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

**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:

**1. Nursing facility MaineCare funding pool.** Except as set forth in ~~subsections~~subsections 1A and 3 and section 334A, 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 ~~subsections~~subsections 1A and 3 and section 334A.

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

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

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

B. The petitioner, or one or more nursing facilities or residential care facilities, or 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 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 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

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

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 or another 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. 6. 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 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 or residential care facilities, or combinations thereof, under common ownership or control, ~~has~~is agreed to delicense a sufficient number of beds from the total number of currently licensed or 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 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 or residential care facilities, or combinations thereof, under common ownership or control, ~~has~~is acquired bed rights from another nursing facility or facilities or residential care 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.

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

**Sec. 7. 22 MRSA §334-A, sub-§2-B** is enacted to read:

**2-B. Project for transfer of ownership.** The department may approve a nursing facility certificate of need application that fulfills other applicable review criteria and proposes a transfer of ownership or control as long as:

- A. The project does not increase MaineCare costs;
- B. Any increases in MaineCare costs are approved pursuant to subsection 1, 2 or 2A; or
- C. Any increases in MaineCare costs are limited to changes in fixed-cost reimbursement due either to changes in approved financing or to changes in applicable depreciation schedules and the seller satisfied depreciation recapture obligations from the sale proceeds.

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.

## SUMMARY

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

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

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