

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 12, 2009

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

Augusta, Maine
2009

~~to another~~ or more nursing facilities to one or more existing or new nursing facilities:

A. May also propose renovation, replacement or other actions requiring certificate of need review; and

B. May be approved by the department upon a showing by the petitioner that the petitioner has acquired bed rights from another nursing facility or facilities that agree to delicense beds, or that are ceasing operations or otherwise reconfiguring their operations, and that the MaineCare revenues associated with these acquired bed rights and related actions are sufficient to cover the additional requested MaineCare costs associated with the project.

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool.

Sec. 5. 22 MRSA §334-A, sub-§2-A is enacted to read:

2-A. Other types of certificate of need projects.

Other types of nursing facility projects that do not add new nursing facility beds to the inventory of nursing facility beds within the State and do not propose to relocate beds from one facility to another existing or new facility and that propose any renovation, replacement or other actions requiring certificate of need review, such as capital expenditures for equipment and renovations that are above applicable thresholds, or that propose actions that do not require a certificate of need, such as the addition of residential care beds to be funded by the MaineCare program, may be approved by the department upon a showing that:

A. The petitioner, or one or more nursing facilities under common ownership or control, has agreed to delicense a sufficient number of beds from the total number of currently licensed or reserved beds, or is otherwise reconfiguring its operations, so that the MaineCare savings associated with such actions are sufficient to fully offset any incremental MaineCare costs that would otherwise arise from implementation of the certificate of need project and, as a result, there are no net incremental MaineCare costs arising from implementation of the certificate of need project; or

B. The petitioner, or one or more nursing facilities under common ownership or control, has acquired bed rights from another nursing facility or facilities that agree to delicense beds or that are ceasing operations or otherwise reconfiguring their operations, and that the MaineCare revenues associated with these acquired bed rights and related actions are sufficient to cover the additional requested MaineCare costs associated with the project.

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool.

Sec. 6. Review of flexibility in MaineCare budget neutrality requirements. The Department of Health and Human Services shall work with stakeholders to identify possible methods for creating more flexibility in the laws governing nursing facility projects that are subject to MaineCare budget neutrality requirements, including, but not limited to, the conversion of nursing facility beds to residential care facility beds, transfers between nursing facilities and residential care facilities and transfers of ownership. In conducting this review the department shall consider the available data and information on the adequacy of existing nursing facilities, residential care facilities and long-term care facilities. The department shall report recommendations, including any necessary legislation, to the Joint Standing Committee on Health and Human Services no later than February 15, 2010. The Joint Standing Committee on Health and Human Services is authorized to submit legislation related to the recommendations to the Second Regular Session of the 124th Legislature.

See title page for effective date.

**CHAPTER 430
H.P. 803 - L.D. 1164**

An Act To Amend the Maine Certificate of Need Act of 2002 To Change Nursing Facilities Review Thresholds for Energy Efficiency Projects and for Replacement Equipment

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

Sec. 1. 22 MRSA §329, sub-§6, as enacted by PL 2001, c. 664, §2, is repealed and the following enacted in its place:

6. Nursing facilities. The obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$510,000 or more and, beginning January 1, 2010, the obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$1,000,000 or more.

A certificate of need is not required for the following:

A. A nursing facility 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, MaineCare and other public funds may not be obligated for payment of services provided in the converted beds unless ap-

proved by the department pursuant to the provisions of sections 333-A and 334-A;

B. Capital expenditures in the case of a natural disaster, major accident or equipment failure;

C. Replacement equipment, other than major medical equipment as defined in section 328, subsection 16;

D. Information systems, communication systems, parking lots and garages; and

E. Certain energy-efficient improvements, as described in section 334-A, subsection 4.

Sec. 2. 22 MRSA §334-A, sub-§3, ¶A, as enacted by PL 2007, c. 440, §13, is amended to read:

A. Allow gross square footage per licensed bed of not less than 500 square feet unless the applicant specifies a smaller allowance for the project; ~~and~~

Sec. 3. 22 MRSA §334-A, sub-§3, ¶B, as enacted by PL 2007, c. 440, §13, is amended to read:

B. Exclude the projected incremental cost associated with replacement of equipment; ~~and~~

Sec. 4. 22 MRSA §334-A, sub-§3, ¶C is enacted to read:

C. Exclude the incremental cost of energy-efficient improvements as defined in the rules governing MaineCare reimbursement for nursing facilities.

Sec. 5. 22 MRSA §334-A, sub-§4 is enacted to read:

4. Cost associated with energy-efficient improvements. The cost associated with energy-efficient improvements in nursing facilities, as set forth in rules governing special reimbursement provisions for energy-efficient improvements adopted by the department, must be excluded from the cost of a project in determining whether the project is subject to review.

Sec. 6. Cost associated with energy-efficient improvements. For purposes of the Maine Revised Statutes, Title 22, section 334-A, subsection 4, the rules governing special reimbursement provisions for energy-efficient improvements are set forth in the Department of Health and Human Services MaineCare Benefits Manual, Chapter III, Section 67, subsection 44.2.4. The rules must be amended and take effect no later than January 1, 2010. The rules must require that the department provide a response to provider requests for prior approval of energy-efficient improvements within 30 days following the receipt of a request supported by sufficient information. Rules adopted pursuant to this section are routine technical

rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 431

S.P. 512 - L.D. 1428

An Act Regarding the Pay of Tribal Representatives

Emergency preamble. **Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under current law Tribal Representatives to the Maine Legislature are not considered members of the House of Representatives for purposes of compensation; and

Whereas, this legislation amends the law to compensate Tribal Representatives in the same manner as other members of the House of Representatives; and

Whereas, it is necessary that this change be implemented immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 3 MRSA §2, 8th ¶, as amended by PL 1989, c. 501, Pt. O, §4; c. 600, Pt. B, §§9 and 10; and c. 878, Pt. D, §§14 and 15, is further amended to read:

The member of the Penobscot Indian Nation and the member of the Passamaquoddy Indian Tribe elected to represent their tribes at the Legislature ~~shall~~ are entitled to receive a ~~compensation~~ of \$110 for each ~~day's attendance during the first and 2nd regular sessions~~ salary equal to the salary of members of the Senate and the House of Representatives, including a cost-of-living adjustment, for each regular session and allowance for meals, constituent service, housing and travel expenses to the same extent as ~~any other member~~ ~~members~~ of the Senate and House of Representatives for attendance at each legislative session or authorized committee meeting. For the duration of any special session of the Legislature, they ~~shall~~ are entitled to receive the same per diem payment and allowances, including housing, meal and travel expenses, as any ~~other~~ member of the Senate and House of Representatives.