

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1909

S.P. 681

In Senate, April 5, 2012

**An Act To Simplify the Certificate of Need Process and Lessen the
Regulatory Burden on Providers**

Reported by Senator McCORMICK of Kennebec for the Joint Standing Committee on
Health and Human Services pursuant to Public Law 2011, chapter 424.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

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

2 **Sec. 1. 22 MRSA §328, sub-§22, ¶B**, as enacted by PL 2001, c. 664, §2, is
3 amended to read:

4 B. A group of ~~40~~ 5 persons residing or located within the health service area served
5 or to be served by the applicant;

6 **Sec. 2. 22 MRSA §333, sub-§1, ¶A-1**, as amended by PL 2011, c. 424, Pt. B, §2
7 and affected by Pt. E, §1, is further amended to read:

8 A-1. ~~Beginning with anniversary dates occurring after July 1, 2007, annually~~
9 Annually provide notice to the department no later than ~~30 days after the anniversary~~
10 ~~date of the effective date of the license reduction~~ July 1st of each year of the nursing
11 facility's intent to retain these reserved beds, subject to the limitations set forth in
12 subsection 2, paragraph B. Notice provided under this paragraph preserves the
13 reserved beds through June 30th of the following year. The annual notice on reserved
14 beds may be filed by an individual nursing facility or by multiple nursing facilities
15 through a membership organization approved by the department by a single filing;
16 and

17 **Sec. 3. 22 MRSA §333, sub-§2**, as amended by PL 2011, c. 424, Pt. B, §4 and
18 affected by Pt. E, §1, is further amended to read:

19 **2. Expedited review.** Except as provided in subsection 1, paragraph B, an
20 application for a certificate of need to reopen beds reserved in accordance with this
21 section must be processed on an expedited basis in accordance with rules adopted by the
22 department providing for shortened review time and for a public hearing if requested by a
23 ~~directly affected~~ person directly affected by a review. The department shall consider and
24 decide upon these applications as follows:

25 A. Review of applications that meet the requirements of this section must be based
26 on the requirements of section 335, subsection 7, except that the determinations
27 required by section 335, subsection 7, paragraph B must be based on the historical
28 costs of operating the beds and must consider whether the projected costs are
29 consistent with the costs of the beds prior to closure, adjusted for inflation; and

30 B. If the nursing facility fails to provide the annual notices required by subsection 1,
31 paragraph B, the nursing facility's ability to convert beds back under this section
32 lapses, and the beds must be treated as lapsed beds for purposes of this section and
33 sections 333-A and 334-A.

34 **Sec. 4. 22 MRSA §333-A, sub-§3-A**, as enacted by PL 2011, c. 424, Pt. B, §8
35 and affected by Pt. E, §1, is amended to read:

36 **3-A. Transfers between nursing facility and residential care facility.** A nursing
37 facility may delicense and sell or transfer beds to a residential care facility for the purpose
38 of permitting the residential care facility to add MaineCare-funded beds to meet identified
39 needs for such beds. Such a transfer does not require a certificate of need but is subject to
40 prior approval of the department on an expedited basis. The divisions within the

1 department that are responsible for licensing and MaineCare reimbursement for nursing
2 facilities and residential care facilities shall work cooperatively to review and consider
3 whether to approve such transfers on an expedited basis. When the average then current
4 occupancy rate for existing state-funded residential care beds within 30 miles of the
5 applicant facility is 80% or less, the department in its review under section 335 shall
6 evaluate the impact that the proposed additional state-funded residential care beds would
7 have on these existing state-funded residential care beds and facilities. Beds and
8 MaineCare resources transferred pursuant to this subsection are not subject to the nursing
9 facility MaineCare funding pool. In order for the department to approve delicensing,
10 selling or transferring under this subsection, the department must determine that any
11 increased MaineCare residential care costs associated with the converted beds are fully
12 offset by reductions in the MaineCare costs from the reduction in MaineCare nursing
13 facility costs associated with the converted beds.

14 **Sec. 5. 22 MRSA §334-A, sub-§1-A, ¶B,** as enacted by PL 2011, c. 424, Pt. B,
15 §10 and affected by Pt. E, §1, is amended to read:

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

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

27 (2) The petitioner, or one or more nursing facilities or residential care facilities
28 or combinations thereof under common ownership or control, has acquired bed
29 rights from another nursing facility or facilities or residential care facility or
30 facilities or combinations thereof that agree to delicense beds or that are ceasing
31 operations or otherwise reconfiguring their operations, and the MaineCare
32 revenues associated with these acquired bed rights and related actions are
33 sufficient to cover the additional requested MaineCare costs associated with the
34 project. The divisions within the department that are responsible for licensing
35 and MaineCare reimbursement for nursing facilities and residential care facilities
36 shall work cooperatively to review and consider whether to approve such
37 projects.

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

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. 6. 22 MRSA §335, sub-§1-A**, as enacted by PL 2003, c. 469, Pt. C, §9, is
4 amended to read:

5 **1-A. Competitive review.** The commissioner ~~shall~~ may review applications
6 ~~periodically~~ on a competitive basis if the applications propose the same or similar
7 services.

8 **Sec. 7. 22 MRSA §335, sub-§2**, as amended by PL 2007, c. 440, §15, is further
9 amended to read:

10 **2. Communications.** ~~Except as otherwise provided in this Act, only a person who is~~
11 ~~a full-time employee of the department with responsibilities for the certificate of need~~
12 ~~program, a consultant to the project or a policy expert pursuant to section 338 may~~
13 ~~communicate with the commissioner regarding any application for a certificate of need or~~
14 ~~any letter of intent. Nothing in this section limits the authority or obligation of the staff~~
15 Staff of the department with responsibility for the certificate of need program ~~to~~ may
16 meet with, or otherwise communicate with, any person who is not a department employee
17 and who wants to provide information to be considered in connection with an application
18 for a certificate of need.

19 **Sec. 8. 22 MRSA §335, sub-§3**, as amended by PL 2007, c. 440, §16, is further
20 amended to read:

21 **3. Limited communications.** ~~Except as otherwise provided in this chapter, a person~~
22 ~~who is not a department employee may not communicate with any department staff~~
23 ~~regarding the merits of a certificate of need application except for the purpose of placing~~
24 ~~that person's views in the application record.~~ All communications regarding any letter of
25 intent or application with the commissioner or with department staff responsible for the
26 certificate of need program from any person who is not a department employee that the
27 department staff reasonably believes is intended to influence the analyses relating to or
28 the decision regarding an application for certificate of need must be made part of the
29 record described in subsection 5-A. If such communications are not in written form or
30 part of public meetings, these communications must be noted in writing by the
31 commissioner or by that department staff and that notation must be made part of the
32 application record.

33 **Sec. 9. 22 MRSA §335, sub-§5-A, ¶I**, as enacted by PL 2007, c. 440, §18, is
34 amended to read:

35 I. Except with regard to a project related to nursing facility services, or a project that
36 qualifies for a simplified review process under section 336, the commissioner may
37 require a written assessment by the Superintendent of Insurance of the impact of the
38 project on the cost of insurance in the region and the State. The superintendent may
39 request additional information from the applicant for the purpose of reviewing the
40 application. Any such request must be transmitted through the department and
41 becomes part of the official record. The applicant shall respond to the request within

1 30 days. Any such response must be transmitted through the department and
2 becomes part of the official record. The inability of the superintendent to complete
3 the review of the application due to the failure of the applicant to respond timely must
4 be noted in the superintendent's assessment filed with the department and may be
5 cause for the commissioner ~~to delay consideration of the application until the next~~
6 ~~review cycle or~~ to deny approval of the project.

7 **Sec. 10. 22 MRSA §335, sub-§6**, as amended by PL 2009, c. 383, §8, is repealed
8 and the following enacted in its place:

9 **6. Maintenance of the record.** The record created pursuant to subsection 5-A first
10 opens on the day the department receives a certificate of need application. From that day,
11 all of the record is a public record. The letter of intent becomes a public record upon the
12 receipt of the letter and is available for review from the date of receipt. Any person may
13 examine all or part of the public record and purchase copies of any or all of that record
14 during the normal business hours of the department.

15 A. The department shall accept public comments and additional information from the
16 applicant for a period of 30 days after the public informational meeting held under
17 section 337, subsection 5 or the public hearing held under section 339, subsection 2,
18 whichever is later. The record will then close until public notice that the preliminary
19 staff analysis has been made part of the record.

20 B. A technical assistance meeting with the department must be scheduled at least 10
21 days before the department publishes the preliminary analysis of a certificate of need
22 application. At the technical assistance meeting the department shall:

23 (1) Give applicants an opportunity to hear whether the certificate of need
24 application is likely to be approved or denied;

25 (2) Give applicants an opportunity to address issues and concerns expressed by
26 the department regarding compliance with this chapter; and

27 (3) Give applicants an opportunity to offer additional information to the
28 department.

29 Any additional information submitted by the applicant becomes part of the public
30 record. The department shall complete its review after the technical assistance
31 meeting and before the department publishes the preliminary analysis.

32 C. The department shall give notice that the preliminary analysis is complete and
33 part of the public record by publication in a newspaper of general circulation in
34 Kennebec County, in a newspaper published within the service area of the project and
35 on the department's publicly accessible website.

36 D. The public and the applicant may submit comments on the preliminary analysis
37 for 15 business days after the notice is published under paragraph C.

38 E. The department may determine to reopen the record in circumstances that it
39 determines to be appropriate for a limited time to permit submission of additional
40 information, as long as the department gives public notice consistent with the
41 provisions of this subsection.

1 **Sec. 11. 22 MRSA §335, sub-§7**, as amended by PL 2011, c. 90, Pt. J, §6, is
2 further amended to read:

3 **7. Expanded review process; approval.** Except as provided in section 334-A,
4 subsection 2-B with respect to emergency nursing facility projects, section 336 with
5 respect to the simplified review process and subsection 9 of this section with respect to
6 emergency certificates of need, the commissioner, or the commissioner's designee in the
7 case of a simplified review under section 336 or an emergency review, shall issue a
8 certificate of need if the commissioner or the commissioner's designee determines and
9 makes specific written findings regarding that determination that:

10 A. The applicant is fit, willing and able to provide the proposed services at the
11 proper standard of care as demonstrated by, among other factors, whether the quality
12 of any health care provided in the past by the applicant or a related party under the
13 applicant's control meets industry standards. If the applicant is a provider of health
14 care services that are substantially similar to those services being reviewed and is
15 licensed in the State, the requirements of this paragraph are deemed to have been met
16 if the services previously provided in the State by the applicant are consistent with
17 applicable licensing and certification standards;

18 B. The economic feasibility of the proposed services is demonstrated in terms of the:

19 (1) Capacity of the applicant to support the project financially over its useful life,
20 in light of the rates the applicant expects to be able to charge for the services to
21 be provided by the project; and

22 (2) Applicant's ability to establish and operate the project in accordance with
23 existing and reasonably anticipated future changes in federal, state and local
24 licensure and other applicable or potentially applicable rules. If the applicant is a
25 provider of health care services that are substantially similar to those services
26 being reviewed and is licensed in the State, the applicant is deemed to have
27 fulfilled the requirements of this subparagraph if the services provided in the
28 State by the applicant during the most recent 3-year period are of similar size and
29 scope and are consistent with applicable licensing and certification standards;

30 C. There is a public need for the proposed services as demonstrated by certain
31 factors, including, but not limited to:

32 (1) Whether, and the extent to which, the project will substantially address
33 specific health problems as measured by health needs in the area to be served by
34 the project;

35 (2) Whether the project will have a positive impact on the health status indicators
36 of the population to be served;

37 (3) Whether the services affected by the project will be accessible to all residents
38 of the area proposed to be served; and

39 (4) Whether the project will provide demonstrable improvements in quality and
40 outcome measures applicable to the services proposed in the project;

41 D. The proposed services are consistent with the orderly and economic development
42 of health facilities and health resources for the State as demonstrated by:

- 1 (1) The impact of the project on total health care expenditures after taking into
2 account, to the extent practical, both the costs and benefits of the project and the
3 competing demands in the local service area and statewide for available resources
4 for health care;
- 5 (2) The availability of state funds to cover any increase in state costs associated
6 with utilization of the project's services; and
- 7 (3) The likelihood that more effective, more accessible or less costly alternative
8 technologies or methods of service delivery may become available; and
- 9 E. The project meets the criteria set forth in subsection 1.

10 In making a determination under this subsection, the commissioner ~~shall~~ may use data
11 from the Maine Health Data Organization established in chapter 1683 and other
12 information available to the commissioner to the extent such data and information is
13 applicable to the determination being made. ~~Particular weight must be given~~ The
14 commissioner may give appropriate weight to information that indicates that the proposed
15 health services are innovations in high-quality health care delivery, that the proposed
16 health services are not reasonably available in the proposed area and that the facility
17 proposing the new health services is designed to provide excellent quality health care.

18 **Sec. 12. 22 MRSA §336**, as amended by PL 2009, c. 383, §9, is further amended
19 to read:

20 **§336. Simplified review and approval process**

21 Notwithstanding the requirements set forth in section 335, the department shall
22 conduct a simplified review and approval process in accordance with this section- unless
23 a public hearing has been requested pursuant to section 339, subsection 2, paragraph D, in
24 which case the project is subject to the expanded review in section 335. The department
25 shall by rule set forth this simplified review and approval process. To the extent
26 practicable, a simplified review must be completed and the commissioner shall make a
27 decision within 60 days after the application has been certified as complete by the
28 applicant pursuant to section 337, subsection 4, unless a hearing is requested by a person
29 directly affected by a review or the commissioner determines to hold a hearing. The
30 following projects may qualify for a simplified review process:

- 31 **1. Maintenance projects.** The commissioner shall issue a certificate of need for a
32 project that primarily involves the maintenance of a health facility if the commissioner
33 determines that the project:
- 34 A. Will result in no or a minimal additional expense to the public or to the health
35 care facility's clients;
- 36 B. Will be in compliance with other applicable state and local laws and regulations;
37 and
- 38 C. Will significantly improve or, in the alternative, not significantly adversely affect
39 the health and welfare of any person currently being served by the health care facility.

1 **2. Life safety codes; previous certificate of need.** The commissioner shall issue a
2 certificate of need for a project that is required solely to meet federal, state or local life
3 safety codes ~~if the project involves a health facility, major medical equipment or a new~~
4 ~~health service that has previously received a certificate of need.~~

5 **3. Acquisition of control.** The commissioner shall issue a certificate of need for a
6 project that involves the acquisition of control of a health facility when the acquisition
7 consists of a management agreement or similar arrangement and primarily involves the
8 day-to-day operation of the facility in its current form, or transfers ownership of a nursing
9 facility to an existing provider of nursing facility services licensed in this State if the
10 commissioner determines that the project meets the requirements of section 335,
11 subsection 7, paragraph B and that the project is economically feasible in light of its
12 impact on:

13 A. The operating budget of the facility and the applicant; and

14 B. The applicant's ability to operate the facility without increases in the facility's
15 rates beyond those that would otherwise occur absent the acquisition.

16 **4. Capital expenditures for compliance or quality improvement.** The
17 commissioner shall issue a certificate of need for a proposed capital expenditure upon
18 determining that:

19 A. The capital expenditure is required to eliminate or prevent imminent safety
20 hazards, as defined by applicable fire, building or life safety codes and regulations; to
21 comply with state licensure standards; to provide demonstrable improvements in
22 patient safety or quality of care; or to comply with accreditation or certification
23 standards that must be met to receive reimbursement under the United States Social
24 Security Act, Title XVIII or payments under a state plan for medical assistance
25 approved under Title XIX of that Act;

26 B. The economic feasibility of the project is demonstrated in terms of its effects on
27 the operating budget of the applicant, including its existing rate structure;

28 C. There remains a public need for the service to be provided; and

29 D. The corrective action proposed by the applicant is ~~the most~~ a cost-effective
30 alternative available under the circumstances.

31 **5. Major medical equipment.** The commissioner shall issue a certificate of need
32 for replacement of major medical equipment that is not otherwise exempt from review
33 pursuant to section 329, subsection 2-A, paragraph B, subparagraph (1) upon determining
34 that a project meets the requirements of section 335, subsection 7.

35 **6. Other projects.** The commissioner may by rule identify other categories of
36 projects that qualify for simplified review under this section that are consistent with the
37 purposes of this section and will foster timely review and approval for qualifying
38 projects.

39 **Sec. 13. 22 MRSA §337, sub-§2, ¶B,** as amended by PL 2011, c. 424, Pt. D, §1
40 and affected by Pt. E, §1, is further amended to read:

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

9 **Sec. 14. 22 MRSA §337, sub-§3**, as enacted by PL 2001, c. 664, §2, is amended
10 to read:

11 **3. Application content; department-approved forms.** An application for a
12 certificate of need must describe with specificity how the proposed project meets each of
13 the ~~conditions~~ standards for granting a certificate of need ~~required by this chapter that are~~
14 applicable to the project. A statement or statements that the project will meet the
15 ~~conditions~~ standards without supporting facts backed by relevant documentation and
16 analysis constitute sufficient cause to deny the application. An application subject to ~~full~~
17 an expanded review must contain, if available and relevant to the particular service or
18 technology, information on health status, public health need for the service or technology,
19 quality assurance processes and prevention programs.

20 A. The department shall make available on the department's publicly accessible
21 website multiple project-specific, department-approved certificate of need forms for
22 at least the following certificate of need categories:

23 (1) Nursing facility projects;

24 (2) Hospital projects; and

25 (3) Other projects subject to review.

26 B. The department-approved forms must set forth application elements that are
27 relevant to each category and must elicit the information and data reasonably
28 necessary to permit the department to carry out the review and approval process in a
29 timely and cost-effective manner, with consideration for the costs and responsibilities
30 imposed on applicants.

31 C. Submission of the completed applicable department-approved forms and required
32 information, together with other information that is appropriate to the application, and
33 the applicant's certification that the application is complete pursuant to subsection 4
34 constitutes a sufficient record for the department to make a determination regarding
35 the application for a certificate of need, unless a hearing is requested either by the
36 department or by a person directly affected by a review.

37 D. If an application is contested by another provider of services or a person directly
38 affected by a review or the department determines that a public hearing must be held
39 pursuant to section 339, subsection 2, additional information may be required by the
40 department.

41 **Sec. 15. 22 MRSA §337, sub-§5**, as amended by PL 2011, c. 424, Pt. D, §2 and
42 affected by Pt. E, §1, is further amended to read:

1 **5. Public notice; public informational meeting.** Within 5 business days of the
2 filing of a certificate by an applicant that a complete certificate of need application is on
3 file with the department, public notice that the application has been filed ~~and that a public~~
4 ~~informational meeting must be held regarding the application~~ must be given by
5 publication in a newspaper of general circulation in Kennebec County and in a newspaper
6 published within the service area in which the proposed expenditure will occur. The
7 notice must also be provided to all persons who have requested notification by means of
8 asking that their names be placed on a mailing list maintained by the department for this
9 purpose. The notice must also be published on the department's publicly accessible
10 website. This notice must include:

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

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

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

17 D. ~~The~~ If a public informational meeting is being held, the time and location of the
18 public informational meeting and, a statement that any person may appear at the
19 meeting to question the applicant regarding the project or the department regarding
20 the conditions that the applicant must satisfy in order to receive a certificate of need
21 for the project-, and a statement that a public hearing may be requested by any person
22 directly affected by a review if the request is received by the commissioner within 15
23 days following the public informational meeting pursuant to the provisions of section
24 339, subsection 2; and

25 E. If a public informational meeting is not being held, a statement that a public
26 hearing may be requested by any person directly affected by a review if the request is
27 received by the commissioner within 15 days following the publication of the notice
28 that an application has been filed.

29 The department shall make an electronic or stenographic record of the public
30 informational meeting.

31 A public informational meeting is not required for the simplified review and approval
32 process in section 336 unless requested by the applicant, the department or a person
33 directly affected by a review.

34 **Sec. 16. 22 MRSA §337, sub-§7,** as enacted by PL 2001, c. 664, §2, is amended
35 to read:

36 **7. Fees.** The department shall adopt rules setting minimum and maximum filing fees
37 under this chapter. A nonrefundable filing fee must be paid at the time an application is
38 filed ~~with the department.~~ If the approved capital expenditure or operating cost upon
39 which ~~the fees were~~ a fee is based is higher than the initially proposed capital
40 expenditure, then the filing fee must be recalculated and the difference ~~in fees,~~ if any,
41 must be paid before the certificate of need may be issued. In addition to filing fees, the
42 department shall adopt rules to establish reasonable and necessary fees to carry out the
43 provisions of this chapter. All fees received by the department under this subsection must

1 be placed in a separate, nonlapsing account to be used in accordance with this chapter.
2 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
3 chapter 375, subchapter 2-A.

4 **Sec. 17. 22 MRSA §337, sub-§8** is enacted to read:

5 **8. Suspension of review.** An applicant may request and be granted a suspension of
6 the review process prior to the date on which the department staff submits its final
7 analysis to the commissioner.

8 A. A request for suspension of the review process must be for specific periods of no
9 less than 10 days and not greater than 12 months.

10 B. If there are no competing applicants, a request under this subsection must be
11 granted.

12 C. If there are competing applicants, the request under this subsection must be
13 reviewed and approved or disapproved within 3 business days, taking into account
14 the interests of the public and of competing applicants.

15 D. If a request to suspend the review is granted, the department shall determine:

16 (1) If the suspension will suspend review of all competing applications; or

17 (2) If the suspension will not affect competing applications, which will continue
18 to be reviewed without interruption.

19 E. Failure to reactivate an application within the time period approved by the
20 department results in automatic withdrawal of the suspended application.

21 **Sec. 18. 22 MRSA §338, sub-§1**, as amended by PL 2003, c. 469, Pt. C, §§13
22 and 14, is further amended to read:

23 **1. Consultation on new technologies and needs.** In connection with the
24 development of policies and procedures to implement this Act, the commissioner may,
25 from time to time, consult with persons with relevant skills and experience regarding:

26 A. New medical technologies and the impact of those technologies on the health care
27 delivery system in the State;

28 B. Unmet need for health care services in the State; ~~and~~

29 C. The quality of health care; ~~and~~

30 D. The need to replace, renovate or upgrade health care facilities to meet current and
31 future needs.

32 **Sec. 19. 22 MRSA §339, sub-§2, ¶B**, as amended by PL 2011, c. 424, Pt. D, §3
33 and affected by Pt. E, §1, is further amended to read:

34 B. The commissioner, or the commissioner's designee, shall hold a public hearing if
35 ~~5 persons residing or located within the health service area to be served by the~~
36 ~~applicant request~~ any person directly affected by a review requests, in writing, that
37 such a public hearing be held and the request is timely received by the commissioner.

1 If a public informational meeting on the application is conducted pursuant to section
2 337, subsection 5, the request for a public hearing must be received by the
3 commissioner no later than 15 days following the informational hearing ~~on the~~
4 ~~application conducted pursuant to section 337, subsection 5.~~ If no public
5 informational meeting is conducted, the request for a public hearing must be received
6 within 15 days following the publication of the public notice required by section 337,
7 subsection 5.

8 **Sec. 20. 22 MRSA §339, sub-§2, ¶D**, as enacted by PL 2009, c. 383, §12, is
9 amended to read:

10 D. A public hearing is not required for the simplified review and approval process
11 set forth in section 336 unless requested by the applicant, the department or a person
12 directly affected by a review.

13 **Sec. 21. 22 MRSA §339, sub-§5**, as amended by PL 2011, c. 424, Pt. D, §4 and
14 affected by Pt. E, §1, is further amended to read:

15 **5. Reviews.** To the extent practicable, a review must be completed and the
16 commissioner shall make a decision within 45 60 days after the application has been
17 certified as complete by the applicant for a simplified review, or within 90 days for an
18 expanded review. The department shall establish criteria for determining when it is not
19 practicable to complete a review within 45 days these time frames. Whenever it is not
20 practicable to complete a review within 45 days these time frames, the department may
21 extend the review period for up to an additional 30 days.

22 **Sec. 22. 22 MRSA §339, sub-§6**, as amended by PL 2011, c. 424, Pt. D, §5 and
23 affected by Pt. E, §1, is further amended to read:

24 **6. Public necessity.** The department may delay action on an otherwise complete
25 application for up to 90 120 days from the time the application has been certified as
26 complete by the applicant if the department finds that a public necessity exists. The
27 department shall provide written notice of the delay to the applicant and any other person
28 who has requested in writing information regarding the application. For purposes of this
29 subsection, the department shall find that a public necessity exists if:

30 A. The application represents a new service or technology not previously provided
31 within the State;

32 B. The application represents a potential significant impact on health care system
33 costs;

34 C. The application represents a new service or technology for which a health care
35 system need has not been previously established; or

36 D. There are several applications for the same or similar projects before the
37 department.

38 **Sec. 23. 22 MRSA §346, sub-§3**, as enacted by PL 2001, c. 664, §2, is amended
39 to read:

1 **3. Issued certificate; duration and expiration.** After the issuance of a certificate of
2 need, the department shall periodically review the progress of the holder of the certificate
3 in meeting the timetable for making the service or equipment available or for completing
4 the project specified in the approved application. A certificate of need expires if the
5 project for which the certificate has been issued is not commenced within ~~12~~ 24 months
6 following the issuance of the certificate. The department may grant an extension of a
7 certificate for an additional specified time not to exceed 12 months if good cause is
8 shown why the project has not commenced. The department may require evidence of the
9 continuing feasibility and availability of financing for a project as a condition for
10 extending the life of the certificate. In addition, if on the basis of its periodic review of
11 progress under the certificate the department determines that the holder of a certificate is
12 not otherwise meeting the timetable and is not making a good faith effort to meet it, the
13 department may, after a hearing, withdraw the certificate of need. ~~The applicant shall~~
14 ~~issue to the department periodic reports as designated in the certificate of need approval~~
15 ~~notification on the impact of the service on the health status, quality of care and health~~
16 ~~outcomes of the population served. These reports may not be in less than 12 month~~
17 ~~intervals following the start of service approved in the certificate of need. The~~
18 department shall adopt rules for the withdrawal of certificates of need.

19 **Sec. 24. 22 MRSA §350-C**, as reallocated by RR 2001, c. 2, Pt. A, §32, is
20 amended to read:

21 **§350-C. Implementation reports**

22 The holder of a certificate of need shall make written reports as provided in this
23 section and as required by rule adopted by the department.

24 **1. Final plans and specifications.** A holder of a certificate of need that has been
25 issued for the construction or modification of a facility or portion of a facility shall file
26 final plans and specifications for the project as required by the department to determine
27 that the plans and specifications are in compliance with the certificate of need and with
28 applicable licensure, life safety code and accreditation standards.

29 **2. Reports.** ~~Periodic reports must be filed at the end of each 6 month period~~
30 ~~following the issuance of a certificate of need under section 335, subsection 7 or section~~
31 ~~336 regarding implementation activities, obligations incurred and expenditures made and~~
32 ~~any other matters as the department may require. The department may require periodic~~
33 ~~reports, summary reports and cost and utilization reports as well as reports regarding the~~
34 ~~effect of the project on the health status, quality of care and health outcomes of the~~
35 ~~population served for no longer than 3 years following the completion of the project as~~
36 ~~set out in rule.~~

37 **3. Summary report.** ~~A summary report must be made when the service or services~~
38 ~~for which a certificate of need was issued become operational.~~

39 **4. Cost and utilization reports.** ~~For a period of one year following the~~
40 ~~implementation of the service or services for which a certificate of need was granted, the~~
41 ~~holder of the certificate of need shall file, at 6 month intervals, reports concerning the~~
42 ~~costs and utilization.~~

1 8. The bill makes the following changes to the certificate of need review process.
2 The bill permits the commissioner to delegate certificate of need decisions to a designee
3 for certain projects. It states that emergency nursing facility projects and other
4 emergency projects are exceptions to the requirement for detailed findings. It provides a
5 more streamlined process for simplified reviews. It clarifies which projects are subject to
6 expanded review and which projects qualify for simplified reviews. It clarifies "fit,
7 willing and able" and "economic feasibility" determinations for applicants whose prior
8 services are consistent with pertinent licensing and certification standards. It modifies
9 provisions requiring reliance on particular types of data, including data from the Maine
10 Health Data Organization.

11 9. The bill clarifies the application of simplified review with respect to projects that
12 are required for code compliance and for certain other needs. It broadens simplified
13 review to cover a wider range of projects, including transfers of ownership of nursing
14 facilities to existing in-state providers of nursing facility services. It clarifies that eligible
15 capital expenditure projects include those that foster compliance or quality improvement.
16 It gives the commissioner authority to identify other categories of projects that qualify for
17 simplified review that are consistent with the purposes of the law and will foster timely
18 review of qualifying projects.

19 10. The bill modifies the certificate of need application process, allowing the
20 applicant to waive the technical assistance meeting after filing the letter of intent and
21 requiring multiple project-specific application forms and other certificate of need forms
22 to be made available on the department's website. It allows the department to require
23 additional information if an application is contested by another provider or another person
24 directly affected by a review or the department determines that a public hearing must be
25 held. It requires the department to publish on the department's website, as well as in the
26 newspaper, the public notice that the applicant has filed a certification that the application
27 is complete. It specifies when a public informational meeting is required and includes
28 processes for requesting a public hearing.

29 11. The bill enacts a new procedure for an applicant to request a suspension of the
30 review process and permits suspensions of no less than 10 days and no greater than one
31 12-month period in duration.

32 12. The bill allows the department to adopt by rule reasonable fees for the
33 administration of its duties.

34 13. The bill allows the commissioner to consult with persons with relevant skills and
35 experience regarding the need to replace, renovate or upgrade health care facilities to
36 meet current and future needs.

37 14. The bill permits any person directly affected by a review to request a public
38 hearing, including health care facilities, providers or insurers. The public hearing must be
39 requested within 15 days of the public informational meeting. If no public informational
40 meeting is held, a public hearing must be requested within 15 days of publication of the
41 notice of filing of the certificate of completion.

1 15. The bill modifies the time frames to provide that, to the extent practicable, a
2 review must be completed and the commissioner must make a decision within 60 days
3 after the application has been certified as complete by the applicant for a simplified
4 review, or within 90 days for an expanded review.

5 16. The bill permits extension of review time to 120 days after an application is
6 certified as complete in case of public necessity.

7 17. The bill specifies that a certificate of need expires if the underlying project is not
8 commenced within 24 months. Current law provides 12 months.

9 18. The bill eliminates the mandatory nature of 3 categories of reports and allows the
10 department to seek reports on a project for up to 3 years following completion of the
11 project.



125th MAINE LEGISLATURE

LD 1909

LR 2842(01)

An Act To Simplify the Certificate of Need Process and Lessen the Regulatory Burden on Providers

Fiscal Note for Original Bill
Committee: Health and Human Services
Fiscal Note Required: Yes

Preliminary Fiscal Impact Statement

Minor cost increase - Other Special Revenue Funds
Potential current biennium revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs for the Department of Health and Human Services are expected to be minor and can be absorbed within existing budgeted resources. The bill authorizes the Department to establish reasonable and necessary fees for the administration of the certificate of need program in addition to the current filing fees, with the proceeds to be placed in a separate non-lapsing account. It is assumed these new fees will not be needed at this time.