

131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 938

H.P. 585

House of Representatives, March 2, 2023

An Act to Assist Nursing Homes in the Management of Facility Beds

Reference to the Committee on Health and Human Services suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative PERRY of Calais.

Cosponsored by Senator BALDACCI of Penobscot and
Representatives: FAY of Raymond, MADIGAN of Waterville, ROEDER of Bangor, STOVER

of Boothbay.

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

- **Sec. 1. 22 MRSA §333, sub-§1,** as amended by PL 2011, c. 648, §2, is further amended to read:
- 1. Procedures. A nursing facility that voluntarily reduces the number of its licensed beds at any time prior to July 1, 2007, for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section, as long as the nursing facility has been in continuous operation without material change of ownership. For purposes of this section and sections 333-A and 334-A, beds voluntarily removed from service prior to July 1, 2007 and available to be reinstated under this section are referred to as "reserved beds." Reserved beds remain facility property until they lapse as provided for in this section or are transferred. To reinstate reserved beds under this subsection, the nursing facility must shall:
 - A. Give notice of the number of beds it is reserving no later than 30 days after the effective date of the license reduction;
 - A-1. Annually provide notice to the department no later than July 1st of each year of the nursing facility's intent to retain these reserved beds, subject to the limitations set forth in subsection 2, paragraph B. Notice provided under this paragraph preserves the reserved beds through June 30th of the following year. The annual notice on reserved beds may be filed by an individual nursing facility or by multiple nursing facilities through a membership organization approved by the department by a single filing; and
 - 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. 2. 22 MRSA §333, sub-§2,** ¶**A,** as enacted by PL 2001, c. 664, §2, is amended to read:
 - A. Review of applications that meet the requirements of this section must be based on the requirements of section 335, subsection 7, except that the determinations required by section 335, subsection 7, paragraph B must be based on the historical costs of operating the beds and must consider whether the projected costs are consistent with the costs of the beds prior to closure, adjusted for inflation applications that seek to reopen reserved beds must be approved if the projected incremental costs of reopening and operating the reserved beds are consistent with the facility's costs of operating its other beds. Applicants are not required to demonstrate that any increases in MaineCare costs are offset by other MaineCare savings. The costs of ongoing operation of both the reopened beds and the complement of facility beds at the time the reserved beds are reopened must be recognized as allowable costs and incorporated into the facility's MaineCare payment rates; and
 - **Sec. 3. 22 MRSA §1720,** as enacted by PL 2005, c. 242, §1, is amended to read:

§1720. Nursing facility medical director reimbursement

The department shall include in its calculation of reimbursement for services provided by a nursing facility an allowance for the cost of incurred by the facility for a medical director in a base year amount not to exceed \$10,000, with that amount being subject to an annual cost-of-living adjustment.

Sec. 4. Cost of computer and cloud-based software systems a fixed cost. Beginning October 1, 2023, the cost incurred by a nursing facility for the acquisition, including set-up costs, use and maintenance, of computer or cloud-based software systems must be included as a fixed cost by the Department of Health and Human Services in its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities. Costs included pursuant to this section must include without limitation the costs of hardware, if any, software and software support.

SUMMARY

This bill restores the ability of nursing facilities to voluntarily reduce the number of their licensed beds and then later increase the number of their licensed beds to the prior level after obtaining a certificate of need and meeting certain conditions.

The bill modifies the process to obtain certificate of need approval to reopen reserved beds. Applications that seek to reopen reserved beds must be approved if the projected incremental costs of reopening and operating the reopened beds are consistent with the facility's costs of operating its other beds. Applicants are not required to demonstrate that any increases in MaineCare costs are offset by other MaineCare savings. The costs of ongoing operation of both the restored beds and the complement of facility beds at the time the reserved beds are reopened must be recognized as allowable costs and incorporated into the facility's MaineCare payment rates.

The bill requires the Department of Health and Human Services to include in its calculation of reimbursement for services provided by a nursing facility the cost incurred by the facility for a medical director.

The bill requires the cost incurred by a nursing facility for the acquisition, use and maintenance of computer or cloud-based software systems to be included as a fixed cost.