

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 828

H.P. 624

House of Representatives, March 3, 2011

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

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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 Representative: MALABY of Hancock.

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

2 **Sec. 1. 22 MRSA §328, sub-§18-A**, as enacted by PL 2007, c. 440, §1, is  
3 repealed.

4 **Sec. 2. 22 MRSA §329, sub-§6**, as repealed and replaced by PL 2009, c. 652, Pt.  
5 A, §29, is amended to read:

6 **6. Nursing facilities.** The obligation by a nursing facility, when related to nursing  
7 services provided by the nursing facility, of any capital expenditures of ~~510,000~~  
8 2,500,000 or more ~~and, beginning January 1, 2010, the obligation by a nursing facility,~~  
9 ~~when related to nursing services provided by the nursing facility, of any capital~~  
10 ~~expenditures of \$1,000,000 or more.~~ Beginning January 1, 2012 and annually thereafter,  
11 the threshold amount for review must be updated by the commissioner to reflect the  
12 change in the Consumer Price Index medical index, with an effective date of January 1st.

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

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

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

21 C. Replacement equipment, other than major medical equipment as defined in  
22 section 328, subsection 16; and

23 D. Information systems, communication systems, parking lots and garages; ~~and.~~

24 E. Certain energy-efficient improvements, as described in section ~~334-A~~ 334-B,  
25 subsection 4.

26 **Sec. 3. 22 MRSA §333, sub-§1**, as amended by PL 2007, c. 440, §8, is further  
27 amended to read:

28 **1. Procedures.** A nursing facility that voluntarily reduces the number of its licensed  
29 beds at any time prior to July 1, 2007, for any reason except to create private rooms may  
30 convert the beds back and thereby increase the number of nursing facility beds to no more  
31 than the previously licensed number of nursing facility beds, after obtaining a certificate  
32 of need in accordance with this section, as long as the nursing facility has been in  
33 continuous operation without material change of ownership. For purposes of this section  
34 ~~and sections 333-A and 334-A~~, beds voluntarily removed from service prior to July 1,  
35 2007 and available to be reinstated under this section are referred to as "reserved beds."  
36 Reserved beds remain facility property until they lapse as provided for in this section or  
37 are transferred. To reinstate reserved beds under this subsection, the nursing facility  
38 must:

1 A. Give notice of the number of beds it is reserving no later than 30 days after the  
2 effective date of the license reduction;

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

8 B. Obtain a certificate of need to convert beds back under section 335, except that,  
9 if no construction is required for the conversion of beds back, the application must be  
10 processed in accordance with subsection 2.

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

13 B. Conversion of beds back under this section must be requested within 4 years of  
14 the effective date of the license reduction. If the nursing facility fails to provide the  
15 annual notices required by subsection 1, paragraph B, the nursing facility's ability to  
16 convert beds back under this section lapses, and the beds must be treated as lapsed  
17 beds for purposes of this section ~~and sections 333-A and 334-A.~~

18 **Sec. 5. 22 MRSA §333-A**, as amended by PL 2009, c. 429, §2, is repealed.

19 **Sec. 6. 22 MRSA §334-A**, as amended by PL 2009, c. 430, §§2 to 5, is repealed.

20 **Sec. 7. 22 MRSA §334-B** is enacted to read:

21 **§334-B. Nursing facility project**

22 **1. Nursing facility projects.** The commissioner must review and approve  
23 applications for nursing facility projects consistent with the criteria in section 335.  
24 Nursing facility projects are not required to demonstrate MaineCare budget neutrality.

25 **2. Emergencies and necessary nursing facility projects.** The department may  
26 determine an emergency exists and may approve a necessary nursing facility certificate of  
27 need application on an expedited basis when the applicant proposes capital expenditures  
28 for renovations and improvements that are necessary:

29 A. To achieve compliance with code and related regulatory requirements;

30 B. To comply with the federal Health Insurance Portability and Accountability Act  
31 of 1996 and related patient privacy standards;

32 C. To address other patient safety requirements and standards, consistent with any  
33 applicable priorities set forth in the State Health Plan; or

34 D. To address other necessary and time-sensitive patient safety or compliance issues.

35 **3. Evaluating costs.** In evaluating whether a nursing facility project is subject to  
36 certificate of need review, the department shall:

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

3           B. Exclude the projected incremental cost associated with replacement of equipment;  
4           and

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

7           **4. Cost associated with energy-efficient improvements.** The cost associated with  
8           energy-efficient improvements in nursing facilities, as set forth in rules governing special  
9           reimbursement provisions for energy-efficient improvements adopted by the department,  
10           must be excluded from the cost of a project in determining whether the project is subject  
11           to review.

12           **5. Rulemaking.** The department may establish rules to implement this section.  
13           Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
14           chapter 375, subchapter 2-A.

15           **Sec. 8. 22 MRSA §335, sub-§1,** as amended by PL 2007, c. 440, §14, is further  
16           amended to read:

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

20           A. Meets the conditions set forth in subsection 7;

21           B. Is consistent with and furthers the goals of the State Health Plan when the State  
22           Health Plan has provisions directly applicable to the application;

23           C. Ensures high-quality outcomes and does not negatively affect the quality of care  
24           delivered by existing service providers; and

25           D. Does not result in inappropriate increases in service utilization, according to the  
26           principles of evidence-based medicine adopted by the Maine Quality Forum, as  
27           established in Title 24-A, section 6951; ~~and~~ when the principles adopted by the  
28           Maine Quality Forum are directly applicable to the application.

29           ~~E. Can be funded within the capital investment fund or, in the case of a nursing~~  
30           ~~facility, is consistent with the nursing facility MaineCare funding pool and other~~  
31           ~~provisions of sections 333-A and 334-A.~~

32           **Sec. 9. 22 MRSA §339, sub-§5,** as enacted by PL 2001, c. 664, §2, is amended to  
33           read:

34           **5. Reviews.** To the extent practicable, a review must be completed and the  
35           commissioner shall make a decision within 90 days after the application has been  
36           certified as complete by the ~~applicant~~ department. The department shall establish criteria  
37           for determining when it is not practicable to complete a review within 90 days.  
38           Whenever it is not practicable to complete a review within 90 days, the department may  
39           extend the review period for up to an additional 60 days. Failure to issue the decision on

1 or before the 150th day after the application has been determined complete for review  
2 results in the automatic approval of the application.

3 **SUMMARY**

4 This bill amends the Certificate of Need Act of 2002 as it affects nursing facility  
5 projects in several respects.

6 1. It increases the review threshold for nursing facility projects from \$1,000,000 to  
7 \$2,500,000 and restores an inflation adjustment factor.

8 2. It repeals the nursing facility MaineCare funding pool.

9 3. It removes the so-called MaineCare budget neutrality requirement.

10 4. It makes nursing facility projects subject to all certificate of need approval criteria  
11 and requirements.

12 5. It retains provisions of existing law that permit expedited approval of certain  
13 nursing facility projects.

14 6. It requires the Department of Health and Human Services to complete the review  
15 process for a project application for a certificate of need in a timely fashion. When a  
16 decision has not been issued within 150 days after the department declares an application  
17 complete, the application is automatically approved.