

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1554

S.P. 618

In Senate, April 10, 2023

An Act to Repeal Certificate of Need Requirements for Health Care Providers

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRAKEY of Androscoggin.
Cosponsored by Representative LIBBY of Auburn and
Senators: KEIM of Oxford, MOORE of Washington, Representatives: ARATA of New
Gloucester, HYMES of Waldo, JAVNER of Chester, MORRIS of Turner, PERKINS of Dover-
Foxcroft, WHITE of Guilford.

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2 **Sec. 1. 22 MRSA c. 103-A**, as amended, is repealed.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 further
4 amended to read:

5 D. Ensure that any calculation of an occupancy percentage or other basis for adjusting
6 the rate of reimbursement for nursing facility services to reduce the amount paid in
7 response to a decrease in the number of residents in the facility or the percentage of the
8 facility's occupied beds excludes all beds that the facility has removed from service for
9 all or part of the relevant fiscal period ~~in accordance with section 333~~. If the excluded
10 beds are converted to residential care beds or another program for which the department
11 provides reimbursement, nothing in this paragraph precludes the department from
12 including those beds for purposes of any occupancy standard applicable to the
13 residential care or other program pursuant to duly adopted rules of the department;

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

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

21 **Sec. 4. 22 MRSA §1715, sub-§1, ¶A**, as amended by PL 2017, c. 475, Pt. A, §29,
22 is further amended to read:

23 A. Is ~~either~~ a direct provider of major ambulatory service, as defined in former section
24 382, subsection 8-A, ~~or is or has been required to obtain a certificate of need under~~
25 ~~section 329 or former section 304 or 304-A;~~

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

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

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

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

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

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

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

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

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

20 **Sec. 8. 24-A MRSA §4204, sub-§1**, as corrected by RR 2021, c. 1, Pt. B, §342, is
21 repealed.

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

24 **2-A.** The superintendent shall issue or deny a certificate of authority to any person
25 filing an application pursuant to section 4203 ~~within 50 business days of receipt of the~~
26 ~~notice from the Department of Health and Human Services that the applicant has been~~
27 ~~granted a certificate of need or, if a certificate of need is not required, within 50 business~~
28 days of receipt of notice from the Department of Health and Human Services that the
29 applicant is in compliance with the requirements of paragraph B. Issuance of a certificate
30 of authority ~~shall~~ must be granted upon payment of the application fee prescribed in section
31 4220 if the superintendent is satisfied that the following conditions are met:;

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

35 ~~B. If the~~ The Commissioner of Health and Human Services ~~has determined that a~~
36 ~~certificate of need is not required, the commissioner makes a determination and~~
37 provides a certification to the superintendent that the following requirements have been
38 met:;

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

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

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

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

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

11 (ii) The organizational structure responsible for quality assurance
12 activities;

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

15 (iv) Confidentiality policies and procedures;

16 (v) A system of ongoing evaluation activities;

17 (vi) A system of focused evaluation activities;

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

20 (viii) Duties and responsibilities of the designated physician supervising
21 the quality assurance activities;

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

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

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

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

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

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

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

1 (7) The health maintenance organization shall must ensure the use and
2 maintenance of an adequate patient record system that facilitates documentation
3 and retrieval of clinical information to permit evaluation by the health maintenance
4 organization of the continuity and coordination of patient care and the assessment
5 of the quality of health and medical care provided to enrollees.;

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

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

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

19 C. The health maintenance organization conforms to the definition under section
20 4202-A, subsection 10.;

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

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

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

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

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

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

40 (b) The adequacy of working capital;

41 (c) Any agreement with an insurer, a nonprofit hospital or medical service
42 corporation, a government or any other organization for insuring or providing
43 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 that
4 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 superintendent;
- 23 I. If any agreement, as set forth in paragraph D, subparagraph (2), division (c), is made
24 by the health maintenance organization, the entity executing the agreement with the
25 health maintenance organization ~~must demonstrate~~ demonstrates to the
26 superintendent's satisfaction that the entity has sufficient unencumbered surplus funds
27 to cover the assured payments under the agreement, otherwise the superintendent shall
28 disallow the agreement. In considering approval of such an agreement, the
29 superintendent shall consider the entity's record of earnings for the most recent 3 years,
30 the risk characteristics of its investments and whether its investments and other assets
31 are reasonably liquid and available to make payments for health services;
- 32 K. The health maintenance organization provides a spectrum of providers and services
33 that meet patient demand;
- 34 L. The health maintenance organization meets the requirements of section 4303,
35 subsection 1;
- 36 M. The health maintenance organization demonstrates a plan for providing services
37 for rural and underserved populations and for developing relationships with essential
38 community providers within the area of the proposed certificate. The health
39 maintenance organization must make an annual report to the superintendent regarding
40 the plan; and
- 41 O. ~~Each~~ The health maintenance organization ~~shall provide~~ provides basic health care
42 services.

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

3 **Sec. 10. 24-A MRSA §4225**, as corrected by RR 2021, c. 2, Pt. A, §79, is amended
4 to read:

5 **§4225. Commissioner of Health and Human Services' authority to contract**

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

11 **Sec. 11. 24-A MRSA §6203, sub-§1, ¶A**, as amended by PL 2003, c. 510, Pt. A,
12 §22, is further amended to read:

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

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

19 G. The department has approved the adequacy of all services proposed under the
20 continuing care agreement ~~not otherwise reviewed under the certificate of need~~
21 ~~process.~~

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

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

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

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

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

34 G. The provider certifies to the superintendent either:

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

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

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

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

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

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

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

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

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

34 Notwithstanding this subsection, a life-care community that holds a final certificate of
35 authority from the superintendent and that was operational on November 18, 2002 and that
36 is barred from seeking reimbursement or financial assistance under the MaineCare program
37 from a state or federal agency may continue to admit nonresidents of the community to its
38 skilled nursing facility after its first 3 years of operation with the approval of the
39 superintendent. A life-care community that admits nonresidents to its skilled nursing
40 facility as permitted under this subsection may continue to admit nonresidents after its first
41 3 years of operation only for such period as approved by the superintendent after the
42 superintendent's consideration of the financial impact on the life-care community and the
43 impact on the contractual rights of subscribers of the community.

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

