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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-§3, as amended by PL 2007, c. 681, §3, is further amended to read:

3. Capital expenditures. Except as provided in subsection 6, the obligation by or on behalf of a health care facility of any capital expenditure of \$2,400,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure or for replacement equipment or for parking lots and garages, for information and communications systems and for physician office space do not require a certificate of need. Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year;

Sec. 2. 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~~\$1,000,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure or for replacement equipment or parking lots and garages, for information and communications systems and for physician office space do not require a certificate of need. Beginning January 1, 2010 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year.

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, public funds are not obligated for payment of services provided in the converted beds;

A certificate of need is not required for certain energy-efficient improvements, as described in section 334-A, subsection 4, paragraph A. A simplified approval of the improvements may be obtained from the department's audit division under procedures set forth in department rules;

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

4. Simplified approval of projects to implement energy-efficient improvements. Nursing facility projects that implement energy-efficient improvements are not subject to certificate of need approval. A simplified approval of the improvements may be obtained from the department's audit division under procedures set forth in department rules.

A. The eligible energy-efficient improvements are:

- (1) Insulation, including, but not limited to, fiberglass and cellulose;
- (2) Energy-efficient windows or doors for the outside of the facility, including insulating shades and shutters;
- (3) Caulking or weather stripping for windows or doors for the outside of the facility;
- (4) Fans specially designed for circulation of heat inside the facility;
- (5) Wood- and coal-burning furnaces or boilers;
- (6) Furnace replacement burners that reduce the amount of fuel used;
- (7) Dampers or other devices connected to furnaces to control heat usage;
- (8) A device or capital expenditure for modifying an existing furnace that reduces the consumption of fuel;
- (9) Solar active systems for water and space heating;
- (10) Retrofitting structures for the purpose of creating or enhancing passive solar gain.

Prior approval must be obtained by the department's audit division regardless of amount of expenditure. A request for prior approval must be evaluated by the department's audit division on the basis of whether energy costs would be decreased to such an extent as to render the expenditure reasonable. The age and condition of the facility requesting approval must be also considered; and

(11) Any energy-saving devices that might qualify as energy efficient other than those listed in this paragraph having prior approval of the department. The department's audit division must evaluate a request for prior approval under recommendations from the division that oversees energy programs on what items qualify as energy-efficient devices and determine that the energy-saving device is a reliable product and the device would decrease the energy costs of the facility, making the expenditure reasonable in nature.

B. MaineCare shall amend its rules to establish guidelines for reimbursement to a nursing facility for the energy-efficient improvements described in paragraph A. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. Rules. Rules adopted pursuant to the Maine Revised Statutes, Title 22, section 334-A, subsection 4, paragraph B must take effect no later than January 1, 2010 and must require that the minimum depreciation periods of between 3 and 7 years set forth in the rules are determined based on the value and efficiency of the assets and the depreciation periods are not extended to mirror the terms of the financing.

SUMMARY

This bill amends the Maine Certificate of Need Act of 2002 in the following ways.

1. It increases the capital expenditure threshold for nursing facility projects to \$1,000,000. It also clarifies that nursing facility projects involving replacement equipment are not subject to review.
2. It amends generic capital expenditure provisions to clarify that any type of replacement equipment is not subject to review.
3. It exempts from the full certificate of need approval nursing facility projects that implement certain energy-efficient improvements.
4. It requires a simplified approval process for these nursing facility energy-efficient improvements, administered by the audit division of the Department of Health and Human Services, consistent with department rules.
5. It requires amendments to these rules to be effective on or before January 1, 2010 and to require that the minimum depreciation periods between 3 and 7 years are determined based on the value and efficiency of the assets and the depreciation periods are not extended to mirror the terms of the financing.