

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 482

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H.P. 345

House of Representatives, February 9, 2017

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

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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 "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative SANDERSON of Chelsea.  
Cosponsored by Senator BRAKEY of Androscoggin and  
Representatives: AUSTIN of Gray, CEBRA of Naples, CHACE of Durham, HANINGTON of  
Lincoln, HANLEY of Pittston, SAMPSON of Alfred, VACHON 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2 **Sec. 1. 22 MRSA c. 103-A**, as amended, is repealed.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, ¶D**, as amended by PL 2013, c. 594, §1, is  
4 repealed.

5 **Sec. 3. 22 MRSA §1714-A, sub-§4, ¶C**, as amended by PL 2011, c. 687, §8, is  
6 further amended to read:

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

12 **Sec. 4. 22 MRSA §1715, sub-§1, ¶A**, as corrected by RR 2001, c. 2, Pt. A, §34,  
13 is amended to read:

14 A. Is ~~either~~ a direct provider of major ambulatory service, as defined in section 382,  
15 subsection 8-A, ~~or is or has been required to obtain a certificate of need under section~~  
16 ~~329 or former section 304 or 304-A;~~

17 **Sec. 5. 22 MRSA §1831, sub-§1**, as amended by PL 2013, c. 214, §1, is further  
18 amended to read:

19 **1. Provision of information.** In order to provide for informed patient or resident  
20 decisions, a hospital or nursing facility shall provide a standardized list of licensed  
21 providers of care and services and available physicians for all patients or residents prior  
22 to discharge for whom home health care, hospice care, acute rehabilitation care, ~~a hospital~~  
23 ~~swing bed as defined in section 328, subsection 15~~ or nursing care is needed. The list  
24 must include a clear and conspicuous notice of the rights of the patient or resident  
25 regarding choice of providers.

26 A. For all patients or residents requiring home health care or hospice care, the list  
27 must include all licensed home health care and hospice providers that request to be  
28 listed and any branch offices, including addresses and phone numbers, that serve the  
29 area in which the patient or resident resides.

30 B. For all patients or residents requiring nursing facility care ~~or a hospital swing bed~~,  
31 the list must include all appropriate facilities that request to be listed that serve the  
32 area in which the patient or resident resides or wishes to reside and the physicians  
33 available within those facilities that request to be listed.

34 C. The hospital or nursing facility shall disclose to the patient or resident any direct  
35 or indirect financial interest the hospital or nursing facility has in the nursing facility  
36 or home health care provider.

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

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

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

7           **1.** ~~Subject to the Maine Certificate of Need Act of 2002, a~~ A person may apply to  
8 the superintendent for and obtain a certificate of authority to establish, maintain, own,  
9 merge with, organize or operate a health maintenance organization in compliance with  
10 this chapter. A person may not establish, maintain, own, merge with, organize or operate  
11 a health maintenance organization in this State either directly as a division or a line of  
12 business or indirectly through a subsidiary or affiliate, nor sell or offer to sell, or solicit  
13 offers to purchase or receive advance or periodic consideration in conjunction with, a  
14 health maintenance organization without obtaining a certificate of authority under this  
15 chapter.

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

18           **Sec. 9. 24-A MRSA §4204, sub-§2-A,** as amended by PL 2013, c. 588, Pt. A,  
19 §29, is further amended to read:

20           **2-A.** The superintendent shall issue or deny a certificate of authority to any person  
21 filing an application pursuant to section 4203 ~~within 50 business days of receipt of the~~  
22 ~~notice from the Department of Health and Human Services that the applicant has been~~  
23 ~~granted a certificate of need or, if a certificate of need is not required,~~ within 50 business  
24 days of receipt of notice from the Department of Health and Human Services that the  
25 applicant is in compliance with the requirements of paragraph B. Issuance of a certificate  
26 of authority ~~shall~~ must be granted upon payment of the application fee prescribed in  
27 section 4220 if the superintendent is satisfied that the following conditions are met:

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

31           ~~B. If the~~ The Commissioner of Health and Human Services ~~has determined that a~~  
32 ~~certificate of need is not required,~~ ~~the commissioner~~ makes a determination and  
33 provides a certification to the superintendent that the following requirements have  
34 been met:

35           (4) The health maintenance organization must establish and maintain procedures  
36 to ensure that the health care services provided to enrollees are rendered under  
37 reasonable standards of quality of care consistent with prevailing professionally  
38 recognized standards of medical practice. These procedures must include  
39 mechanisms to ensure availability, accessibility and continuity of care;

40           (5) The health maintenance organization must have an ongoing internal quality  
41 assurance program to monitor and evaluate its health care services including

1 primary and specialist physician services, ancillary and preventive health care  
2 services across all institutional and noninstitutional settings. The program must  
3 include, at a minimum, the following:

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

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

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

9 (ii) The organizational structure responsible for quality assurance  
10 activities;

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

13 (iv) Confidentiality policies and procedures;

14 (v) A system of ongoing evaluation activities;

15 (vi) A system of focused evaluation activities;

16 (vii) A system for reviewing and evaluating provider credentials for  
17 acceptance and performing peer review activities; and

18 (viii) Duties and responsibilities of the designated physician supervising  
19 the quality assurance activities;

20 (c) A written statement describing the system of ongoing quality assurance  
21 activities including:

22 (i) Problem assessment, identification, selection and study;

23 (ii) Corrective action, monitoring evaluation and reassessment; and

24 (iii) Interpretation and analysis of patterns of care rendered to individual  
25 patients by individual providers;

26 (d) A written statement describing the system of focused quality assurance  
27 activities based on representative samples of the enrolled population that  
28 identifies the method of topic selection, study, data collection, analysis,  
29 interpretation and report format; and

30 (e) Written plans for taking appropriate corrective action whenever, as  
31 determined by the quality assurance program, inappropriate or substandard  
32 services have been provided or services that should have been furnished have  
33 not been provided;

34 (6) The health maintenance organization ~~shall~~ must record proceedings of formal  
35 quality assurance program activities and maintain documentation in a  
36 confidential manner. Quality assurance program minutes must be available to the  
37 Commissioner of Health and Human Services;

38 (7) The health maintenance organization ~~shall~~ must ensure the use and  
39 maintenance of an adequate patient record system that facilitates documentation

1 and retrieval of clinical information to permit evaluation by the health  
2 maintenance organization of the continuity and coordination of patient care and  
3 the assessment of the quality of health and medical care provided to enrollees;

4 (8) Enrollee clinical records must be available to the Commissioner of Health  
5 and Human Services or an authorized designee for examination and review to  
6 ascertain compliance with this section, or as considered necessary by the  
7 Commissioner of Health and Human Services; and

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

11 ~~The Commissioner of Health and Human Services shall make the certification~~  
12 ~~required by this paragraph within 60 days of the date of the written decision that a~~  
13 ~~certificate of need was not required. If the commissioner~~ Commissioner of Health and  
14 Human Services certifies that the health maintenance organization does not meet all  
15 of the requirements of this paragraph, the commissioner shall specify in what respects  
16 the health maintenance organization is deficient;

17 C. The health maintenance organization conforms to the definition under section  
18 4202-A, subsection 10;

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

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

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

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

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

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

38 (b) The adequacy of working capital;

39 (c) Any agreement with an insurer, a nonprofit hospital or medical service  
40 corporation, a government or any other organization for insuring or providing  
41 the payment of the cost of health care services or the provision for automatic

- 1 applicability of an alternative coverage in the event of discontinuance of the  
2 plan;
- 3 (d) Any agreement with providers for the provision of health care services  
4 that contains a covenant consistent with subsection 6; and
- 5 (e) Any arrangements for insurance coverage or an adequate plan for self-  
6 insurance to respond to claims for injuries arising out of the furnishing of  
7 health care services;
- 8 E. The enrollees are afforded an opportunity to participate in matters of policy and  
9 operation pursuant to section 4206;
- 10 F. Nothing in the proposed method of operation, as shown by the information  
11 submitted pursuant to section 4203 or by independent investigation, is contrary to the  
12 public interest;
- 13 G. Any director, officer, employee or partner of a health maintenance organization  
14 who receives, collects, disburses or invests funds in connection with the activities of  
15 that organization ~~shall be~~ is responsible for those funds in a fiduciary relationship to  
16 the organization;
- 17 H. The health maintenance organization ~~shall maintain~~ maintains in force a fidelity  
18 bond or fidelity insurance on those employees and officers of the health maintenance  
19 organization who have duties as described in paragraph G, in an amount not less than  
20 \$250,000 for each health maintenance organization or a maximum of \$5,000,000 in  
21 aggregate maintained on behalf of health maintenance organizations owned by a  
22 common parent corporation, or such sum as may be prescribed by the  
23 superintendent;
- 24 I. If any agreement, as set forth in paragraph D, subparagraph (2), division (c), is  
25 made by the health maintenance organization, the entity executing the agreement  
26 with the health maintenance organization ~~must demonstrate~~ demonstrates to the  
27 superintendent's satisfaction that the entity has sufficient unencumbered surplus funds  
28 to cover the assured payments under the agreement, otherwise the superintendent  
29 shall disallow the agreement. In considering approval of such an agreement, the  
30 superintendent shall consider the entity's record of earnings for the most recent 3  
31 years, the risk characteristics of its investments and whether its investments and other  
32 assets are reasonably liquid and available to make payments for health services;
- 33 K. The health maintenance organization provides a spectrum of providers and  
34 services that meet patient demand;
- 35 L. The health maintenance organization meets the requirements of section 4303,  
36 subsection 1;
- 37 M. The health maintenance organization demonstrates a plan for providing services  
38 for rural and underserved populations and for developing relationships with essential  
39 community providers within the area of the proposed certificate. The health  
40 maintenance organization must make an annual report to the superintendent regarding  
41 the plan; and

1 O. ~~Each~~ The health maintenance organization ~~shall provide~~ provides basic health  
2 care services.

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

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

7 **§4225. Commissioner of Health and Human Services' authority to contract**

8 The Commissioner of Health and Human Services, in carrying out ~~his~~ the  
9 commissioner's obligations under sections ~~4204, subsection 1, paragraph B,~~ 4215 and  
10 4216, subsection 1, may contract with qualified persons to make recommendations  
11 concerning the determinations required to be made by ~~him~~ the commissioner. Such  
12 recommendations may be accepted in full or in part by the Commissioner of Health and  
13 Human Services.

14 **Sec. 11. 24-A MRSA §6203, sub-§1, ¶A**, as amended by PL 2003, c. 510, Pt. A,  
15 §22, is further amended to read:

16 A. The provider has ~~submitted to the department an application for a certificate of~~  
17 ~~need, if required under Title 22, section 329, and the department has submitted a~~  
18 ~~preliminary report of a recommendation for approval of a certificate of need and the~~  
19 ~~provider has applied for any other licenses or permits required prior to operation.~~

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

22 G. The department has approved the adequacy of all services proposed under the  
23 continuing care agreement ~~not otherwise reviewed under the certificate of need~~  
24 ~~process.~~

25 **Sec. 13. 24-A MRSA §6203, sub-§2**, as amended by PL 1995, c. 452, §§12 to  
26 16, is further amended to read:

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

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

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

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

37 G. The provider certifies to the superintendent either:



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

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

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

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

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

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

14 Within 120 days after determining that the application to the superintendent and the  
15 department is complete, the superintendent shall issue or deny a final certificate of  
16 authority to the provider, ~~unless a certificate of need is required, in which case the final~~  
17 ~~certificate of authority shall be issued or denied in accordance with the certificate of need~~  
18 ~~schedule.~~

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

21 **6. Provision of services to nonresidents.** The final certificate of authority must  
22 state whether any skilled nursing facility that is part of a life-care community or a  
23 continuing care retirement community may provide services to persons who have not  
24 been bona fide residents of the community prior to admission to the skilled nursing  
25 facility. If the life-care community or the continuing care retirement community admits  
26 to its skilled nursing facility only persons who have been bona fide residents of the  
27 community prior to admission to the skilled nursing facility, then the community is  
28 ~~exempt from the provisions of Title 22, chapter 103-A, but is~~ subject to the licensing  
29 provisions of Title 22, chapter 405; and is entitled to only one skilled nursing facility bed  
30 for every 4 residential units in the community. Any community exempted under ~~Title 22,~~  
31 ~~chapter 103-A~~ rules adopted by the department may admit nonresidents of the community  
32 to its skilled nursing facility only during the first 3 years of operation. For purposes of  
33 this subsection, a "bona fide resident" means a person who has been a resident of the  
34 community for a period of not less than 180 consecutive days immediately preceding  
35 admission to the nursing facility or has been a resident of the community for less than 180  
36 consecutive days but who has been medically admitted to the nursing facility resulting  
37 from an illness or accident that occurred subsequent to residence in the community. Any  
38 community exempted under ~~Title 22, chapter 103-A~~ rules adopted by the department is  
39 not entitled to and may not seek any reimbursement or financial assistance under the  
40 MaineCare program from any state or federal agency and, as a consequence, that  
41 community must continue to provide nursing facility services to any person who has been  
42 admitted to the facility.

1 Notwithstanding this subsection, a life-care community that holds a final certificate of  
2 authority from the superintendent and that was operational on November 18, 2002 and  
3 that is barred from seeking reimbursement or financial assistance under the MaineCare  
4 program from a state or federal agency may continue to admit nonresidents of the  
5 community to its skilled nursing facility after its first 3 years of operation with the  
6 approval of the superintendent. A life-care community that admits nonresidents to its  
7 skilled nursing facility as permitted under this subsection may continue to admit  
8 nonresidents after its first 3 years of operation only for such period as approved by the  
9 superintendent after the superintendent's consideration of the financial impact on the  
10 life-care community and the impact on the contractual rights of subscribers of the  
11 community.

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

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

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

19 **Sec. 17. 35-A MRSA §10122**, as enacted by PL 2011, c. 424, Pt. A, §6 and  
20 affected by Pt. E, §1, is amended to read:

21 **§10122. Health care facility program**

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

28 **Sec. 18. 38 MRSA §1310-X, sub-§4, ¶A**, as amended by PL 2003, c. 551, §17,  
29 is further amended to read:

30 A. A commercial biomedical waste disposal or treatment facility, if at least 51% of  
31 the facility is owned by a licensed hospital or hospitals ~~as defined in Title 22, section~~  
32 ~~328, subsection 14~~ or a group of hospitals that are licensed under Title 22 acting  
33 through a statewide association of Maine hospitals or a wholly owned affiliate of the  
34 association; and

35 **SUMMARY**

36 Under current law, before introducing additional health care services and procedures  
37 in a market area, a person must apply for and receive a certificate of need from the  
38 Department of Health and Human Services. This bill eliminates that requirement.