

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

CHAPTER 688

H.P. 1561 - L.D. 2192

An Act to Create a Nonlegislative System to Adjust Municipal Valuations in the Circumstance of Sudden and Severe Valuation Disruption

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

Sec. 1. 36 MRSA §208-A is enacted to read:

§208-A. Adjustment for sudden and severe disruption of valuation

1. Request for adjustment. A municipality that has experienced a sudden and severe disruption in its municipal valuation may request an adjustment to the equalized valuation determined by the State Tax Assessor under section 208. A municipality requesting an adjustment under this section must file a petition, with supporting documentation, with the State Tax Assessor by the August 1st preceding the October 1st when municipalities are notified of proposed valuations under section 208.

2. Sudden and severe disruption. A municipality experiences a sudden and severe disruption in its municipal valuation if:

A. The municipality experiences an equalized net reduction in valuation from the equalized valuation that would apply without adjustment under this section. The net reduction must be at least 2% for valuations based on the status of property on April 1, 1998 and 5% for valuations in subsequent years;

B. The equalized net reduction is attributable to the closure, removal, replacement, retrofit, obsolescence, disaster or abatement attributable to a single taxpayer; and

C. The municipality's equalized tax rate of residential property exceeds the state average.

3. Procedure. On receipt of a request by a municipality for adjustment under this section, the State Tax Assessor shall examine the documentation provided by the municipality and determine if the municipality qualifies for an adjustment under this section. If the State Tax Assessor determines that a municipality qualifies for an adjustment under this section, the State Tax Assessor shall calculate an adjusted state valuation for the municipality by reducing the amount that is determined under section 208 by the amount of the net sudden and severe disruption of equalized valuation.

4. Notifications. The State Tax Assessor shall notify the Commissioner of Education and the Treasurer of State of any adjusted state valuation determined under this section by February 1st of the year following the request for an adjustment.

5. Effect of modified state valuation. The determination of an adjusted state valuation has the following effect.

A. The Commissioner of Education shall use the adjusted state valuation for the municipality instead of the valuation certified under section 305 in calculating the distribution of state funds to support education.

B. The Treasurer of State shall use the adjusted state valuation instead of the valuation certified under section 305 in calculating the distribution of state municipal revenue sharing.

See title page for effective date.

CHAPTER 689

H.P. 1633 - L.D. 2261

An Act to Implement the Recommendations of the Commission to Study the Certificate of Need Laws

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

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§38, as enacted by PL 1987, c. 786, §5, is amended to read:

38. Certificate of Need Services: Health Facilities \$25/DAY of Need Advisory Committee 22 MRSA §307-§306-B

Sec. A-2. 22 MRSA §253, sub-§3, as enacted by PL 1995, c. 653, Pt. C, §1 and affected by §3, is amended to read:

3. Public hearings; consultation with Certificate of Need Advisory Committee. Prior to adopting the state health plan and in reviewing the state health plan, the department shall conduct public hearings in different regions of the State on the proposed state health plan. Interested persons must be given the opportunity to submit oral and written testimony. Not less than 30 days before each hearing, the department shall publish in a newspaper of general circulation in the region the time and place of the hearing, the place

where interested persons may review the plan in advance of the hearing and the place to which and period during which written comment may be directed to the department. Prior to adopting the state health plan and in reviewing the state health plan, the department shall provide copies to and shall meet and consult with the Certificate of Need Advisory Committee as provided in section 306-B, subsection 2, paragraph A.

PART B

Sec. B-1. 22 MRSA §302, sub-§2, as enacted by PL 1977, c. 687, §1, is amended to read:

2. Purposes. The purposes of this chapter are to:

A. ~~Promote~~ Support effective health planning;

B. ~~Assist in providing~~ Support the provision of quality health care ~~at the lowest possible cost in a manner that ensures access to cost-effective services;~~

C. ~~Avoid unnecessary duplication in health facilities and health services and ensure that only those facilities that are needed will be built or modified;~~

C-1. Support reasonable choice in health care services while avoiding excessive duplication;

D. ~~Assure~~ Ensure that state funds are ~~not used to support unnecessary capital expenditures made by or on behalf of~~ prudently in the provision of health care facilities services;

E. ~~Provide an orderly method of resolving questions concerning the need for health care facilities and health services which are proposed to be developed;~~

F. ~~Permit consumers of health services to participate~~ Ensure public participation in the process of determining the array, distribution, quantity, quality and cost of these services; ~~and~~

G. ~~Provide for a certificate of need program which meets the requirements of the National Health Planning and Resources Development Act of 1974, Public Law 93-641 and its accompanying regulations.~~

H. Improve the availability of health care services throughout the State;

I. Support the development and availability of health care services regardless of the consumer's ability to pay; and

J. Seek a balance, to the extent a balance assists in achieving the purposes of this subsection, be-

tween competition and regulation in the provision of health care.

Sec. B-2. 22 MRSA §303, sub-§3-A, as enacted by PL 1983, c. 579, §6, is repealed.

Sec. B-3. 22 MRSA §303, sub-§6-A, as enacted by PL 1981, c. 705, Pt. V, §4, is repealed and the following enacted in its place:

6-A. Expenditure minimum for annual operating costs. The "expenditure minimum for annual operating costs" is, for services commenced after October 1, 1998, \$350,000 for the 3rd fiscal year, including a partial first year, as adjusted pursuant to section 305-A.

Sec. B-4. 22 MRSA §303, sub-§7, as amended by PL 1995, c. 696, Pt. A, §2, is repealed and the following enacted in its place:

7. Health care facility. "Health care facility" means a hospital, psychiatric hospital, nursing facility, kidney disease treatment center including free-standing hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization center or cancer treatment center. The term does not include the office of a private physician or physicians, dentist or dentists, whether in individual or group practice.

Sec. B-5. 22 MRSA §303, sub-§§8 and 9, as enacted by PL 1977, c. 687, §1, are amended to read:

8. Health maintenance organization. "Health maintenance organization" means a public or private organization ~~which~~ that:

A. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive health services and out-of-area coverage;

B. Is compensated, except for copayments, for the provision of the basic health services to enrolled participants on a predetermined periodic rate basis; and

C. Provides physicians' services primarily through physicians who are either employees or partners of the organization or through arrangements with individual physicians or one or more groups of physicians.

9. Health services. "Health services" means clinically related ~~services,~~ that is, are diagnostic, treatment ~~or,~~ rehabilitative services or nursing services

provided by a nursing facility; and includes alcohol, drug abuse and mental health services.

Sec. B-6. 22 MRSA §303, sub-§12-A, as enacted by PL 1981, c. 705, Pt. V, §7, is amended to read:

12-A. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions ~~which is~~ used to provide medical and other health services and ~~which that~~ costs ~~\$300,000~~ \$1,000,000 or more. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under the United States Social Security Act, Title XVIII, to meet the requirements of Section 1861 (s), paragraphs 10 and 11 of that Act. In determining whether medical equipment costs more than ~~\$300,000~~ \$1,000,000, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment ~~shall~~ must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Sec. B-7. 22 MRSA §303, sub-§17, as repealed and replaced by PL 1983, c. 579, §7, is amended to read:

17. Project. "Project" means any acquisition, capital expenditure, new health service, ~~termination~~ or change in a health service, predevelopment activity or other activity ~~which that~~ requires a certificate of need under section 304-A.

Sec. B-8. 22 MRSA §303, sub-§17-B is enacted to read:

17-B. Replacement equipment. "Replacement equipment" means a piece of capital equipment that replaces another piece of capital equipment that performs essentially the same functions as the replaced equipment.

Sec. B-9. 22 MRSA §303, sub-§18, as amended by PL 1981, c. 705, Pt. V, §13, is repealed.

Sec. B-10. 22 MRSA §304-A, as amended by PL 1997, c. 242, §1, is further amended to read:

§304-A. Certificate of need required

No person may enter into any commitment for financing a project that requires a certificate of need or incur an ~~obligation~~ expenditure for the project without having sought and received a certificate of need, except that this prohibition does not apply to ~~commitments~~ obligations for financing conditioned upon the

receipt of a certificate of need or to obligations for predevelopment activities ~~of less than \$150,000 for health care facilities other than hospitals or \$250,000 for hospitals.~~

Except as provided in ~~sections 304-D and section 304-E~~, a certificate of need from the department ~~shall~~ be is required for:

1. Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control. Any ~~transfer of ownership or acquisition by or on behalf of a health care facility~~ under lease or comparable arrangement or through donation, ~~which or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department;~~

~~1-A. Acquisition of control.~~ Any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the acquisition of control had been by purchase, ~~except in emergencies when such acquisition of control is at the direction of the department;~~

2. Acquisitions of certain major medical equipment. Acquisitions of major medical equipment with a cost in the aggregate of \$1,000,000 or more, as adjusted pursuant to section 305-A. ~~There is a waiver for the~~ The use of major medical equipment on a temporary basis ~~as provided in section 308, subsection 4 in the case of a natural disaster, major accident or equipment failure and the use of replacement equipment does not require a certificate of need;~~

~~2-A. Acquisitions of major medical equipment with a cost in the aggregate of \$1,000,000 or more.~~ Acquisitions of major medical equipment with a cost in the aggregate of \$1,000,000 or more by ambulatory surgical centers, independent cardiac catheterization centers, independent radiologic service centers and centers providing endoscopy, sigmoidoscopy, colonoscopy or other similar procedures associated with gastroenterology;

3. Capital expenditures. ~~The~~ Except as provided in subsection 8-A, the obligation by or on behalf of a health care facility, ~~except a hospital,~~ of any capital expenditure of \$500,000 \$2,000,000 or more, except that any transfer of ownership is reviewable as adjusted pursuant to section 305-A. Capital expenditures in the case of a natural disaster, major accident or equipment failure for replacement equipment or for parking lots and garages, information and communications systems and physician office space do not require a certificate of need;

3-A. Hospital capital expenditures. The obligation, by or on behalf of a hospital, of any capital expenditure of \$2,000,000 or more, except that:

A. A capital expenditure for the purpose of acquiring major medical equipment is reviewable only to the extent provided in subsection 2; and

B. Any transfer of ownership of a hospital is reviewable.

4. New health service. The offering or development of any new health service. For purposes of this section, "new health services service" includes only the following:

A. The obligation of any capital expenditures by or on behalf of a health care facility of \$100,000 or more, as adjusted pursuant to section 305-A, that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered; or

B. The addition of a health service that is to be offered by or on behalf of a health care facility that was not offered on a regular basis by or on behalf of the facility within the 12-month period prior to the time the services would be offered, and that, for the 3rd fiscal year of operation, including a partial first year, following addition of that service, absent any adjustment for inflation, is projected to entail annual operating costs of at least the expenditure minimum for annual operating costs; or \$350,000, as adjusted pursuant to section 305-A.

C. The addition of a health service that falls within a category of health services that are subject to review regardless of capital expenditure or operating cost and which category the department has defined through regulations promulgated pursuant to section 312.

This subsection does not prohibit a nursing facility from converting beds used for the provision of nursing services to beds to be used for the provision of residential care services. If such a conversion occurs, public funds are not obligated for payment of services provided in the converted beds;

A certificate of need is not required for a health care facility that extends a current service within the defined primary service area of the facility by purchasing within a 12-month time period new equipment costing in the aggregate less than \$1,000,000, as adjusted pursuant to section 305-A;

5. Termination of a health service. The obligation of any capital expenditure by or on behalf of a

~~health care facility other than a hospital that is associated with the termination of a health service that was previously offered by or on behalf of the health care facility; except, neither the conversion of licensed nursing facility beds to residential care beds nor a decrease in the licensed or certified bed capacity of a nursing facility may be considered a termination of a health service;~~

6. Changes in bed complement. Any change increase in the existing licensed bed complement or any increase in the licensed bed category of a health care facility ~~other than a hospital; except that a decrease in the licensed or certified bed capacity of a nursing facility is not subject to review so long as any capital expenditure incurred in the decrease does not trigger review under subsection 3;~~

6-A. Increases in licensed bed capacity of a hospital. Any change in the existing bed complement of a hospital, in any 2-year period, that:

A. ~~Increases the licensed or certified bed capacity of the hospital by more than 10% or more than 5 beds, whichever is less; or~~

B. ~~Increases the number of beds licensed or certified by the department to provide a particular level of care by more than 10% of that number or more than 5 beds, whichever is less;~~

7. Predevelopment activities. Any appropriately capitalized expenditure of \$150,000 or more or, in the case of hospitals, \$250,000 or more for predevelopment activities proposed to be undertaken in preparation for any project that would itself require a certificate of need;

8. New health care facilities. ~~The construction, development or other establishment of a new health care facility; and~~

8-A. Nursing facilities. The obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$500,000 or more, as adjusted pursuant to section 305-A.

A certificate of need is not required for a nursing facility to convert beds used for the provision of nursing services to beds to be used for the provision of residential care services. If such a conversion occurs, public funds are not obligated for payment of services provided in the converted beds; and

9. Other circumstances. In the following circumstances:

A. Any proposed use of major medical equipment to serve inpatients of a hospital, if the equipment is not located in a health care facility

and was acquired without a certificate of need, except acquisitions ~~waived under section 308, subsection 4 exempt from review under subsection 2 or 3;~~ or

B. If a person adds a health service not subject to review under subsection 4, paragraph A ~~or C~~ and ~~which was~~ not deemed subject to review under subsection 4, paragraph B at the time it was established and ~~which was~~ not reviewed and approved prior to establishment at the request of the applicant, and its actual 3rd fiscal year operating cost, as adjusted by an appropriate inflation deflator promulgated by the department, ~~after consultation with the Maine Health Care Finance Commission,~~ exceeds the expenditure minimum for annual operating cost in the 3rd fiscal year of operation following addition of these services.

Sec. B-11. 22 MRSA §304-B, sub-§1, as enacted by PL 1981, c. 705, Pt. V, §17, is amended to read:

1. Criteria for subsequent review. The following activities require subsequent review and approval, if the department has previously issued a certificate of need and if within ~~one year~~ 3 years after the approved activity is undertaken:

- A. There is a significant change in financing;
- B. There is a change affecting the licensed or certified bed capacity as approved in the certificate of need;
- C. There is a change involving the addition or termination of the health services proposed to be rendered ~~by the facility;~~
- D. There is a change in the site or the location of the proposed facility; or
- E. There is a substantial change proposed in the design of the facility or the type of construction.

Sec. B-12. 22 MRSA §304-D, as amended by PL 1995, c. 696, Pt. A, §§15 and 16, is repealed.

Sec. B-13. 22 MRSA §304-E, sub-§§1 and 6, as enacted by PL 1987, c. 725, §2, are amended to read:

1. Request for waiver. An applicant for a project requiring a certificate of need, ~~other than a project related to acute patient care or a project that could affect the financial requirements of a hospital under chapter 107,~~ may request a waiver of the review requirements under this chapter. The applicant shall submit, with the request, sufficient written documentation to demonstrate that the proposed project meets the

conditions of this section and that sufficient public notice of the proposed waiver has been given.

6. Report to Legislature. The department shall submit an annual report to the joint standing committee of the Legislature having jurisdiction over health and human resources services matters on the implementation and operation of this section no later than February 15th of each year.

Sec. B-14. 22 MRSA §304-F, sub-§1, as enacted by PL 1995, c. 696, Pt. A, §17, is amended to read:

1. Procedures. A nursing ~~home~~ facility that voluntarily reduces the number of its licensed beds for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section, provided the facility has been in continuous operation and has not been purchased or leased. To convert beds back to nursing facility beds under this subsection, the nursing facility must:

- A. Give notice of its intent to preserve conversion options to the department no later than 30 days after the effective date of the license reduction; and
- B. Obtain a certificate of need to convert beds back under section 309, except that if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2.

Sec. B-15. 22 MRSA §304-G is enacted to read:

§304-G. Nursing facility projects

Nursing facility projects that propose to add new nursing facility beds to the inventory of nursing facility beds within the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the Legislature. A nursing facility project that proposes renovation, replacement or other actions that will increase Medicaid costs may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs, except that the department may approve, without a prior appropriation for the express purpose, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 304-F, if the annual total of reopened beds approved does not exceed 100.

Sec. B-16. 22 MRSA §305, as enacted by PL 1977, c. 687, §1, is repealed.

Sec. B-17. 22 MRSA §305-A is enacted to read:

§305-A. Annual proposal to adjust for inflation

By December 1st annually, the department shall submit to the joint standing committee of the Legislature having jurisdiction over health and human services matters proposed legislation to adjust the monetary figures contained in this chapter to reflect changes in the Consumer Price Index medical index.

Sec. B-18. 22 MRSA §306-A, sub-§5-A is enacted to read:

5-A. Public informational meeting. Within 30 days of the filing of an application, the department shall advertise and conduct in a location convenient to the proposal location a public informational meeting at which the applicant shall present information about the proposal.

Sec. B-19. 22 MRSA §306-A, sub-§8, ¶¶B and C, as enacted by PL 1995, c. 696, Pt. A, §19, are amended to read:

B. If the approved capital expenditure or operating cost upon which the fees were based is higher than the initially proposed capital expenditure, then the filing fee must be recalculated and the difference in fees, if any, must be paid before the certificate of need may be issued.

C. Rules adopted pursuant to this subsection are major substantive routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

Sec. B-20. 22 MRSA §306-B is enacted to read:

§306-B. Certificate of Need Advisory Committee

The Certificate of Need Advisory Committee, established by Title 5, section 12004-I, subsection 38 and referred to in this section as the "committee," shall participate with the department in the public hearing process under section 307, subsection 2-B.

1. Appointment. The members of the Certificate of Need Advisory Committee are appointed according to this subsection.

A. The committee is composed of 10 members, 9 of whom are appointed by the Governor. The commissioner shall name a person employed by the department as the commissioner's designee to serve as an ex officio, nonvoting member of the committee. The 9 members appointed by the Governor must be selected in accordance with the following requirements.

(1) Four members must be appointed as follows:

(a) One member must represent the hospitals;

(b) One member must represent the nursing home industry;

(c) One member must represent major 3rd-party payors; and

(d) One member must represent providers.

In appointing these representatives, the Governor shall consider recommendations made by the Maine Hospital Association, the Maine Health Care Association, the Maine Medical Association, the Maine Osteopathic Association and other representative organizations.

(2) Five public members must be appointed as consumers of health care. One of these members must be designated on an annual basis by the Governor as chair of the committee. Neither the public members nor their spouses or children may, within 12 months preceding the appointment, have been affiliated with, employed by or have had any professional affiliation with any health care facility or institution or nursing facility, health product manufacturer or corporation or insurer providing coverage for hospital or medical care; however, neither membership in or subscription to a service plan maintained by a nonprofit hospital and medical service organization, nor enrollment in a health maintenance organization, nor membership as a policy holder in a mutual insurer or coverage under such a policy, nor the purchase of or coverage under a policy issued by a stock insurer may disqualify a person from serving as a public member.

B. Appointed members of the committee serve for terms of 4 years. Members are limited to 2 4-year terms.

C. Vacancies among appointed members must be filled by appointment by the Governor for the unexpired term. A vacancy in the office of the chair must be filled by the Governor, who shall designate a new chair for the balance of the member's term as chair. The Governor may remove any appointed member who becomes disqualified by virtue of the requirements of paragraph A or for neglect of any duty required

by law or for incompetency or dishonorable conduct.

D. Each appointed member of the committee is entitled to compensation according to Title 5, chapter 379.

E. Five members of the committee constitute a quorum. Actions of the committee must be by majority vote.

2. Duties. The committee shall perform the following duties:

A. Review proposed rules, criteria, standards and procedures for the certificate of need process and the state health plan prior to their adoption, review the annual certificate of need report prepared by the department and advise the commissioner with regard to certificate of need; and

B. Conduct the public hearing required under section 307, subsection 2-B.

Sec. B-21. 22 MRSA §307, sub-§2-A, as amended by PL 1995, c. 696, Pt. A, §20, is repealed.

Sec. B-22. 22 MRSA §307, sub-§6-A, as amended by PL 1995, c. 696, Pt. A, §24, is further amended to read:

6-A. Review cycles. The department shall establish review cycles for the review of applications. There must be at least one review cycle for each type or category of project each calendar year, the dates for which must be published at least 3 months in advance. An application must be reviewed during the next scheduled review cycle following the date on which the application is either declared complete or submitted for review pursuant to section 306-A, subsection 4, paragraph B. ~~Nursing home projects that propose to add new nursing home beds to the inventory of nursing home beds within the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the Legislature. A nursing home project that proposes renovation, replacement or other actions that will increase Medicaid costs may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs, except that the department may approve, without a prior appropriation for the express purpose, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 304 F, provided that the annual total of reopened beds approved does not exceed 100.~~ The department may hold an application for up to 90 days following the commencement of the next scheduled review cycle if, on the basis of one or more letters of intent on file at the time the application is either declared complete or submitted for review pursuant to section 306-A,

subsection 4, paragraph B, the department expects to receive within the additional 90 days one or more other applications pertaining to similar types of services, facilities or equipment affecting the same health service area. Pertinent health service areas must be defined in rules adopted by the department pursuant to section 312.

Sec. B-23. 22 MRSA §308, sub-§1, ¶A, as amended by PL 1985, c. 418, §11, is further amended to read:

A. Meets an already demonstrated need as established by applicable state health plans or by the rules of the department; and

Sec. B-24. 22 MRSA §308, sub-§1, ¶B, as amended by PL 1985, c. 418, §11, is repealed.

Sec. B-25. 22 MRSA §308, sub-§1-A, as enacted by PL 1997, c. 242, §2, is amended to read:

1-A. Acquisition of control. The department shall waive the requirements of section 309, subsection 1, paragraphs C and D and conduct a simplified review process in accordance with this section for an acquisition of control of health care facilities pursuant to section 304-A, subsection ~~1-A~~ 1, if the acquisition consists of a management agreement or similar arrangement and primarily involves day-to-day operation of the facility in its current form. The department shall complete its review of arrangements qualifying for simplified review within 45 days of the filing of a completed application.

Sec. B-26. 22 MRSA §308, sub-§3, as enacted by PL 1979, c. 601, §2, is amended to read:

3. Emergency certificate of need. The department shall determine that an emergency situation exists whenever it finds that an applicant has demonstrated:

A. The necessity for immediate or temporary relief due to natural disaster, fire, unforeseen safety consideration, major accident, equipment failure, foreclosure, receivership or action of the department or other circumstances determined appropriate by the department;

B. The serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular requirements of this chapter and the rules ~~and regulations promulgated~~ adopted by the department; and

C. The lack of substantial change in the facility or services ~~which~~ that existed before the emergency situation.

In an emergency situation the department may waive in writing any penalties for failure to receive a certificate of need for an otherwise reviewable project. After the emergency is resolved the department shall review the action to determine whether any additional review is required.

Sec. B-27. 22 MRSA §308, sub-§4, as enacted by PL 1981, c. 705, Pt. V, §30, is repealed.

Sec. B-28. 22 MRSA §308, sub-§5, as enacted by PL 1987, c. 436, §5, is repealed.

Sec. B-29. 22 MRSA §309, sub-§5, as enacted by PL 1981, c. 705, Pt. V, §33, is amended to read:

5. Standards applied in certificate of need.

The commissioner shall, in issuing a certificate of need, make ~~his~~ the decision, to the maximum extent practicable, directly related to criteria established under federal laws and standards or criteria prescribed in ~~regulations promulgated~~ rules adopted by the department pursuant to subsections 1 to 4 and section 312.

The commissioner ~~shall~~ may not deny issuance of a certificate of need, or make ~~his~~ the decision subject to fulfillment of a condition on the part of the applicant, except ~~where~~ when the denial or condition directly relates to criteria established under federal laws and standards or criteria prescribed in ~~regulations promulgated~~ rules adopted by the department in accordance with subsections 1 to 4 and section 312, ~~which~~ that are pertinent to the application.

Sec. B-30. 22 MRSA §309, sub-§6, as amended by PL 1995, c. 696, Pt. A, §29, is repealed.

Sec. B-31. 22 MRSA §311, 3rd ¶, as enacted by PL 1985, c. 701, is amended to read:

In civil actions involving competitive reviews of proposals to construct new nursing ~~home~~ facility beds, the court shall require the party seeking judicial review to give security in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any other party who is found to have been wrongfully delayed or restrained from proceeding to implement the certificate of need, provided that for good cause shown and recited in the order, the court may waive the giving of security. A surety upon a bond or undertaking under this paragraph submits ~~himself~~ the surety to the jurisdiction of the court and irrevocably appoints the clerk of the court as ~~his~~ the agent for the ~~surety~~ upon whom any papers affecting ~~his~~ the liability on the bond or undertaking may be served. ~~His~~ The liability of the surety may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court

prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

Sec. B-32. 22 MRSA §312, as amended by PL 1981, c. 705, Pt. V, §34, is further amended to read:

§312. Rules

The department shall adopt any rules, ~~regulations~~, standards, criteria ~~or~~ plans or procedures that may be necessary to carry out the provisions and purposes of this Act. The department shall, to the extent applicable, take into consideration recommendations contained in the state health plan ~~as approved by the Governor and the recommendations of the Certificate of Need Advisory Committee under section 306-A, subsection 2, paragraph A.~~ The department shall provide for public notice and hearing on all proposed rules, ~~regulations~~, standards, criteria, plans, procedures or schedules pursuant to Title 5, chapter 375. Unless otherwise provided by this chapter, rules adopted pursuant to this chapter are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. The department is authorized to accept any federal funds to be used for the purposes of carrying out this chapter.

Sec. B-33. 22 MRSA §316-A, as amended by PL 1983, c. 200, §§1 to 3, is further amended to read:

§316-A. Exemptions

Except as otherwise specifically provided, nothing in this Act ~~shall~~ may be construed to preempt, replace or otherwise negate the requirements of any other laws or regulations governing health care facilities. The requirements of this Act ~~shall~~ do not apply with respect to:

1. Health care facilities. Any health care facility:

A. Operated by religious groups relying solely on spiritual means through prayer for healing; ~~or~~

~~B. For which any construction, modification or other change subject to this Act has been reviewed and has received approval pursuant to the United States Social Security Act, Section 1122, from appropriate agencies prior to the effective date of this Act;~~

2. Activities; acquisitions. Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National

Health Planning and Resources Development Act of 1974, as amended and its accompanying regulations; ~~and~~

3. Home health care services. Home health care services offered by a home health care provider ~~prior to 90 days after adjournment of the Second Regular Session of the 110th Legislature; and~~

5. Hospice. Hospice services and programs.

6. Assisted living. Assisted living programs and services regulated under chapter 1665;

7. Existing capacity. The use by an ambulatory surgical facility licensed on January 1, 1998 of capacity in existence on January 1, 1998;

Sec. B-34. 22 MRSA §317-A, sub-§2, as enacted by PL 1981, c. 705, Pt. V, §38, is amended to read:

2. Maximum expenditure. In issuing a certificate of need, the department shall specify the maximum capital expenditures ~~which that~~ may be obligated under this certificate. The department shall, by ~~regulations promulgated~~ rules adopted pursuant to section 312, prescribe the method to be used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under certificates and establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

Sec. B-35. 22 MRSA §317-A, sub-§3, as amended by PL 1985, c. 418, §17, is further amended to read:

3. Periodic review. After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need ~~shall expire~~ expires if the project for which the certificate has been issued is not commenced within 12 months following the issuance of the certificate. The department may grant an extension of a certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced. The department may require evidence of the continuing feasibility and availability of financing for a project as a condition for extending the life of certificate. In addition if on the basis of its periodic review of progress under the certificate, the department determines that the holder of a certificate is not otherwise meeting the timetable and is not making a good faith effort to meet it, the department may, after a hearing, withdraw the certificate of need. The department shall in accordance with section 312

~~promulgate the necessary procedures~~ adopt rules for withdrawal of certificates of need.

Sec. B-36. 22 MRSA §323, as enacted by PL 1981, c. 705, Pt. V, §39, is repealed.

Sec. B-37. 22 MRSA §324, as repealed and replaced by PL 1995, c. 696, Pt. A, §31, is amended to read:

§324. Review

The department shall convene meetings of the public, providers and consumers of health care, state agencies, insurers and managed care entities, the Certificate of Need Advisory Committee and interested parties to examine the operation of the certificate of need laws, rules, standards, criteria and procedures and shall report to the legislative joint standing committee of the Legislature having jurisdiction over health and ~~institutional~~ human services matters not later than January 31, ~~1999~~ 2001 on the continuing feasibility of this chapter.

PART C

Sec. C-1. Adoption of rules, standards, criteria and procedures. Beginning November 1, 1998, the Department of Human Services shall adopt new rules, standards, criteria and procedures for the certificate of need process, consistent with the Maine Revised Statutes, Title 22, chapter 103, as amended, in accordance with the requirements of Title 5, chapter 375, subchapter II.

Sec. C-2. Effective date. This Act takes effect October 1, 1998.

Effective October 1, 1998.

CHAPTER 690

H.P. 1640 - L.D. 2273

An Act to Amend the Animal Welfare Laws

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

Sec. 1. 7 MRSA §3906-B, sub-§§1 and 2, as enacted by PL 1991, c. 779, §9, are amended to read:

1. Dog licensing laws. The commissioner shall carry out the dog licensing laws and furnish to municipalities all license blanks, stickers and tags.

2. Animal Welfare Fund. The commissioner shall deposit all license fees received pursuant to