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

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Certificate of Need Act of 2002 is an important tool in the planning and development of affordable health care services in the State; and

**Whereas,** this legislation is necessary immediately for the enhancement of the strength and clarity of the Maine Certificate of Need Act of 2002; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 22 MRSA §328, sub-§16,** as amended by PL 2003, c. 469, Pt. C, §4, 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 \$1,200,000 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 September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index; medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year.

**Sec. 2. 22 MRSA §328, sub-§17-A, ¶C,** as corrected by RR 2003, c. 1, §15, is amended to read:

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 \$1,200,000 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. Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index

medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year. 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.

**Sec. 3. 22 MRSA §329, sub-§3**, as amended by PL 2003, c. 469, Pt. C, §7, is further amended to read:

**3. Capital expenditures.** Except as provided in subsection 6, the obligation by or on behalf of a health care facility of any capital expenditure of \$2,400,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure for replacement equipment or for parking lots and garages, information and communications systems and physician office space do not require a certificate of need. Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year;

**Sec. 4. 22 MRSA §333-A, sub-§2**, as enacted by PL 2007, c. 440, §11, is 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. 5. 22 MRSA §333-A, sub-§3**, as enacted by PL 2007, c. 440, §11, is repealed and the following enacted in its place:

**3. Emergencies and necessary renovations.** The department may determine an emergency exists and may approve a necessary nursing facility certificate of need application, as described in paragraph A, that is not limited by the nursing facility MaineCare funding pool set forth in subsection 1.

A. The department may approve a nursing facility certificate of need application when the applicant proposes capital expenditures for renovations and improvements that are necessary:

(1) To achieve compliance with code and related regulatory requirements;

(2) To comply with the federal Health Insurance Portability and Accountability Act of 1996 and related patient privacy standards;

(3) To address other patient safety requirements and standards, consistent with the priorities set forth in the current State Health Plan; or

(4) To address other necessary and time-sensitive patient safety or compliance issues.

B. Certificate of need projects described in paragraph A are not subject to or limited by the nursing facility MaineCare funding pool. Any accompanying increases in MaineCare costs may be approved by the department as long as the project fulfills all other pertinent requirements and sufficient funding is available within MaineCare's nursing facility program. The department may seek additional appropriations to fulfill the purposes of this subsection if necessary.

**Sec. 6. 22 MRSA §333-A, sub-§4**, as enacted by PL 2007, c. 440, §11, is amended to read:

**4. Rulemaking.** The department may establish rules ~~regarding the award of pooled savings to~~ implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 7. 22 MRSA §350-A**, as amended by PL 2007, c. 440, §21, is further amended to read:

#### **§ 350-A. Cost-of-living adjustment**

~~Every 2 years, beginning January 1, 2005~~Beginning January 1, 2009 and annually thereafter, the department shall review the monetary figures contained in this chapter. The department shall publish revised figures to correspond to changes in the Consumer Price Index medical index.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 23, 2008.