

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON HEALTH AND HUMAN
SERVICES**

June 2012

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STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

| | |
|---|--|
| <i>CARRIED OVER</i> | <i>carried over to a subsequent session of the Legislature</i> |
| <i>CON RES XXX</i> | <i>chapter # of constitutional resolution passed by both houses</i> |
| <i>CONF CMTE UNABLE TO AGREE</i> | <i>Committee of Conference unable to agree; legislation died</i> |
| <i>DIED BETWEEN HOUSES</i> | <i>House & Senate disagreed; legislation died</i> |
| <i>DIED IN CONCURRENCE</i> | <i>defeated in each house, but on different motions; legislation died</i> |
| <i>DIED ON ADJOURNMENT</i> | <i>action incomplete when session ended; legislation died</i> |
| <i>EMERGENCY</i> | <i>enacted law takes effect sooner than 90 days after session adjournment</i> |
| <i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i> | <i>emergency failed to receive required 2/3 vote</i> |
| <i>FAILED, ENACTMENT or FINAL PASSAGE</i> | <i>failed to receive final majority vote</i> |
| <i>FAILED, MANDATE ENACTMENT</i> | <i>legislation proposing local mandate failed required 2/3 vote</i> |
| <i>HELD BY GOVERNOR</i> | <i>Governor has not signed; final disposition to be determined at subsequent session</i> |
| <i>LEAVE TO WITHDRAW</i> | <i>sponsor's request to withdraw legislation granted</i> |
| <i>NOT PROPERLY BEFORE THE BODY</i> | <i>ruled out of order by the presiding officer; legislation died</i> |
| <i>INDEF PP</i> | <i>indefinitely postponed; legislation died</i> |
| <i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ... | <i>ought-not-to-pass report accepted; legislation died</i> |
| <i>P&S XXX</i> | <i>chapter # of enacted private & special law</i> |
| <i>PUBLIC XXX</i> | <i>chapter # of enacted public Law</i> |
| <i>RESOLVE XXX</i> | <i>chapter # of finally passed resolve</i> |
| <i>VETO SUSTAINED</i> | <i>Legislature failed to override Governor's veto</i> |

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Health and Human Services

is amended to reflect that restricted revenue is income from organizations and individuals that require the funds to be used for a specific purpose within a program and unrestricted revenue is revenue from funding sources to a community agency that is not restricted for a particular purpose within a program by the donor. The rule must reflect that revenue that has been designated to a specific program, but not for a specific purpose, is considered unrestricted revenue.

Enacted Law Summary

Resolve 2011, chapter 157 approves the major substantive rule if it is amended to reflect that restricted revenue is income from organizations and individuals that require the funds to be used for a specific purpose within a program and unrestricted revenue is revenue from funding sources to a community agency that is not restricted for a particular purpose within a program by the donor. The rule must reflect that revenue that has been designated to a specific program, but not for a specific purpose, is considered unrestricted revenue.

Resolve 2011, chapter 157 was finally passed as an emergency measure effective April 18, 2012.

LD 1909

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

PUBLIC 648

Sponsor(s)

Committee Report

Amendments Adopted

OTP

This bill is the report of the Joint Standing Committee on Health and Human Services pursuant to Public Law 2011, chapter 424. It amends the Maine Certificate of Need Act of 2002 as follows.

1. The bill modifies the definition of "person directly affected by a review" to conform to provisions that permit 5 persons in a health service area to request a hearing.
2. The bill standardizes and simplifies the process for submission of a department-approved annual report form on reserved beds. The report must be submitted on or before July 1st of each year. Annual reports may be submitted by an individual facility or on behalf of multiple facilities by a single filing by a department-approved membership organization. This change will eliminate the requirement that facilities submit multiple reports on multiple dates throughout the year on the anniversary date the facility established the bed as a reserved bed.
3. The bill requires divisions within the Department of Health and Human Services that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities to work cooperatively to review and consider approving transfers between nursing facilities and residential care facilities on an expedited basis and to review and consider approving projects that expand nursing facility bed capacity on an expedited basis. This provision is included because residential care beds are managed by the Bureau of Elder and Adult Services and nursing facility beds are managed by the Division of Licensing and Regulatory Services.
4. The bill clarifies that projects may be reviewed on a competitive basis when the projects propose the same or similar services.
5. The bill permits contacts with the Commissioner of Health and Human Services or the department regarding certificate of need applications and letters of intent as long as these communications are made part of the record.
6. The bill exempts from the Bureau of Insurance actuarial analysis, in addition to nursing facility projects, any project that qualifies for simplified review. The bill removes reference to review cycles, consistent with Public Law 2011, chapter 424.

Joint Standing Committee on Health and Human Services

7. The bill adds a second technical assistance meeting to the application process prior to the department's publication of its preliminary analysis to encourage dialogue regarding whether the application is likely to be approved so that the applicant will be given the opportunity to comment on the department's proposed findings before they are formally issued in the form of the preliminary analysis. The other technical assistance meeting in the certificate of need process occurs after submission of the letter of intent.

8. The bill makes the following changes to the certificate of need review process. The bill permits the commissioner to delegate certificate of need decisions to a designee for certain projects. It states that emergency nursing facility projects and other emergency projects are exceptions to the requirement for detailed findings. It provides a more streamlined process for simplified reviews. It clarifies which projects are subject to expanded review and which projects qualify for simplified reviews. It clarifies "fit, willing and able" and "economic feasibility" determinations for applicants whose prior services are consistent with pertinent licensing and certification standards. It modifies provisions requiring reliance on particular types of data, including data from the Maine Health Data Organization.

9. The bill clarifies the application of simplified review with respect to projects that are required for code compliance and for certain other needs. It broadens simplified review to cover a wider range of projects, including transfers of ownership of nursing facilities to existing in-state providers of nursing facility services. It clarifies that eligible capital expenditure projects include those that foster compliance or quality improvement. It gives the commissioner authority to identify other categories of projects that qualify for simplified review that are consistent with the purposes of the law and will foster timely review of qualifying projects.

10. The bill modifies the certificate of need application process, allowing the applicant to waive the technical assistance meeting after filing the letter of intent and requiring multiple project-specific application forms and other certificate of need forms to be made available on the department's website. It allows the department to require additional information if an application is contested by another provider or another person directly affected by a review or the department determines that a public hearing must be held. It requires the department to publish on the department's website, as well as in the newspaper, the public notice that the applicant has filed a certification that the application is complete. It specifies when a public informational meeting is required and includes processes for requesting a public hearing.

11. The bill enacts a new procedure for an applicant to request a suspension of the review process and permits suspensions of no less than 10 days and no greater than one 12-month period in duration.

12. The bill allows the department to adopt by rule reasonable fees for the administration of its duties.

13. The bill allows the commissioner to consult with persons with relevant skills and experience regarding the need to replace, renovate or upgrade health care facilities to meet current and future needs.

14. The bill permits any person directly affected by a review to request a public hearing, including health care facilities, providers or insurers. The public hearing must be requested within 15 days of the public informational meeting. If no public informational meeting is held, a public hearing must be requested within 15 days of publication of the notice of filing of the certificate of completion.

15. The bill modifies the time frames to provide that, to the extent practicable, a review must be completed and the commissioner must make a decision within 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.

16. The bill permits extension of review time to 120 days after an application is certified as complete in case of public necessity.

Joint Standing Committee on Health and Human Services

17. The bill specifies that a certificate of need expires if the underlying project is not commenced within 24 months. Current law provides 12 months.
18. The bill eliminates the mandatory nature of 3 categories of reports and allows the department to seek reports on a project for up to 3 years following completion of the project.

Enacted Law Summary

Public Law 2011, chapter 648 amends the Maine Certificate of Need Act of 2002 as follows.

1. The law modifies the definition of "person directly affected by a review" to conform to provisions that permit 5 persons in a health service area to request a hearing.
2. The law standardizes and simplifies the process for submission of a department-approved annual report form on reserved beds. The report must be submitted on or before July 1st of each year. Annual reports may be submitted by an individual facility or on behalf of multiple facilities by a single filing by a department-approved membership organization. This change will eliminate the requirement that facilities submit multiple reports on multiple dates throughout the year on the anniversary date the facility established the bed as a reserved bed.
3. The law requires divisions within the Department of Health and Human Services that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities to work cooperatively to review and consider approving transfers between nursing facilities and residential care facilities on an expedited basis and to review and consider approving projects that expand nursing facility bed capacity on an expedited basis. This provision is included because residential care beds are managed by the Bureau of Elder and Adult Services and nursing facility beds are managed by the Division of Licensing and Regulatory Services.
4. The law clarifies that projects may be reviewed on a competitive basis when the projects propose the same or similar services.
5. The law permits contacts with the Commissioner of Health and Human Services or the department regarding certificate of need applications and letters of intent as long as these communications are made part of the record.
6. The law exempts from the Bureau of Insurance actuarial analysis, in addition to nursing facility projects, any project that qualifies for simplified review. The law removes reference to review cycles, consistent with Public Law 2011, chapter 424.
7. The law adds a second technical assistance meeting to the application process prior to the department's publication of its preliminary analysis to encourage dialogue regarding whether the application is likely to be approved so that the applicant will be given the opportunity to comment on the department's proposed findings before they are formally issued in the form of the preliminary analysis. The other technical assistance meeting in the certificate of need process occurs after submission of the letter of intent.
8. The law makes the following changes to the certificate of need review process. The law permits the commissioner to delegate certificate of need decisions to a designee for certain projects. It states that emergency nursing facility projects and other emergency projects are exceptions to the requirement for detailed findings. It provides a more streamlined process for simplified reviews. It clarifies which projects are subject to expanded review and which projects qualify for simplified reviews. It clarifies "fit, willing and able" and "economic feasibility" determinations for applicants whose prior services are consistent with pertinent licensing and certification standards. It modifies provisions requiring reliance on particular types of data, including data from the Maine Health Data Organization.

Joint Standing Committee on Health and Human Services

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11. The law enacts a new procedure for an applicant to request a suspension of the review process and permits suspensions of no less than 10 days and no greater than one 12-month period in duration.
12. The law allows the department to adopt by rule reasonable fees for the administration of its duties.
13. The law allows the commissioner to consult with persons with relevant skills and experience regarding the need to replace, renovate or upgrade health care facilities to meet current and future needs.
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