

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

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LAWS IS
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IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2012

issuance of a written decision on the merits of the case or written notice that the board denies review.

Sec. 20. 39-A MRSA §§321-A and 321-B are enacted to read:

§321-A. Appellate Division

1. Establishment. There is established within the board the Appellate Division, referred to in this subchapter as "the division."

2. Composition. The division is composed of full-time hearing officers who are appointed by the executive director of the board to serve on panels to review decisions under section 318. The executive director of the board shall appoint no fewer than 3 full-time hearing officers to serve as members of a panel. A hearing officer may not serve as a member of a panel that reviews a decision of that hearing officer. A hearing officer may be a member of more than one panel at the discretion of the executive director of the board.

3. Rules. The board shall adopt rules of procedure designed to provide a prompt and inexpensive review of a decision by a hearing officer. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§321-B. Appeal from hearing officer decision

1. Procedure. An appeal of a decision by a hearing officer pursuant to section 318 to the division must be conducted pursuant to this subsection.

A. A party in interest may file with the division a notice of intent to appeal a decision by a hearing officer pursuant to section 318 within 20 days after receipt of notice of the filing of the decision by the hearing officer.

B. At the time of filing an appeal under this section, the appellant shall file with the division a copy of the decision, order or agreement appealed. The failure of an appellant who timely files an appeal in accordance with paragraph A to provide a copy of the decision, order or agreement does not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure.

2. Basis. A finding of fact by a hearing officer is not subject to appeal under this section.

3. Action. The division, after due consideration, may reverse or modify a decree of a hearing officer and shall issue a written decision. The written decision of the division must be filed with the board and mailed to the parties or their counsel.

4. Publication of decisions. The division shall publish the decisions issued under subsection 3 and make them available to the public at such cost as is

required to pay for suitable publication. The division shall distribute copies of all written decisions to the State Law Library and the county law libraries.

Sec. 21. 39-A MRSA §322, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Appeals. Any party in interest may present a copy of the decision of ~~a hearing officer~~ the division or a decision of the board, if the board has reviewed a decision pursuant to section 320, to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the ~~hearing officer~~ division or the board. Within 20 days after the copy is filed with the Law Court, the party seeking review by the Law Court shall file a petition seeking appellate review with the Law Court that sets forth a brief statement of the facts, the error or errors of law that are alleged to exist and the legal authority supporting the position of the appellant.

See title page for effective date.

CHAPTER 648

S.P. 681 - L.D. 1909

**An Act To Simplify the
Certificate of Need Process and
Lessen the Regulatory Burden
on Providers**

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

Sec. 1. 22 MRSA §328, sub-§22, ¶B, as enacted by PL 2001, c. 664, §2, is amended to read:

B. A group of ~~40~~ 5 persons residing or located within the health service area served or to be served by the applicant;

Sec. 2. 22 MRSA §333, sub-§1, ¶A-1, as amended by PL 2011, c. 424, Pt. B, §2 and affected by Pt. E, §1, is further amended to read:

A-1. ~~Beginning with anniversary dates occurring after July 1, 2007, annually~~ Annually provide notice to the department no later than 30 days after the anniversary date of the effective date of the license reduction July 1st of each year of the nursing facility's intent to retain these reserved beds, subject to the limitations set forth in subsection 2, paragraph B. Notice provided under this paragraph preserves the reserved beds through June 30th of the following year. The annual notice on reserved beds may be filed by an individual nursing facility or by multiple nursing facilities through a membership organization approved by the department by a single filing; and

Sec. 3. 22 MRSA §333, sub-§2, as amended by PL 2011, c. 424, Pt. B, §4 and affected by Pt. E, §1, is further amended to read:

2. Expedited review. Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a ~~directly affected~~ person directly affected by a review. The department shall consider and decide upon these applications as follows:

A. Review of applications that meet the requirements of this section must be based on the requirements of section 335, subsection 7, except that the determinations required by section 335, subsection 7, paragraph B must be based on the historical costs of operating the beds and must consider whether the projected costs are consistent with the costs of the beds prior to closure, adjusted for inflation; and

B. If the nursing facility fails to provide the annual notices required by subsection 1, paragraph B, the nursing facility's ability to convert beds back under this section lapses, and the beds must be treated as lapsed beds for purposes of this section and sections 333-A and 334-A.

Sec. 4. 22 MRSA §333-A, sub-§3-A, as enacted by PL 2011, c. 424, Pt. B, §8 and affected by Pt. E, §1, is amended to read:

3-A. Transfers between nursing facility and residential care facility. A nursing facility may delicense and sell or transfer beds to a residential care facility for the purpose of permitting the residential care facility to add MaineCare-funded beds to meet identified needs for such beds. Such a transfer does not require a certificate of need but is subject to prior approval of the department on an expedited basis. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such transfers on an expedited basis. When the average then current occupancy rate for existing state-funded residential care beds within 30 miles of the applicant facility is 80% or less, the department in its review under section 335 shall evaluate the impact that the proposed additional state-funded residential care beds would have on these existing state-funded residential care beds and facilities. Beds and MaineCare resources transferred pursuant to this subsection are not subject to the nursing facility MaineCare funding pool. In order for the department to approve delicensing, selling or transferring under this subsection, the department must determine that any increased MaineCare residential care costs associated with the converted beds are fully offset by reductions in the

MaineCare costs from the reduction in MaineCare nursing facility costs associated with the converted beds.

Sec. 5. 22 MRSA §334-A, sub-§1-A, ¶B, as enacted by PL 2011, c. 424, Pt. B, §10 and affected by Pt. E, §1, is amended to read:

B. Petitioners proposing such projects may elect not to participate in a competitive review under paragraph A and the projects may be approved if:

(1) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof 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 the operations of such facilities, 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

(2) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has acquired bed rights from another nursing facility or facilities or residential care facility or facilities or combinations thereof that agree to delicense beds or that are ceasing operations or otherwise reconfiguring their operations, and 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. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such projects.

With respect to the option described in this paragraph, when the average then current occupancy rate for existing nursing facility beds at facilities within 30 miles of the applicant facility exceeds 85%, the department in its review under section 335 shall evaluate the impact that the proposed additional nursing facility beds would have on those existing nursing facility beds and facilities and shall determine whether to approve the request based on current certificate of need criteria and methodology.

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

Sec. 6. 22 MRSA §335, sub-§1-A, as enacted by PL 2003, c. 469, Pt. C, §9, is amended to read:

1-A. Competitive review. The commissioner ~~shall~~ may review applications ~~periodically~~ on a competitive basis if the applications propose the same or similar services.

Sec. 7. 22 MRSA §335, sub-§2, as amended by PL 2007, c. 440, §15, is further amended to read:

2. Communications. ~~Except as otherwise provided in this Act, only a person who is a full time employee of the department with responsibilities for the certificate of need program, a consultant to the project or a policy expert pursuant to section 338 may communicate with the commissioner regarding any application for a certificate of need or any letter of intent. Nothing in this section limits the authority or obligation of the staff Staff of the department with responsibility for the certificate of need program to may meet with, or otherwise communicate with, any person who is not a department employee and who wants to provide information to be considered in connection with an application for a certificate of need.~~

Sec. 8. 22 MRSA §335, sub-§3, as amended by PL 2007, c. 440, §16, is further amended to read:

3. Limited communications. ~~Except as otherwise provided in this chapter, a person who is not a department employee may not communicate with any department staff regarding the merits of a certificate of need application except for the purpose of placing that person's views in the application record. All communications regarding any letter of intent or application with the commissioner or with department staff responsible for the certificate of need program from any person who is not a department employee that the department staff reasonably believes is intended to influence the analyses relating to or the decision regarding an application for certificate of need must be made part of the record described in subsection 5-A. If such communications are not in written form or part of public meetings, these communications must be noted in writing by the commissioner or by that department staff and that notation must be made part of the application record.~~

Sec. 9. 22 MRSA §335, sub-§5-A, ¶I, as enacted by PL 2007, c. 440, §18, is amended to read:

I. Except with regard to a project related to nursing facility services, or a project that qualifies for a simplified review process under section 336, the commissioner may require a written assessment by the Superintendent of Insurance of the impact of the project on the cost of insurance in the region and the State. The superintendent may request additional information from the applicant for the purpose of reviewing the application. Any such request must be transmitted through the de-

partment and becomes part of the official record. The applicant shall respond to the request within 30 days. Any such response must be transmitted through the department and becomes part of the official record. The inability of the superintendent to complete the review of the application due to the failure of the applicant to respond timely must be noted in the superintendent's assessment filed with the department and may be cause for the commissioner ~~to delay consideration of the application until the next review cycle or to deny approval of the project.~~

Sec. 10. 22 MRSA §335, sub-§6, as amended by PL 2009, c. 383, §8, is repealed and the following enacted in its place:

6. Maintenance of the record. The record created pursuant to subsection 5-A first opens on the day the department receives a certificate of need application. From that day, all of the record is a public record. The letter of intent becomes a public record upon the receipt of the letter and is available for review from the date of receipt. Any person may examine all or part of the public record and purchase copies of any or all of that record during the normal business hours of the department.

A. The department shall accept public comments and additional information from the applicant for a period of 30 days after the public informational meeting held under section 337, subsection 5 or the public hearing held under section 339, subsection 2, whichever is later. The record will then close until public notice that the preliminary staff analysis has been made part of the record.

B. A technical assistance meeting with the department must be scheduled at least 10 days before the department publishes the preliminary analysis of a certificate of need application. At the technical assistance meeting the department shall:

(1) Give applicants an opportunity to hear whether the certificate of need application is likely to be approved or denied;

(2) Give applicants an opportunity to address issues and concerns expressed by the department regarding compliance with this chapter; and

(3) Give applicants an opportunity to offer additional information to the department.

Any additional information submitted by the applicant becomes part of the public record. The department shall complete its review after the technical assistance meeting and before the department publishes the preliminary analysis.

C. The department shall give notice that the preliminary analysis is complete and part of the public record by publication in a newspaper of gen-

eral circulation in Kennebec County, in a newspaper published within the service area of the project and on the department's publicly accessible website.

D. The public and the applicant may submit comments on the preliminary analysis for 15 business days after the notice is published under paragraph C.

E. The department may determine to reopen the record in circumstances that it determines to be appropriate for a limited time to permit submission of additional information, as long as the department gives public notice consistent with the provisions of this subsection.

Sec. 11. 22 MRSA §335, sub-§7, as amended by PL 2011, c. 90, Pt. J, §6, is further amended to read:

7. Expanded review process; approval. Except as provided in section 334-A, subsection 2-B with respect to emergency nursing facility projects, section 336 with respect to the simplified review process and subsection 9 of this section with respect to emergency certificates of need, the commissioner, or the commissioner's designee in the case of a simplified review under section 336 or an emergency review, shall issue a certificate of need if the commissioner or the commissioner's designee determines and makes specific written findings regarding that determination that:

A. The applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards. If the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards;

B. The economic feasibility of the proposed services is demonstrated in terms of the:

(1) Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

(2) Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules. If the applicant is a provider of health care services that are substantially similar to those

services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this subparagraph if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards;

C. There is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

(1) Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

(2) Whether the project will have a positive impact on the health status indicators of the population to be served;

(3) Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and

(4) Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project;

D. The proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

(1) The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

(2) The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

(3) The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available; and

E. The project meets the criteria set forth in subsection I.

In making a determination under this subsection, the commissioner ~~shall~~ may use data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner to the extent such data and information is applicable to the determination being made. Particular weight must be given ~~The commissioner may give appropriate weight~~ to information that indicates that the proposed health services are innovations in high-quality health care delivery, that the proposed health services are not

reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

Sec. 12. 22 MRSA §336, as amended by PL 2009, c. 383, §9, is further amended to read:

§336. Simplified review and approval process

Notwithstanding the requirements set forth in section 335, the department shall conduct a simplified review and approval process in accordance with this section: unless a public hearing has been requested pursuant to section 339, subsection 2, paragraph D, in which case the project is subject to the expanded review in section 335. The department shall by rule set forth this simplified review and approval process. To the extent practicable, a simplified review must be completed and the commissioner shall make a decision within 60 days after the application has been certified as complete by the applicant pursuant to section 337, subsection 4, unless a hearing is requested by a person directly affected by a review or the commissioner determines to hold a hearing. The following projects may qualify for a simplified review process:

1. Maintenance projects. The commissioner shall issue a certificate of need for a project that primarily involves the maintenance of a health facility if the commissioner determines that the project:

- A. Will result in no or a minimal additional expense to the public or to the health care facility's clients;
- B. Will be in compliance with other applicable state and local laws and regulations; and
- C. Will significantly improve or, in the alternative, not significantly adversely affect the health and welfare of any person currently being served by the health care facility.

2. Life safety codes; previous certificate of need. The commissioner shall issue a certificate of need for a project that is required ~~solely~~ to meet federal, state or local life safety codes ~~if the project involves a health facility, major medical equipment or a new health service that has previously received a certificate of need.~~

3. Acquisition of control. The commissioner shall issue a certificate of need for a project that involves the acquisition of control of a health facility when the acquisition consists of a management agreement or similar arrangement and primarily involves the day-to-day operation of the facility in its current form, or transfers ownership of a nursing facility to an existing provider of nursing facility services licensed in this State if the commissioner determines that the project meets the requirements of section 335, subsection 7, paragraph B and that the project is economically feasible in light of its impact on:

- A. The operating budget of the facility and the applicant; and
- B. The applicant's ability to operate the facility without increases in the facility's rates beyond those that would otherwise occur absent the acquisition.

4. Capital expenditures for compliance or quality improvement. The commissioner shall issue a certificate of need for a proposed capital expenditure upon determining that:

- A. The capital expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life safety codes and regulations; to comply with state licensure standards; to provide demonstrable improvements in patient safety or quality of care; or to comply with accreditation or certification standards that must be met to receive reimbursement under the United States Social Security Act, Title XVIII or payments under a state plan for medical assistance approved under Title XIX of that Act;
- B. The economic feasibility of the project is demonstrated in terms of its effects on the operating budget of the applicant, including its existing rate structure;
- C. There remains a public need for the service to be provided; and
- D. The corrective action proposed by the applicant is ~~the most~~ a cost-effective alternative available under the circumstances.

5. Major medical equipment. The commissioner shall issue a certificate of need for replacement of major medical equipment that is not otherwise exempt from review pursuant to section 329, subsection 2-A, paragraph B, subparagraph (1) upon determining that a project meets the requirements of section 335, subsection 7.

6. Other projects. The commissioner may by rule identify other categories of projects that qualify for simplified review under this section that are consistent with the purposes of this section and will foster timely review and approval for qualifying projects.

Sec. 13. 22 MRSA §337, sub-§2, ¶B, as amended by PL 2011, c. 424, Pt. D, §1 and affected by Pt. E, §1, is further amended to read:

- B. Within 15 days of filing the letter of intent, the applicant shall schedule a meeting with the department staff in order to assist the department in understanding the application and to receive technical assistance concerning the nature, extent and format of the documentary evidence, statistical data and financial data required for the department to evaluate the proposal. ~~The department may not accept an application for review until the appli-~~

~~licant has satisfied this technical assistance requirement. The applicant may waive the technical assistance meeting requirement under this paragraph.~~

Sec. 14. 22 MRSA §337, sub-§3, as enacted by PL 2001, c. 664, §2, is amended to read:

3. Application content; department-approved forms. An application for a certificate of need must describe with specificity how the proposed project meets each of the ~~conditions~~ standards for granting a certificate of need ~~required by this chapter that are applicable to the project.~~ A statement or statements that the project will meet the ~~conditions~~ standards without supporting facts backed by relevant documentation and analysis constitute sufficient cause to deny the application. An application subject to ~~full~~ an expanded review must contain, if available and relevant to the particular service or technology, information on health status, public health need for the service or technology, quality assurance processes and prevention programs.

A. The department shall make available on the department's publicly accessible website multiple project-specific, department-approved certificate of need forms for at least the following certificate of need categories:

- (1) Nursing facility projects;
- (2) Hospital projects; and
- (3) Other projects subject to review.

B. The department-approved forms must set forth application elements that are relevant to each category and must elicit the information and data reasonably necessary to permit the department to carry out the review and approval process in a timely and cost-effective manner, with consideration for the costs and responsibilities imposed on applicants.

C. Submission of the completed applicable department-approved forms and required information, together with other information that is appropriate to the application, and the applicant's certification that the application is complete pursuant to subsection 4 constitutes a sufficient record for the department to make a determination regarding the application for a certificate of need, unless a hearing is requested either by the department or by a person directly affected by a review.

D. If an application is contested by another provider of services or a person directly affected by a review or the department determines that a public hearing must be held pursuant to section 339, subsection 2, additional information may be required by the department.

Sec. 15. 22 MRSA §337, sub-§5, as amended by PL 2011, c. 424, Pt. D, §2 and affected by Pt. E, §1, is further amended to read:

5. Public notice; public informational meeting. Within 5 business days of the filing of a certificate by an applicant that a complete certificate of need application is on file with the department, public notice that the application has been filed ~~and that a public informational meeting must be held regarding the application~~ must be given by publication in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed expenditure will occur. The notice must also be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose. The notice must also be published on the department's publicly accessible website. This notice must include:

A. A brief description of the proposed expenditure or other action;

B. A description of the review process and schedule;

C. A statement that any person may examine the application, submit comments in writing to the department regarding the application and examine the entire record assembled by the department at any time from the date of publication of the notice until the application process is closed for comment; ~~and~~

~~D. The~~ If a public informational meeting is being held, the time and location of the public informational meeting and, a statement that any person may appear at the meeting to question the applicant regarding the project or the department regarding the conditions that the applicant must satisfy in order to receive a certificate of need for the project, and a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the public informational meeting pursuant to the provisions of section 339, subsection 2; and

E. If a public informational meeting is not being held, a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the publication of the notice that an application has been filed.

The department shall make an electronic or stenographic record of the public informational meeting.

A public informational meeting is not required for the simplified review and approval process in section 336 unless requested by the applicant, the department or a person directly affected by a review.

Sec. 16. 22 MRSA §337, sub-§7, as enacted by PL 2001, c. 664, §2, is amended to read:

7. Fees. The department shall adopt rules setting minimum and maximum filing fees under this chapter. A nonrefundable filing fee must be paid at the time an application is filed ~~with the department~~. If the approved capital expenditure or operating cost upon which ~~the fees were a fee is~~ 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. In addition to filing fees, the department shall adopt rules to establish reasonable and necessary fees to carry out the provisions of this chapter. All fees received by the department under this subsection must be placed in a separate, nonlapsing account to be used in accordance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 17. 22 MRSA §337, sub-§8 is enacted to read:

8. Suspension of review. An applicant may request and be granted a suspension of the review process prior to the date on which the department staff submits its final analysis to the commissioner.

A. A request for suspension of the review process must be for specific periods of no less than 10 days and not greater than 12 months.

B. If there are no competing applicants, a request under this subsection must be granted.

C. If there are competing applicants, the request under this subsection must be reviewed and approved or disapproved within 3 business days, taking into account the interests of the public and of competing applicants.

D. If a request to suspend the review is granted, the department shall determine:

(1) If the suspension will suspend review of all competing applications; or

(2) If the suspension will not affect competing applications, which will continue to be reviewed without interruption.

E. Failure to reactivate an application within the time period approved by the department results in automatic withdrawal of the suspended application.

Sec. 18. 22 MRSA §338, sub-§1, as amended by PL 2003, c. 469, Pt. C, §§13 and 14, is further amended to read:

1. Consultation on new technologies and needs. In connection with the development of policies and procedures to implement this Act, the commissioner

may, from time to time, consult with persons with relevant skills and experience regarding:

A. New medical technologies and the impact of those technologies on the health care delivery system in the State;

B. Unmet need for health care services in the State; ~~and~~

C. The quality of health care; ~~and~~

D. The need to replace, renovate or upgrade health care facilities to meet current and future needs.

Sec. 19. 22 MRSA §339, sub-§2, ¶B, as amended by PL 2011, c. 424, Pt. D, §3 and affected by Pt. E, §1, is further amended to read:

B. The commissioner, or the commissioner's designee, shall hold a public hearing if ~~5 persons residing or located within the health service area to be served by the applicant request~~ any person directly affected by a review requests, in writing, that such a public hearing be held and the request is timely received by the commissioner. ~~If a public informational meeting on the application is conducted pursuant to section 337, subsection 5, the request for a public hearing must be received by the commissioner no later than 15 days following the informational hearing on the application conducted pursuant to section 337, subsection 5.~~ If no public informational meeting is conducted, the request for a public hearing must be received within 15 days following the publication of the public notice required by section 337, subsection 5.

Sec. 20. 22 MRSA §339, sub-§2, ¶D, as enacted by PL 2009, c. 383, §12, is amended to read:

D. A public hearing is not required for the simplified review and approval process set forth in section 336 unless requested by the applicant, the department or a person directly affected by a review.

Sec. 21. 22 MRSA §339, sub-§5, as amended by PL 2011, c. 424, Pt. D, §4 and affected by Pt. E, §1, is further amended to read:

5. Reviews. To the extent practicable, a review must be completed and the commissioner shall make a decision within ~~45~~ 60 days after the application has been certified as complete by the applicant for a simplified review, or within 90 days for an expanded review. The department shall establish criteria for determining when it is not practicable to complete a review within ~~45 days~~ these time frames. Whenever it is not practicable to complete a review within ~~45 days~~ these time frames, the department may extend the review period for up to an additional 30 days.

Sec. 22. 22 MRSA §339, sub-§6, as amended by PL 2011, c. 424, Pt. D, §5 and affected by Pt. E, §1, is further amended to read:

6. Public necessity. The department may delay action on an otherwise complete application for up to ~~90~~ 120 days from the time the application has been certified as complete by the applicant if the department finds that a public necessity exists. The department shall provide written notice of the delay to the applicant and any other person who has requested in writing information regarding the application. For purposes of this subsection, the department shall find that a public necessity exists if:

- A. The application represents a new service or technology not previously provided within the State;
- B. The application represents a potential significant impact on health care system costs;
- C. The application represents a new service or technology for which a health care system need has not been previously established; or
- D. There are several applications for the same or similar projects before the department.

Sec. 23. 22 MRSA §346, sub-§3, as enacted by PL 2001, c. 664, §2, is amended to read:

3. Issued certificate; duration and expiration. 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 expires if the project for which the certificate has been issued is not commenced within ~~12~~ 24 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 the 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 applicant shall issue to the department periodic reports as designated in the certificate of need approval notification on the impact of the service on the health status, quality of care and health outcomes of the population served. These reports may not be in less than 12 month intervals following the start of service approved in the certificate of need. The depart-~~

ment shall adopt rules for the withdrawal of certificates of need.

Sec. 24. 22 MRSA §350-C, as reallocated by RR 2001, c. 2, Pt. A, §32, is amended to read:

§350-C. Implementation reports

The holder of a certificate of need shall make written reports as provided in this section and as required by rule adopted by the department.

1. Final plans and specifications. A holder of a certificate of need that has been issued for the construction or modification of a facility or portion of a facility shall file final plans and specifications for the project as required by the department to determine that the plans and specifications are in compliance with the certificate of need and with applicable licensure, life safety code and accreditation standards.

2. Reports. ~~Periodic reports must be filed at the end of each 6 month period following the issuance of a certificate of need under section 335, subsection 7 or section 336 regarding implementation activities, obligations incurred and expenditures made and any other matters as the department may require. The department may require periodic reports, summary reports and cost and utilization reports as well as reports regarding the effect of the project on the health status, quality of care and health outcomes of the population served for no longer than 3 years following the completion of the project as set out in rule.~~

3. Summary report. ~~A summary report must be made when the service or services for which a certificate of need was issued become operational.~~

4. Cost and utilization reports. ~~For a period of one year following the implementation of the service or services for which a certificate of need was granted, the holder of the certificate of need shall file, at 6 month intervals, reports concerning the costs and utilization.~~

5. Department action. The department may revoke any certificate of need the department has issued when the person to whom it has been issued fails to file reports or plans and specifications required by ~~this section~~ the department on a timely basis. The department shall review services that fall below the required volume and quality standards of a certificate of need.

See title page for effective date.