

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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Legislative Document

No. 162

H.P. 137

House of Representatives, January 31, 2013

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

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MALABY of Hancock.
Cosponsored by Senator CUSHING of Penobscot and
Representatives: DUNPHY of Embden, GUERIN of Glenburn, LIBBY of Waterboro,
LOCKMAN of Amherst, SANDERSON of Chelsea, SIROCKI of Scarborough.

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

2 **Sec. 1. 22 MRSA c. 103-A**, as amended, is repealed.

3 **Sec. 2. 22 MRSA §1708, sub-§3, ¶C**, as amended by PL 2001, c. 666, Pt. A, §1
4 and affected by Pt. E, §1, is further amended to read:

5 C. Are consistent with federal requirements relative to limits on reimbursement
6 under the federal Social Security Act, Title XIX; and

7 **Sec. 3. 22 MRSA §1708, sub-§3, ¶D**, as corrected by RR 2001, c. 2, Pt. A, §33,
8 is repealed.

9 **Sec. 4. 22 MRSA §1714-A, sub-§4, ¶C**, as amended by PL 2011, c. 687, §8, is
10 further amended to read:

11 C. The department shall provide in a letter written notice of the requirements of this
12 section to the transferee in ~~a letter acknowledging receipt of a request for a certificate~~
13 ~~of need or waiver of the certificate of need for the case of~~ a nursing home or hospital
14 transfer or in response to a request for an application for a license to operate a
15 boarding home or to provide other health care services.

16 **Sec. 5. 22 MRSA §1715, sub-§1, ¶A**, as corrected by RR 2001, c. 2, Pt. A, §34,
17 is amended to read:

18 A. Is ~~either~~ a direct provider of major ambulatory service, as defined in section 382,
19 subsection 8-A, ~~or is or has been required to obtain a certificate of need under section~~
20 ~~329 or former section 304 or 304-A;~~

21 **Sec. 6. 22 MRSA §2061, sub-§2**, as amended by PL 2011, c. 90, Pt. J, §19, is
22 further amended to read:

23 **2. Review.** Each project for a health care facility has been reviewed and approved to
24 the extent required by the agency of the State that serves as the designated planning
25 agency of the State ~~or by the Department of Health and Human Services in accordance~~
26 ~~with the provisions of the Maine Certificate of Need Act of 2002, as amended;~~

27 **Sec. 7. 24-A MRSA §4203, sub-§1**, as amended by PL 2003, c. 510, Pt. A, §19,
28 is further amended to read:

29 **1.** ~~Subject to the Maine Certificate of Need Act of 2002, a~~ A person may apply to
30 the superintendent for and obtain a certificate of authority to establish, maintain, own,
31 merge with, organize or operate a health maintenance organization in compliance with
32 this chapter. A person may not establish, maintain, own, merge with, organize or operate
33 a health maintenance organization in this State either directly as a division or a line of
34 business or indirectly through a subsidiary or affiliate, nor sell or offer to sell, or solicit
35 offers to purchase or receive advance or periodic consideration in conjunction with, a
36 health maintenance organization without obtaining a certificate of authority under this
37 chapter.

1 **Sec. 8. 24-A MRSA §4204, sub-§1**, as amended by PL 2003, c. 510, Pt. A, §20
2 and c. 689, Pt. B, §6, is repealed.

3 **Sec. 9. 24-A MRSA §4204, sub-§2-A**, as amended by PL 2011, c. 90, Pt. F, §6,
4 is further amended to read:

5 **2-A.** The superintendent shall issue or deny a certificate of authority to any person
6 filing an application pursuant to section 4203 ~~within 50 business days of receipt of the~~
7 ~~notice from the Department of Health and Human Services that the applicant has been~~
8 ~~granted a certificate of need or, if a certificate of need is not required,~~ within 50 business
9 days of receipt of notice from the Department of Health and Human Services that the
10 applicant is in compliance with the requirements of paragraph B. Issuance of a certificate
11 of authority ~~shall~~ **must** be granted upon payment of the application fee prescribed in
12 section 4220 if the superintendent is satisfied that the following conditions are met.

13 ~~A. The Commissioner of Health and Human Services certifies that the health~~
14 ~~maintenance organization has received a certificate of need or that a certificate of~~
15 ~~need is not required pursuant to Title 22, chapter 103-A.~~

16 **B.** ~~If the~~ **The** Commissioner of Health and Human Services ~~has determined that a~~
17 ~~certificate of need is not required,~~ ~~the commissioner~~ makes a determination and
18 provides a certification to the superintendent that the following requirements have
19 been met.

20 (4) The health maintenance organization must establish and maintain procedures
21 to ensure that the health care services provided to enrollees are rendered under
22 reasonable standards of quality of care consistent with prevailing professionally
23 recognized standards of medical practice. These procedures must include
24 mechanisms to ensure availability, accessibility and continuity of care.

25 (5) The health maintenance organization must have an ongoing internal quality
26 assurance program to monitor and evaluate its health care services including
27 primary and specialist physician services, ancillary and preventive health care
28 services across all institutional and noninstitutional settings. The program must
29 include, at a minimum, the following:

30 (a) A written statement of goals and objectives that emphasizes improved
31 health outcomes in evaluating the quality of care rendered to enrollees;

32 (b) A written quality assurance plan that describes the following:

33 (i) The health maintenance organization's scope and purpose in quality
34 assurance;

35 (ii) The organizational structure responsible for quality assurance
36 activities;

37 (iii) Contractual arrangements, in appropriate instances, for delegation of
38 quality assurance activities;

39 (iv) Confidentiality policies and procedures;

40 (v) A system of ongoing evaluation activities;

- 1 (vi) A system of focused evaluation activities;
- 2 (vii) A system for reviewing and evaluating provider credentials for
- 3 acceptance and performing peer review activities; and
- 4 (viii) Duties and responsibilities of the designated physician supervising
- 5 the quality assurance activities;
- 6 (c) A written statement describing the system of ongoing quality assurance
- 7 activities including:
 - 8 (i) Problem assessment, identification, selection and study;
 - 9 (ii) Corrective action, monitoring evaluation and reassessment; and
 - 10 (iii) Interpretation and analysis of patterns of care rendered to individual
 - 11 patients by individual providers;
 - 12 (d) A written statement describing the system of focused quality assurance
 - 13 activities based on representative samples of the enrolled population that
 - 14 identifies the method of topic selection, study, data collection, analysis,
 - 15 interpretation and report format; and
 - 16 (e) Written plans for taking appropriate corrective action whenever, as
 - 17 determined by the quality assurance program, inappropriate or substandard
 - 18 services have been provided or services that should have been furnished have
 - 19 not been provided.

20 (6) The health maintenance organization shall record proceedings of formal
21 quality assurance program activities and maintain documentation in a
22 confidential manner. Quality assurance program minutes must be available to the
23 Commissioner of Health and Human Services.

24 (7) The health maintenance organization shall ensure the use and maintenance of
25 an adequate patient record system that facilitates documentation and retrieval of
26 clinical information to permit evaluation by the health maintenance organization
27 of the continuity and coordination of patient care and the assessment the quality
28 of health and medical care provided to enrollees.

29 (8) Enrollee clinical records must be available to the Commissioner of Health
30 and Human Services or an authorized designee for examination and review to
31 ascertain compliance with this section, or as considered necessary by the
32 Commissioner of Health and Human Services.

33 (9) The organization must establish a mechanism for periodic reporting of
34 quality assurance program activities to the governing body, providers and
35 appropriate organization staff.

36 ~~The Commissioner of Health and Human Services shall make the certification~~
37 ~~required by this paragraph within 60 days of the date of the written decision that a~~
38 ~~certificate of need was not required.~~ If the ~~commissioner~~ Commissioner of Health and
39 Human Services certifies that the health maintenance organization does not meet all
40 of the requirements of this paragraph, the commissioner shall specify in what respects
41 the health maintenance organization is deficient.

1 C. The health maintenance organization conforms to the definition under section
2 4202-A, subsection 10.

3 D. The health maintenance organization is financially responsible, complies with the
4 minimum surplus requirements of section 4204-A and, among other factors, can
5 reasonably be expected to meet its obligations to enrollees and prospective enrollees.

6 (1) In a determination of minimum surplus requirements, the following terms
7 have the following meanings.

8 (a) "Admitted assets" means assets recognized by the superintendent
9 pursuant to section 901-A. For purposes of this chapter, the asset value is
10 that contained in the annual statement of the corporation as of December 31st
11 of the year preceding the making of the investment or contained in any
12 audited financial report, as defined in section 221-A, of more current origin.

13 (b) "Reserves" means those reserves held by corporations subject to this
14 chapter for the protection of subscribers. For purposes of this chapter, the
15 reserve value is that contained in the annual statement of the corporation as
16 of December 31st of the preceding year or any audited financial report, as
17 defined in section 221-A, of more current origin.

18 (2) In making the determination whether the health maintenance organization is
19 financially responsible, the superintendent may also consider:

20 (a) The financial soundness of the health maintenance organization's
21 arrangements for health care services and the schedule of charges used;

22 (b) The adequacy of working capital;

23 (c) Any agreement with an insurer, a nonprofit hospital or medical service
24 corporation, a government or any other organization for insuring or providing
25 the payment of the cost of health care services or the provision for automatic
26 applicability of an alternative coverage in the event of discontinuance of the
27 plan;

28 (d) Any agreement with providers for the provision of health care services
29 that contains a covenant consistent with subsection 6; and

30 (e) Any arrangements for insurance coverage or an adequate plan for self-
31 insurance to respond to claims for injuries arising out of the furnishing of
32 health care services.

33 E. The enrollees are afforded an opportunity to participate in matters of policy and
34 operation pursuant to section 4206.

35 F. Nothing in the proposed method of operation, as shown by the information
36 submitted pursuant to section 4203 or by independent investigation, is contrary to the
37 public interest.

38 G. Any director, officer, employee or partner of a health maintenance organization
39 who receives, collects, disburses or invests funds in connection with the activities of
40 that organization ~~shall be~~ is responsible for those funds in a fiduciary relationship to
41 the organization.

1 H. The health maintenance organization shall maintain in force a fidelity bond or
2 fidelity insurance on those employees and officers of the health maintenance
3 organization who have duties as described in paragraph G, in an amount not less than
4 \$250,000 for each health maintenance organization or a maximum of \$5,000,000 in
5 aggregate maintained on behalf of health maintenance organizations owned by a
6 common parent corporation, or such sum as may be prescribed by the superintendent.

7 I. If any agreement, as set forth in paragraph D, subparagraph (2), division (c), is
8 made by the health maintenance organization, the entity executing the agreement
9 with the health maintenance organization must demonstrate to the superintendent's
10 satisfaction that the entity has sufficient unencumbered surplus funds to cover the
11 assured payments under the agreement, otherwise the superintendent shall disallow
12 the agreement. In considering approval of such an agreement, the superintendent
13 shall consider the entity's record of earnings for the most recent 3 years, the risk
14 characteristics of its investments and whether its investments and other assets are
15 reasonably liquid and available to make payments for health services.

16 K. The health maintenance organization provides a spectrum of providers and
17 services that meet patient demand.

18 L. The health maintenance organization meets the requirements of section 4303,
19 subsection 1.

20 M. The health maintenance organization demonstrates a plan for providing services
21 for rural and underserved populations and for developing relationships with essential
22 community providers within the area of the proposed certificate. The health
23 maintenance organization must make an annual report to the superintendent regarding
24 the plan.

25 O. Each health maintenance organization shall provide basic health care services.

26 The applicant shall furnish, upon request of the superintendent, any information
27 necessary to make any determination required pursuant to this subsection.

28 **Sec. 10. 24-A MRSA §4225**, as amended by PL 1975, c. 293, §4 and enacted by
29 c. 503 and amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

30 **§4225. Commissioner of Health and Human Services' authority to contract**

31 The Commissioner of Health and Human Services, in carrying out ~~his~~ the
32 commissioner's obligations under sections 4204, ~~subsection 1, paragraph B,~~ 4215 and
33 4216, subsection 1, may contract with qualified persons to make recommendations
34 concerning the determinations required to be made by ~~him~~ the commissioner. Such
35 recommendations may be accepted in full or in part by the Commissioner of Health and
36 Human Services.

37 **Sec. 11. 24-A MRSA §6203, sub-§1, ¶A**, as amended by PL 2003, c. 510, Pt. A,
38 §22, is further amended to read:

39 A. The provider has ~~submitted to the department an application for a certificate of~~
40 ~~need, if required under Title 22, section 329, and the department has submitted a~~

1 preliminary report of a recommendation for approval of a certificate of need and the
2 provider has applied for any other licenses or permits required prior to operation.

3 **Sec. 12. 24-A MRSA §6203, sub-§1, ¶G**, as enacted by PL 1995, c. 452, §11, is
4 amended to read:

5 G. The department has approved the adequacy of all services proposed under the
6 continuing care agreement not otherwise reviewed ~~under the certificate of need~~
7 ~~process~~.

8 **Sec. 13. 24-A MRSA §6203, sub-§2**, as amended by PL 1995, c. 452, §§12 to
9 16, is further amended to read:

10 **2. Final certificate of authority.** The superintendent shall issue a final certificate of
11 authority, subject to annual renewal, when:

12 A. The provider has obtained any required ~~certificate of need or other~~ permits or
13 licenses required prior to construction of the facility;

14 C. The superintendent is satisfied that the provider has demonstrated that it is
15 financially responsible and ~~shall~~ may reasonably be expected to meet its obligations
16 to subscribers or prospective subscribers;

17 D. The superintendent has determined that the provider's continuing care agreement
18 meets the requirements of section 6206, subsection 3; and the rules ~~promulgated~~
19 adopted in this chapter; and

20 G. The provider certifies to the superintendent either:

21 (1) That preliminary continuing care agreements have been entered and deposits
22 of not less than 10% of the entrance fee have been received either:

23 (a) From subscribers with respect to 70% of the residential units, including
24 names and addresses of the subscribers, for which entrance fees will be
25 charged; or

26 (b) From subscribers with respect to 70% of the total entrance fees due or
27 expected at full occupancy of the community; or

28 (2) That preliminary continuing care agreements have been entered and deposits
29 of not less than 25% of the entrance fee received from either:

30 (a) Subscribers with respect to 60% of the residential units, including names
31 and addresses of the subscribers, for which entrance fees will be charged; or

32 (b) Subscribers with respect to 60% of the total entrance fees due or expected
33 at full occupancy of the community.

34 Within 120 days after determining that the application to the superintendent and the
35 department is complete, the superintendent shall issue or deny a final certificate of
36 authority to the provider, ~~unless a certificate of need is required, in which case the final~~
37 ~~certificate of authority shall be issued or denied in accordance with the certificate of need~~
38 ~~schedule~~.

1 **Sec. 14. 24-A MRSA §6203, sub-§6**, as amended by PL 2003, c. 155, §1, is
2 further amended to read:

3 **6. Provision of services to nonresidents.** The final certificate of authority must
4 state whether any skilled nursing facility that is part of a life-care community or a
5 continuing care retirement community may provide services to persons who have not
6 been bona fide residents of the community prior to admission to the skilled nursing
7 facility. If the life-care community or the continuing care retirement community admits
8 to its skilled nursing facility only persons who have been bona fide residents of the
9 community prior to admission to the skilled nursing facility, then the community is
10 ~~exempt from the provisions of Title 22, chapter 103-A, but is~~ subject to the licensing
11 provisions of Title 22, chapter 405, and is entitled to only one skilled nursing facility bed
12 for every 4 residential units in the community. Any community exempted under ~~Title 22,~~
13 ~~chapter 103-A~~ rules adopted by the department may admit nonresidents of the community
14 to its skilled nursing facility only during the first 3 years of operation. For purposes of
15 this subsection, a "bona fide resident" means a person who has been a resident of the
16 community for a period of not less than 180 consecutive days immediately preceding
17 admission to the nursing facility or has been a resident of the community for less than 180
18 consecutive days but who has been medically admitted to the nursing facility resulting
19 from an illness or accident that occurred subsequent to residence in the community. Any
20 community exempted under ~~Title 22, chapter 103-A~~ rules adopted by the department is
21 not entitled to and may not seek any reimbursement or financial assistance under the
22 MaineCare program from any state or federal agency and, as a consequence, that
23 community must continue to provide nursing facility services to any person who has been
24 admitted to the facility.

25 Notwithstanding this subsection, a life-care community that holds a final certificate of
26 authority from the superintendent and that was operational on November 18, 2002 and
27 that is barred from seeking reimbursement or financial assistance under the MaineCare
28 program from a state or federal agency may continue to admit nonresidents of the
29 community to its skilled nursing facility after its first 3 years of operation with the
30 approval of the superintendent. A life-care community that admits nonresidents to its
31 skilled nursing facility as permitted under this subsection may continue to admit
32 nonresidents after its first 3 years of operation only for such period as approved by the
33 superintendent after the superintendent's consideration of the financial impact on the
34 life-care community and the impact on the contractual rights of subscribers of the
35 community.

36 **Sec. 15. 24-A MRSA §6226**, as amended by PL 2003, c. 510, Pt. A, §23, is
37 repealed.

38 **Sec. 16. 24-A MRSA §6951, sub-§6**, as enacted by PL 2003, c. 469, Pt. A, §8, is
39 amended to read:

40 **6. Technology assessment.** The forum shall conduct technology assessment reviews
41 to guide the use and distribution of new technologies in this State. ~~The forum shall make~~
42 ~~recommendations to the certificate of need program under Title 22, chapter 103-A.~~

