

**§333-A. Procedures for allowing reallocation of nursing facility capacity**

**1. Nursing facility MaineCare funding pool.** Except as set forth in subsection 3-A 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. For those nursing facility projects that propose to add new nursing facility beds to the inventory of beds within the State, 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 such projects unless such projects are approved under applicable provisions of section 334-A. Nursing facility projects that do not add new nursing facility beds to the inventory of beds within the State are not subject to the nursing facility MaineCare funding pool.

[PL 2011, c. 424, Pt. B, §5 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

**2. Procedure.** The balance of the nursing facility MaineCare funding pool must be used for development of additional nursing facility beds in areas of the State where additional beds are needed to meet the community need. The department must assess needs throughout the State and issue requests for proposals for the development of additional beds in areas where need has been identified by the department, except in the event of an emergency, when the department may use a sole source process. Proposals must be evaluated based on consideration of quality of care and cost, and preference must be given to existing nursing facilities in the identified need area that may increase licensed capacity by adding on to or renovating the existing facility.

[PL 2011, c. 424, Pt. B, §6 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

**3. Emergencies and necessary renovations.**

[PL 2011, c. 424, Pt. B, §7 (RP); PL 2011, c. 424, Pt. E, §1 (AFF).]

**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.

[PL 2011, c. 648, §4 (AMD).]

**4. Rulemaking.** The department may establish rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 681, §6 (AMD).]

**SECTION HISTORY**

PL 2007, c. 440, §11 (NEW). PL 2007, c. 681, §§4-6 (AMD). PL 2009, c. 429, §2 (AMD). PL 2011, c. 90, Pt. J, §4 (AMD). PL 2011, c. 424, Pt. B, §§5-8 (AMD). PL 2011, c. 424, Pt. E, §1 (AFF). PL 2011, c. 648, §4 (AMD).

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