

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 825

H.P. 621

House of Representatives, March 3, 2011

**An Act To Amend the Maine Certificate of Need Act of 2002 for
Nursing Facility Projects To Provide Alternative Means To Satisfy
MaineCare Neutrality**

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Representatives: EVES of North Berwick, MALABY of Hancock.

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

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

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

15 **Sec. 2. 22 MRSA §333-A, sub-§1-A** is enacted to read:

16 **1-A. Transfers between nursing facilities and residential care facilities.** Nursing
17 facilities may delicense and sell or transfer beds to residential care facilities for the
18 purpose of permitting the residential care facilities to add MaineCare-funded beds or
19 carry out renovation or expansion projects. Such transfers are subject to prior approval of
20 the department. Beds and resources transferred pursuant to this subsection are not subject
21 to the nursing facility MaineCare funding pool.

22 **Sec. 3. 22 MRSA §334-A, sub-§1, ¶B**, as enacted by PL 2009, c. 429, §3, is
23 amended to read:

24 B. The petitioner, or one or more nursing facilities or residential care facilities, or
25 combinations thereof, under common ownership or control, ~~has~~ have agreed to
26 delicense a sufficient number of beds from the total number of currently licensed or
27 reserved beds, or ~~is~~ are otherwise reconfiguring ~~its~~ the operations of such facilities, 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 **Sec. 4. 22 MRSA §334-A, sub-§1, ¶C**, as enacted by PL 2009, c. 429, §3, is
33 amended to read:

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

1 **Sec. 5. 22 MRSA §334-A, sub-§2, ¶B**, as amended by PL 2009, c. 429, §4, is
2 further amended to read:

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

10 **Sec. 6. 22 MRSA §334-A, sub-§2-A**, as enacted by PL 2009, c. 429, §5, is
11 amended to read:

12 **2-A. Other types of certificate of need projects.** Other types of nursing facility
13 projects that do not add new nursing facility beds to the inventory of nursing facility beds
14 within the State and do not propose to relocate beds from one facility to another existing
15 or new facility and that propose any renovation, replacement or other actions requiring
16 certificate of need review, such as capital expenditures for equipment and renovations
17 that are above applicable thresholds, or that propose actions that do not require a
18 certificate of need, such as the addition of residential care beds to be funded by the
19 MaineCare program, may be approved by the department upon a showing that:

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

28 B. The petitioner, or one or more nursing facilities or residential care facilities, or
29 combinations thereof, under common ownership or control, ~~has~~ have acquired bed
30 rights from another nursing facility or facilities or residential care facilities, or
31 combinations thereof, that agree to delicense beds or that are ceasing operations or
32 otherwise reconfiguring their operations, and that the MaineCare revenues associated
33 with these acquired bed rights and related actions are sufficient to cover the
34 additional requested MaineCare 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. 7. 22 MRSA §334-A, sub-§2-B** is enacted to read:

38 **2-B. Project for transfer of ownership.** The department may approve a nursing
39 facility certificate of need application that fulfills other applicable review criteria and
40 proposes a transfer of ownership or control as long as:

41 A. The project does not increase MaineCare costs;

