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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Sec. 1. 22 MRSA §329, sub-§6, as enacted by PL 2001, c. 664, §2, is repealed and the following enacted in its place:

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 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.

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

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~~ Except as set forth in subsection 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 subsection 3 and section 334-A, subsection 2.

Sec. 3. 22 MRSA §334-A, sub-§1, as enacted by PL 2007, c. 440, §13, is repealed and the following enacted in its place:

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 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;

B. 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

C. 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. 4. 22 MRSA §334-A, sub-§2, as enacted by PL 2007, c. 440, §13, is amended to read:

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 or more nursing facilities to one or more existing or new facility nursing facilities:

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 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. 5. 22 MRSA §334-A, sub-§2-A is enacted 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 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 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. 6. Review of flexibility in MaineCare budget neutrality requirements. The Department of Health and Human Services shall work with stakeholders to identify possible methods for creating more flexibility in the laws governing nursing facility projects that are subject to MaineCare budget neutrality requirements, including, but not limited to, the conversion of nursing facility beds to residential care facility beds, transfers between nursing facilities and residential care facilities and transfers of ownership. In conducting this review the department shall consider the available data and information on the adequacy of existing nursing facilities, residential care facilities and long-term care facilities. The department shall report recommendations, including any necessary legislation, to the Joint Standing Committee on Health and Human Services no later than February 15, 2010. The Joint Standing Committee on Health and Human Services is authorized to submit legislation related to the recommendations to the Second Regular Session of the 124th Legislature.

Effective September 12, 2009