An Act To Amend the Maine Certificate of Need Act of 2002

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

PART A

Sec. A-1. 22 MRSA §328, sub-§16, as amended by PL 2009, c. 383, §3, is further amended to read:

16. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs ~~$1,600,000~~$3,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and 11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

Sec. A-2. 22 MRSA §328, sub-§17-A, as amended by PL 2009, c. 383, §4, is further amended to read:

17-A. New health service. "New health service" means:

A. The obligation of any capital expenditures by or on behalf of a new or existing health care facility of ~~$110,000~~$3,000,000 or more that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered;

B. The addition of a health service that is to be offered by or on behalf of a new or existing health care facility that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered and that, for the 3rd fiscal year of operation, including a partial first year following addition of that service, is projected to entail incremental annual operating costs directly attributable to the addition of that health service of at least ~~$400,000~~$1,000,000. For the purposes of this paragraph, the compensation attributable to the health care practitioner is not included in the calculation of 3rd-year operating costs; or

C. The addition in the private office of a health care practitioner, as defined in Title 24, section 2502, subsection 1-A, of new technology that costs ~~$1,600,000~~$3,200,000 or more. The department shall consult with the Maine Quality Forum Advisory Council established pursuant to Title 24-A, section 6952, prior to determining whether a project qualifies as a new technology in the office of a private practitioner. With regard to the private office of a health care practitioner, "new health service" does not include the location of a new practitioner in a geographic area.

Beginning January 1, 2013 and annually thereafter, the threshold amounts for review in paragraphs A, B and C must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

"New health service" does not include a health care facility that extends a current service within the defined primary service area of the health care facility by purchasing within a 12-month time period new equipment costing in the aggregate less than the threshold provided in ~~section 328,~~ subsection 16;

Sec. A-3. 22 MRSA §329, sub-§2-A, ¶B, as amended by PL 2009, c. 383, §5, is further amended to read:

B. The following acquisitions of major medical equipment do not require a certificate of need:

(1) Major medical equipment being replaced by the owner~~, as long as the replacement cost is less than $2,000,000~~; and

(2) The use of major medical equipment on a temporary basis in the case of a natural disaster, major accident or major medical equipment failure.

Sec. A-4. 22 MRSA §329, sub-§3, as amended by PL 2009, c. 383, §6 and affected by §16, is further amended to read:

3. Capital expenditures. Except as provided in subsection 6, the obligation by or on behalf of a new or existing health care facility of any capital expenditure of ~~$3,100,000~~$10,000,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure or for replacement equipment that is not major medical equipment as defined in section 328, subsection 16 or for parking lots and garages, information and communications systems or physician office space or projects directed solely at reducing energy costs through energy efficiency, renewable energy technology or smart grid technology and that have been certified as likely to be cost-effective by the Efficiency Maine Trust pursuant to Title 35-A, section 10122 do not require a certificate of need. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year;

Sec. A-5. 22 MRSA §329, sub-§4-A, as enacted by PL 2007, c. 440, §4, is amended to read:

4-A. New health care facility. The construction, development or other establishment of a new health care facility. The following requirements apply to certificate of need for new health care facilities.

A. A new health care facility that is a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than $5,000,000; or

(2) If it proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, in which case it must satisfy all applicable requirements of section 334-A.

B. A new health care facility other than a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than $3,000,000; or

(2) If it is a new health service;

Sec. A-6. 35-A MRSA §10122 is enacted to read:

§ 10122. Health care facility program

The trust shall develop and implement a process to review projects undertaken by health care facilities that are directed solely at reducing energy costs through energy efficiency, renewable energy technology or smart grid technology and to certify those projects that are likely to be cost-effective. If a project is certified as likely to be cost-effective by the trust, the review process serves as an alternative to the certificate of need process established pursuant to Title 22, section 329, subsection 3.

PART B

Sec. B-1. 22 MRSA §329, sub-§6, as repealed and replaced by PL 2009, c. 652, Pt. A, §29, is amended to read:

6. Nursing facilities. The obligation by a new or existing nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of ~~$510,000~~$5,000,000 or more ~~and, beginning January 1, 2010, the obligation by a nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of $1,000,000 or more~~. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

A certificate of need is not required for the following:

A. A nursing facility converting 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 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. In order to approve a conversion under this paragraph, 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;

B. Capital expenditures in the case of a natural disaster, major accident or equipment failure;

C. Replacement equipment, other than major medical equipment as defined in section 328, subsection 16;

D. Information systems, communication systems, parking lots and garages; and

E. Certain energy-efficient improvements, as described in section 334-A, subsection 4.

Sec. B-2. 22 MRSA §333, sub-§1, ¶A-1, as enacted by PL 2007, c. 440, §8, is amended to read:

A-1. Beginning with anniversary dates occurring after July 1, 2007, annually provide notice to the department no later than 30 days after the anniversary date of the effective date of the license reduction of the nursing facility's intent to retain these reserved beds~~, subject to the time limitations set forth in subsection 2, paragraph B~~; and

Sec. B-3. 22 MRSA §333, sub-§1, ¶B, as enacted by PL 2001, c. 664, §2, is amended to read:

B. Obtain a certificate of need to convert beds back under section 335, except that, if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2. The department in its review shall evaluate the impact that the nursing facility beds to be converted back would have on those existing nursing facility beds and facilities within 30 miles of the applicant's facility and shall determine whether to approve the request based on current certificate of need criteria and methodology.

Sec. B-4. 22 MRSA §333, sub-§2, ¶B, as amended by PL 2007, c. 440, §9, is further amended to read:

B. ~~Conversion of beds back under this section must be requested within 4 years of the effective date of the license reduction.~~ 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. B-5. 22 MRSA §333-A, sub-§1, as amended by PL 2009, c. 429, §2, is further amended to read:

1. Nursing facility MaineCare funding pool. Except as set forth in subsection ~~3~~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. ~~The~~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 ~~nursing facility~~such projects ~~requiring review under this chapter, except as set forth in subsection 3 and~~ 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.

Sec. B-6. 22 MRSA §333-A, sub-§2, as amended by PL 2007, c. 681, §4, is further amended to read:

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. ~~Projects that exceed the review thresholds require a certificate of need, but no additional assessment of need will be conducted as part of that process. Except as set forth in section 334-A, subsection 2, a project requiring certificate of need approval may not increase MaineCare costs beyond the total amount appropriated for nursing facility care plus the available balance of the nursing facility MaineCare funding pool.~~

Sec. B-7. 22 MRSA §333-A, sub-§3, as amended by PL 2011, c. 90, Pt. J, §4, is repealed.

Sec. B-8. 22 MRSA §333-A, sub-§3-A is enacted 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. 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. B-9. 22 MRSA §334-A, sub-§1, as repealed and replaced by PL 2009, c. 429, §3, is repealed.

Sec. B-10. 22 MRSA §334-A, sub-§1-A is enacted to read:

1-A. 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 considered under either of the following 2 options:

A. These projects may be grouped for competitive review purposes consistent with funds available from the nursing facility MaineCare funding pool and may be approved if sufficient funds are available from the nursing facility MaineCare funding pool or are added to the pool by an 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; or

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.

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. B-11. 22 MRSA §334-A, sub-§2, ¶B, as amended by PL 2009, c. 429, §4, is further amended to read:

B. May be approved by the department upon a showing by the petitioner that the ~~petitioner has acquired bed rights from another nursing facility or facilities that agree to delicense beds, or that are ceasing operations or otherwise reconfiguring their operations, and that 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 fulfills all pertinent requirements and the review criteria set forth in section 335.

Sec. B-12. 22 MRSA §334-A, sub-§2-A, as enacted by PL 2009, c. 429, §5, is amended to read:

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, transfer of ownership 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:the project fulfills all pertinent requirements and the review criteria set forth in section 335.

~~A. The petitioner, or one or more nursing facilities 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 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 one or more nursing facilities under common ownership or control, has acquired bed rights from another nursing facility or facilities that agree to delicense beds or that are ceasing operations or otherwise reconfiguring their operations, and that 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.~~

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

Sec. B-13. 22 MRSA §334-A, sub-§2-B is enacted to read:

2-B. Emergencies and necessary nursing facility projects. If the department determines that an emergency exists, it may approve a necessary nursing facility certificate of need application on an expedited basis when the applicant proposes capital expenditures for renovations and improvements that are necessary:

A. To achieve compliance with code and related regulatory requirements;

B. To comply with the federal Health Insurance Portability and Accountability Act of 1996 and related patient privacy standards;

C. To address other patient safety requirements and standards; or

D. To address other necessary and time-sensitive patient safety or compliance issues.

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

Sec. B-14. 22 MRSA §334-A, sub-§3, amended by PL 2009, c. 430, §§2 to 4, is further amended to read:

3. Evaluating costs. Beginning with all applications pending on ~~January 1, 2003~~February 15, 2012, 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~~;~~.

~~B. Exclude the projected incremental cost associated with replacement of equipment; and~~

~~C. Exclude the incremental cost of energy-efficient improvements as defined in the rules governing MaineCare reimbursement for nursing facilities.~~

Sec. B-15. 22 MRSA §335, sub-§1, as amended by PL 2011, c. 90, Pt. J, §5, is further amended to read:

1. Basis for decision. Based solely on a review of the record maintained under subsection 6, the commissioner shall approve an application for a certificate of need if the commissioner determines that the project:

A. Meets the conditions set forth in subsection 7;

C. Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;

D. Does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum, as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application; and

~~E. Can be funded within the capital investment fund or, in the case of a nursing facility, is consistent with the nursing facility MaineCare funding pool and other provisions of sections 333-A and 334-A.~~

F. In the case of a nursing facility project that proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A.

PART C

Sec. C-1. Rule amendment. No later than January 1, 2012, the Department of Health and Human Services shall amend its rules on certificate of need under the Maine Revised Statutes, Title 22, chapter 103-A to permit applications to be filed at any time, rather than on a cycle, and to allow applicants to waive having a technical assistance meeting.

Sec. C-2. Review of certificate of need. The Department of Health and Human Services shall convene a stakeholder group no later than October 15, 2011 to review ways to improve the certificate of need process under the Maine Revised Statutes, Title 22, chapter 103-A and the rules that implement certificate of need laws. The department shall make any necessary recommendations for changes in law or rule for the benefit of the regulated entities and the people of the State to the Legislature no later than January 15, 2012. The department shall invite participants from a range of groups, including, but not limited to, the Maine Medical Association, the Maine Hospital Association, the Maine Health Care Association, private attorneys who have practiced in the field of certificate of need law, an association of not-for-profit, long-term care providers of services to the elderly in Maine and New Hampshire and a physician-owned multi-specialty medical practice based in Portland.

Sec. C-3. Effective date. Notwithstanding any other provision of this Act, section 1 of this Part takes effect December 1, 2011 and section 2 of this Part takes effect October 1, 2011.

PART D

Sec. D-1. 22 MRSA §337, sub-§2, ¶B, as amended by PL 2009, c. 383, §10, is further amended to read:

B. Within ~~30~~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 applicant has satisfied this technical assistance requirement.

Sec. D-2. 22 MRSA §337, sub-§5, as amended by PL 2009, c. 383, §11, is further amended to read:

5. Public notice; public informational meeting. Within ~~10~~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. 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 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.

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.

Sec. D-3. 22 MRSA §339, sub-§2, ¶B, as enacted by PL 2001, c. 664, §2, is 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, in writing, that such a public hearing be held and the request is received by the commissioner no later than ~~30~~15 days following the informational hearing on the application conducted pursuant to section 337, subsection 5.

Sec. D-4. 22 MRSA §339, sub-§5, as enacted by PL 2001, c. 664, §2, is amended to read:

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

Sec. D-5. 22 MRSA §339, sub-§6, as enacted by PL 2001, c. 664, §2, is amended to read:

6. Public necessity. The department may delay action on an otherwise complete application for up to ~~180~~90 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.

PART E

Sec. E-1. Effective date. This Act takes effect February 15, 2012 except as otherwise indicated.

Effective February 15, 2012, unless otherwise indicated.