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Legislative Document

No. 825

H.P. 621

House of Representatives, March 3, 2011

An Act To Amend the Maine Certificate of Need Act of 2002 for Nursing Facility Projects To Provide Alternative Means To Satisfy MaineCare Neutrality

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

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HEATHER J.R. PRIEST Clerk

Presented by Representative MARTIN of Eagle Lake. Cosponsored by Representatives: EVES of North Berwick, MALABY of Hancock.

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

Sec. 1. 22 MRSA §333-A, sub-§1, as amended by PL 2009, c. 429, §2, is further
 amended to read:

4 1. Nursing facility MaineCare funding pool. Except as set forth in subsection 5 subsections 1-A and 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 6 lapsed beds but excluding savings from reserved beds, must be credited to the nursing 7 8 facility MaineCare funding pool, which must be maintained by the department to provide 9 for the development of new beds or other improvements requiring a certificate of need. 10 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, 11 serves as a limit on the MaineCare share of all incremental 3rd-year operating costs of 12 13 nursing facility projects requiring review under this chapter, except as set forth in 14 subsection subsections 1-A and 3 and section 334-A.

15 Sec. 2. 22 MRSA §333-A, sub-§1-A is enacted to read:

16 **1-A. Transfers between nursing facilities and residential care facilities.** Nursing 17 facilities may delicense and sell or transfer beds to residential care facilities for the 18 purpose of permitting the residential care facilities to add MaineCare-funded beds or 19 carry out renovation or expansion projects. Such transfers are subject to prior approval of 20 the department. Beds and resources transferred pursuant to this subsection are not subject 21 to the nursing facility MaineCare funding pool.

22 Sec. 3. 22 MRSA §334-A, sub-§1, ¶B, as enacted by PL 2009, c. 429, §3, is 23 amended to read:

24 B. The petitioner, or one or more nursing facilities or residential care facilities, or 25 combinations thereof, under common ownership or control, has have agreed to delicense a sufficient number of beds from the total number of currently licensed or 26 27 reserved beds, or is are otherwise reconfiguring its the operations of such facilities, so 28 that the MaineCare savings associated with such actions are sufficient to fully offset 29 any incremental MaineCare costs that would otherwise arise from implementation of 30 the certificate of need project and, as a result, there are no net incremental MaineCare 31 costs arising from implementation of the certificate of need project; or

32 Sec. 4. 22 MRSA §334-A, sub-§1, ¶C, as enacted by PL 2009, c. 429, §3, is 33 amended to read:

C. The petitioner, or one or more nursing facilities or residential care facilities, or combinations thereof, under common ownership or control, has have 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 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. Sec. 5. 22 MRSA §334-A, sub-§2, ¶B, as amended by PL 2009, c. 429, §4, is
 further amended to read:

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8 9 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 <u>or another</u> residential care facility or facilities, or combinations thereof, 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.

10 Sec. 6. 22 MRSA §334-A, sub-§2-A, as enacted by PL 2009, c. 429, §5, is 11 amended to read:

12 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 13 within the State and do not propose to relocate beds from one facility to another existing 14 15 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 16 that are above applicable thresholds, or that propose actions that do not require a 17 certificate of need, such as the addition of residential care beds to be funded by the 18 19 MaineCare program, may be approved by the department upon a showing that:

- 20 A. The petitioner, or one or more nursing facilities or residential care facilities, or 21 combinations thereof, under common ownership or control, has have agreed to delicense a sufficient number of beds from the total number of currently licensed or 22 23 reserved beds, or is are otherwise reconfiguring its the operations of such facilities, so that the MaineCare savings associated with such actions are sufficient to fully offset 24 25 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 26 27 costs arising from implementation of the certificate of need project; or
- B. The petitioner, or one or more nursing facilities <u>or residential care facilities</u>, or <u>combinations thereof</u>, under common ownership or control, <u>has have</u> acquired bed rights from another nursing facility or facilities <u>or residential care facilities</u>, or <u>combinations thereof</u>, 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.
- 35 Certificate of need projects described in this subsection are not subject to or limited by36 the nursing facility MaineCare funding pool.
- 37 Sec. 7. 22 MRSA §334-A, sub-§2-B is enacted to read:
- 38 2-B. Project for transfer of ownership. The department may approve a nursing
 39 facility certificate of need application that fulfills other applicable review criteria and
 40 proposes a transfer of ownership or control as long as:
- 41 <u>A. The project does not increase MaineCare costs;</u>

 B. Any increases in MaineCare costs are approved pursuant to subsection 1, 2 or

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 2-A; or

3 <u>C. Any increases in MaineCare costs are limited to changes in fixed-cost</u> 4 <u>reimbursement due either to changes in approved financing or to changes in</u> 5 <u>applicable depreciation schedules and the seller satisfied depreciation recapture</u> 6 <u>obligations from the sale proceeds.</u>

A certificate of need project described in this subsection is not subject to or limited by the
 nursing facility MaineCare funding pool, and any accompanying increases in MaineCare
 costs may be approved by the department as long as the project fulfills all other pertinent
 requirements.

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SUMMARY

12 This bill amends the Maine Certificate of Need Act of 2002 governing the conversion 13 of nursing facility beds to residential care beds to permit such conversions as long as the 14 terms of the conversion are approved by the Department of Health and Human Services 15 under applicable provisions permitting transfers that are MaineCare-neutral in their 16 overall impact.

The bill also amends provisions governing the nursing facility MaineCare funding pool to create certain exceptions to the constraints of the pool. A provision is enacted to permit the transfers of beds and other nursing facility resources to residential care facilities and to exclude such beds and resources from the pool if prior approval is obtained from the department.

The bill also changes the provisions governing nursing facility projects in several respects:

1. To permit certificate of need approval of different types of nursing facility projects
as long as MaineCare neutrality is demonstrated and to permit transfers of MaineCare
resources between nursing facilities and residential care facilities to satisfy MaineCare
neutrality requirements;

28 2. To permit the exchange of bed rights between nursing facilities and residential care
 29 facilities in order to permit nursing facilities to satisfy MaineCare neutrality
 30 requirements;

31 3. To permit nursing facilities to satisfy MaineCare neutrality requirements for 32 projects that do not involve relocation of beds from one facility to another or a new 33 facility when the entity proposing the changes is able to satisfy MaineCare neutrality 34 requirements by delicensing beds under common ownership or acquiring beds from other 35 facilities including residential care facilities; and

4. To permit approval of nursing facility projects that propose transfers of ownership
 when any increases in MaineCare costs are offset by transfers of bed rights or the
 increase in MaineCare costs is limited to changes in fixed-cost reimbursement due to
 changes in approved financing or applicable depreciation schedules.