be approved by the department upon a showing  
22 that: the project fulfills all pertinent requirements and the review criteria set forth in  
23 section 335.

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

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

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

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

40 **2-B. Emergencies and necessary nursing facility projects.** If the department  
41 determines that an emergency exists, it may approve a necessary nursing facility  
42 certificate of need application on an expedited basis when the applicant proposes capital  
43 expenditures for renovations and improvements that are necessary:



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COMMITTEE AMENDMENT "B" to H.P. 286, L.D. 360

- 1        A. To achieve compliance with code and related regulatory requirements;
- 2        B. To comply with the federal Health Insurance Portability and Accountability Act
- 3        of 1996 and related patient privacy standards;
- 4        C. To address other patient safety requirements and standards; or
- 5        D. To address other necessary and time-sensitive patient safety or compliance issues.

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

8        **Sec. B-14. 22 MRSA §334-A, sub-§3**, amended by PL 2009, c. 430, §§2 to 4, is  
9        further amended to read:

10       **3. Evaluating costs.** Beginning with all applications pending on ~~January 1, 2003~~  
11       February 15, 2012, in evaluating whether a project will increase MaineCare expenditures  
12       for a nursing facility for the purposes of this section, the department shall:

- 13       A. Allow gross square footage per licensed bed of not less than 500 square feet
- 14       unless the applicant specifies a smaller allowance for the project;
- 15       ~~B. Exclude the projected incremental cost associated with replacement of equipment;~~
- 16       ~~and~~
- 17       ~~C. Exclude the incremental cost of energy efficient improvements as defined in the~~
- 18       ~~rules governing MaineCare reimbursement for nursing facilities.~~

19       **Sec. B-15. 22 MRSA §335, sub-§1**, as amended by PL 2011, c. 90, Pt. J, §5, is  
20       further amended to read:

21       **1. Basis for decision.** Based solely on a review of the record maintained under  
22       subsection 6, the commissioner shall approve an application for a certificate of need if the  
23       commissioner determines that the project:

- 24       A. Meets the conditions set forth in subsection 7;
- 25       C. Ensures high-quality outcomes and does not negatively affect the quality of care
- 26       delivered by existing service providers;
- 27       D. Does not result in inappropriate increases in service utilization, according to the
- 28       principles of evidence-based medicine adopted by the Maine Quality Forum, as
- 29       established in Title 24-A, section 6951, when the principles adopted by the Maine
- 30       Quality Forum are directly applicable to the application; and
- 31       ~~E. Can be funded within the capital investment fund or, in the case of a nursing~~
- 32       ~~facility, is consistent with the nursing facility MaineCare funding pool and other~~
- 33       ~~provisions of sections 333-A and 334-A.~~
- 34       F. In the case of a nursing facility project that proposes to add new nursing facility
- 35       beds to the inventory of nursing facility beds within the State, is consistent with the
- 36       nursing facility MaineCare funding pool and other applicable provisions of sections
- 37       333-A and 334-A.

# COMMITTEE AMENDMENT

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**PART C**

**Sec. C-1. Rule amendment.** No later than January 1, 2012, the Department of Health and Human Services shall amend its rules on certificate of need under the Maine Revised Statutes, Title 22, chapter 103-A to permit applications to be filed at any time, rather than on a cycle, and to allow applicants to waive having a technical assistance meeting.

**Sec. C-2. Review of certificate of need.** The Department of Health and Human Services shall convene a stakeholder group no later than October 15, 2011 to review ways to improve the certificate of need process under the Maine Revised Statutes, Title 22, chapter 103-A and the rules that implement certificate of need laws. The department shall make any necessary recommendations for changes in law or rule for the benefit of the regulated entities and the people of the State to the Legislature no later than January 15, 2012. The department shall invite participants from a range of groups, including, but not limited to, the Maine Medical Association, the Maine Hospital Association, the Maine Health Care Association, private attorneys who have practiced in the field of certificate of need law, an association of not-for-profit, long-term care providers of services to the elderly in Maine and New Hampshire and a physician-owned multi-specialty medical practice based in Portland.

**Sec. C-3. Effective date.** Notwithstanding any other provision of this Act, section 1 of this Part takes effect December 1, 2011 and section 2 of this Part takes effect October 1, 2011.

**PART D**

**Sec. D-1. 22 MRSA §337, sub-§2, ¶B,** as amended by PL 2009, c. 383, §10, is further amended to read:

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

**Sec. D-2. 22 MRSA §337, sub-§5,** as amended by PL 2009, c. 383, §11, is further amended to read:

**5. Public notice; public informational meeting.** Within ~~10~~ 5 business days of the filing of a certificate by an applicant that a complete certificate of need application is on file with the department, public notice that the application has been filed and that a public informational meeting must be held regarding the application must be given by publication in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed expenditure will occur. The notice must also be provided to all persons who have requested notification by means of

1 asking that their names be placed on a mailing list maintained by the department for this  
2 purpose. This notice must include:

- 3 A. A brief description of the proposed expenditure or other action;
- 4 B. A description of the review process and schedule;
- 5 C. A statement that any person may examine the application, submit comments in  
6 writing to the department regarding the application and examine the entire record  
7 assembled by the department at any time from the date of publication of the notice  
8 until the application process is closed for comment; and
- 9 D. The time and location of the public informational meeting and a statement that  
10 any person may appear at the meeting to question the applicant regarding the project  
11 or the department regarding the conditions that the applicant must satisfy in order to  
12 receive a certificate of need for the project.

13 The department shall make an electronic or stenographic record of the public  
14 informational meeting.

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

17 **Sec. D-3. 22 MRSA §339, sub-§2, ¶B**, as enacted by PL 2001, c. 664, §2, is  
18 amended to read:

- 19 B. The commissioner, or the commissioner's designee, shall hold a public hearing if  
20 5 persons residing or located within the health service area to be served by the  
21 applicant request, in writing, that such a public hearing be held and the request is  
22 received by the commissioner no later than ~~30~~ 15 days following the informational  
23 hearing on the application conducted pursuant to section 337, subsection 5.

24 **Sec. D-4. 22 MRSA §339, sub-§5**, as enacted by PL 2001, c. 664, §2, is amended  
25 to read:

26 **5. Reviews.** To the extent practicable, a review must be completed and the  
27 commissioner shall make a decision within ~~90~~ 45 days after the application has been  
28 certified as complete by the applicant. The department shall establish criteria for  
29 determining when it is not practicable to complete a review within ~~90~~ 45 days. Whenever  
30 it is not practicable to complete a review within ~~90~~ 45 days, the department may extend  
31 the review period for up to an additional ~~60~~ 30 days.

32 **Sec. D-5. 22 MRSA §339, sub-§6**, as enacted by PL 2001, c. 664, §2, is amended  
33 to read:

34 **6. Public necessity.** The department may delay action on an otherwise complete  
35 application for up to ~~180~~ 90 days from the time the application has been certified as  
36 complete by the applicant if the department finds that a public necessity exists. The  
37 department shall provide written notice of the delay to the applicant and any other person  
38 who has requested in writing information regarding the application. For purposes of this  
39 subsection, the department shall find that a public necessity exists if:

- 40 A. The application represents a new service or technology not previously provided  
41 within the State;

- 1 B. The application represents a potential significant impact on health care system
- 2 costs;
- 3 C. The application represents a new service or technology for which a health care
- 4 system need has not been previously established; or
- 5 D. There are several applications for the same or similar projects before the
- 6 department.

**PART E**

**Sec. E-1. Appropriations and allocations.** The following appropriations and allocations are made.

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

**Nursing Facilities 0148**

Initiative: Appropriates and allocates funds for increased costs resulting from limiting the MaineCare cost neutrality requirements for new nursing facility construction and bed conversion projects.

15	<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
16	All Other	\$191,741	\$620,457
17			
18	<b>GENERAL FUND TOTAL</b>	<u>\$191,741</u>	<u>\$620,457</u>

19	<b>FEDERAL EXPENDITURES FUND</b>	<b>2011-12</b>	<b>2012-13</b>
20	All Other	\$332,178	\$1,074,897
21			
22	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<u>\$332,178</u>	<u>\$1,074,897</u>

**PART F**

**Sec. F-1. Effective date.** This Act takes effect February 15, 2012 except as otherwise indicated.'

**SUMMARY**

This amendment is the minority report of the committee. The amendment replaces the bill and does the following.

Part A amends certificate of need laws by raising thresholds for review, providing for later threshold increases tied to the Consumer Price Index medical care services index and eliminating the certificate of need requirements for the purchase of replacement equipment. The amendment includes a threshold of \$1,000,000 for capital expenditures for a new health service by a new or existing health care facility. The amendment

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exempts from the requirement of a certificate of need process certain capital expenditures by health care facilities that have been certified by the Efficiency Maine Trust as cost-effective and requires the trust to develop and implement a process for certification.

Part B amends the certificate of need laws by increasing the threshold for nursing facility projects, providing for later threshold increases tied to the Consumer Price Index, limiting MaineCare budget neutrality requirements and the MaineCare nursing facility funding pool to apply solely to projects that propose to add additional nursing facility beds to the total inventory of beds within the State, making other changes to certificate of need laws and clarifying that projects need to comply with the principles of the Maine Quality Forum only when such standards are directly applicable to nursing facility projects.

Part C requires the Department of Health and Human Services to amend its rules on certificate of need by January 1, 2012 to permit applications to be filed at any time, rather than on a cycle, and to allow applicants to waive having a technical assistance meeting. It also requires the Department of Health and Human Services to convene a stakeholder group to review certificate of need laws and rules.

Part D shortens by half the time periods in the laws on the application and review processes for certificate of need.

Part E adds an appropriations and allocations section.

Part F adds an effective date of February 15, 2012 except that the provision requiring the Department of Health and Human Services to amend its rules to permit certificate of need applications to be filed at any time takes effect December 1, 2011 and the provision requiring the department to convene a stakeholder group takes effect October 1, 2011.

**FISCAL NOTE REQUIRED**

(See attached)



# 125th MAINE LEGISLATURE

LD 360

LR 290(03)

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

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Health and Human Services

Fiscal Note Required: Yes

## Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
<b>Net Cost (Savings)</b>				
General Fund	\$191,741	\$620,457	\$729,604	\$893,325
<b>Appropriations/Allocations</b>				
General Fund	\$191,741	\$620,457	\$729,604	\$893,325
Federal Expenditures Fund	\$332,178	\$1,074,897	\$1,263,986	\$1,547,619
<b>Revenue</b>				
Other Special Revenue Funds	\$62,911	\$171,265	\$172,862	\$174,514

### Fiscal Detail and Notes

Provides General Fund appropriations of \$191,741 in 2011-12 and \$620,457 in 2012-13 to the Nursing Facilities program in the Department of Health and Human Services for increased costs to the MaineCare program resulting from an assumed increase in nursing facility projects under Part B of the bill, primarily from bed conversions from nursing facilities to residential care facilities, that will not be subject to MaineCare cost neutrality provisions. Also assumes additional certificate of need program application revenue from the likely increase in the number of project applications. The potential for increased costs that may result from the increases to certificate of need thresholds in Part A of the bill cannot be determined at this time.