

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Amend the Certificate of Need Act of 2002 for Nursing Facility Projects**

**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 amended to read:

**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.

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, MaineCare and other public funds are may not be obligated for payment of services provided in the converted beds unless approved by the department pursuant to the provisions of sections 333-A and 334-A;

**Sec. 2. 22 MRSA §333-A, sub-§1**, as enacted by PL 2007, c. 440, §11, is amended to read:

**1. Nursing facility MaineCare funding pool.** Savings~~Savings~~Except as set forth in subsections 1-A and 3 and section 334-A, savings to the MaineCare program as a result of delicensing of nursing facility beds on or after July 1, 2005, including savings from lapsed beds but excluding savings from reserved beds, must be credited to the nursing facility MaineCare funding pool, which must be maintained by the department to provide for the development of new beds or other improvements requiring a certificate of need. The balance of the nursing facility MaineCare funding pool, as adjusted to reflect current costs consistent with the rules and statutes governing reimbursement of nursing facilities, serves as a limit on the MaineCare share of all incremental 3rd-year operating costs of nursing facility projects requiring review under this chapter, except as set forth in subsections 1-A and 3 and section 334-A,~~subsection 2.~~

**Sec. 3. 22 MRSA §333-A, sub-§1-A** is enacted to read:

**1-A. Transfers between nursing facilities and residential care facilities.** Nursing facilities may delicense and sell or transfer beds to residential care facilities for the purpose of permitting the residential care facilities to add MaineCare funded beds or carry out renovation or expansion projects. Such transfers are subject to prior approval of the department. Beds and resources transferred pursuant to this subsection are not subject to the MaineCare funding pool.

**Sec. 4. 22 MRSA §334-A**, as enacted by PL 2007, c. 440, §13, is repealed and the following enacted in its place:

**§ 334-A. Nursing facility projects**

**1. Projects that expand current bed capacity.** 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 funds available from the nursing facility MaineCare funding pool. Such projects may not be grouped for competitive review if approved under paragraph B or C. A nursing facility project that proposes to add new beds is subject to review. Any related renovation, replacement or other actions may also be subject to review if such actions are above the applicable thresholds for review. Such projects may be approved only if:

A. Sufficient funds are available from the nursing facility MaineCare funding pool or are added to the pool by act of the Legislature, except that the department may approve, without available funds from the pool, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 333 if the annual total of reopened beds approved does not exceed 100;

B. The petitioner, or a nursing facility or residential care facility under common ownership or control, has agreed to delicense a sufficient number of beds, including either nursing facility beds or residential care facility 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

C. The petitioner, or a nursing facility or residential care facility under common ownership or control, has acquired bed rights from another facility or facilities, including both nursing facilities and residential care facilities, that agree to delicense beds or that are ceasing operations and the MaineCare revenues associated with these acquired bed rights 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.

**2. Projects to relocate beds.** Nursing facility projects that do not add new nursing facility beds to the inventory of nursing facility beds within the State, but instead propose to relocate beds from one facility to another existing or new facility:

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 facility or facilities, including either nursing facilities and residential care facilities or both, that agree to delicense beds, or that are ceasing operations, and that the MaineCare revenues associated with these acquired bed rights 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.

**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 a nursing facility or residential care facility under common ownership or control, has agreed to delicense a sufficient number of beds, including either nursing facility beds or residential care facility 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 a nursing facility or residential care facility under common ownership or control, has acquired bed rights from another facility or facilities, including both nursing facilities and residential care facilities, that agree to delicense beds, or that are ceasing operations, and that the MaineCare revenues associated with these acquired bed rights 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.

**2-B. Projects for transfers of ownership.** The department may approve nursing facility certificate of need applications that propose transfers of ownership or control as long as:

A. Such projects do not increase MaineCare costs;

B. Any increases in MaineCare costs are approved pursuant to subsection 1, 2 or 2-A; or

C. Any increases in MaineCare costs are limited to changes in fixed cost reimbursement due either to changes in approved financing or to changes in applicable depreciation schedules and the seller satisfied depreciation recapture obligations from the sale proceeds.

Certificate of need projects described in this subsection are not subject to or limited by the nursing facility MaineCare funding pool, and any accompanying increases in MaineCare costs may be approved by the department as long as the project fulfills all other pertinent requirements.

**3. Evaluating costs.** In evaluating whether a project will increase MaineCare expenditures for a nursing facility for the purposes of this section, the department shall:

- 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
- B. Exclude the projected incremental cost associated with replacement of equipment.

## SUMMARY

This bill amends the Certificate of Need Act of 2002 governing the conversion of nursing facility beds to residential care beds to permit such conversions as long as the terms of the conversion are approved by the Department of Health and Human Services under applicable provisions permitting transfers that are MaineCare-neutral in their overall impact.

The bill also amends provisions governing the nursing facility MaineCare funding pool to create certain exceptions to the constraints of the pool. A provision is enacted to permit the transfers of beds and other nursing facility resources to residential care facilities and to exclude such beds and resources from the pool if prior approval is obtained from the department.

The bill also changes the provisions governing nursing facility projects in several respects:

1. To permit certificate of need approval of different types of nursing facility projects as long as MaineCare neutrality is demonstrated and to permit transfers of MaineCare resources between nursing facilities and residential care facilities to satisfy these requirements;

2. To permit the exchange of bed rights between nursing facilities and residential care facilities in order to permit nursing facilities to satisfy MaineCare neutrality requirements;

3. To permit nursing facilities to satisfy MaineCare neutrality requirements for projects that do not involve relocation of beds from one facility to another or a new facility when the entity proposing the changes is able to satisfy MaineCare neutrality requirements by delicensing beds under common ownership or acquiring beds from other facilities including residential care facilities; and

4. To permit approval of nursing facility projects that propose transfers of ownership when any increases in MaineCare costs are offset by transfers of bed rights or the increase in MaineCare costs is limited to changes in fixed-costs reimbursement due to changes in approved financing or applicable depreciation schedules.