

**Title 22: HEALTH AND WELFARE**  
**Chapter 103-A: CERTIFICATE OF NEED**

**Table of Contents**

**Subtitle 2. HEALTH.....**

**Part 1. ADMINISTRATION.....**

Section 326. SHORT TITLE..... 3

Section 327. DECLARATION OF FINDINGS AND PURPOSES..... 3

Section 328. DEFINITIONS..... 4

Section 329. CERTIFICATE OF NEED REQUIRED..... 9

Section 330. EXCEPTIONS..... 11

Section 331. SUBSEQUENT REVIEW FOLLOWING CHANGES IN PROJECT..... 12

Section 332. SUBSEQUENT REVIEW..... 13

Section 333. PROCEDURES AFTER VOLUNTARY NURSING FACILITY  
REDUCTIONS..... 14

Section 333-A. PROCEDURES FOR ALLOWING REALLOCATION OF NURSING  
FACILITY CAPACITY..... 16

Section 334. NURSING FACILITY PROJECTS (REPEALED)..... 17

Section 334-A. NURSING FACILITY PROJECTS..... 17

Section 335. APPROVAL; RECORD..... 19

Section 336. SIMPLIFIED REVIEW AND APPROVAL PROCESS..... 24

Section 337. APPLICATION PROCESS FOR CERTIFICATE OF NEED..... 25

Section 338. CONSULTATION..... 28

Section 339. REVIEW PROCESS; PUBLIC HEARING..... 28

Section 340. RECONSIDERATION..... 30

Section 341. REMEDY..... 30

Section 342. RULES..... 31

Section 343. PUBLIC INFORMATION..... 31

Section 344. CONFLICT OF INTEREST..... 32

Section 345. DIVISION OF PROJECT TO EVADE COST LIMITATION  
PROHIBITED..... 32

Section 346. SCOPE OF CERTIFICATE OF NEED..... 32

Section 347. WITHHOLDING OF LICENSE..... 33

Section 348. WITHHOLDING OF FUNDS..... 33

Section 349. INJUNCTION..... 33

Section 349-A. COMPLIANCE INVESTIGATION..... 33

Section 350. PENALTY..... 34

Section 350-A. COST-OF-LIVING ADJUSTMENT (REPEALED) (REALLOCATED  
FROM TITLE 22, SECTION 351)..... 34

Section 350-B. FEDERAL FUNDING (REALLOCATED FROM TITLE 22, SECTION  
352)..... 35

Section 350-C. IMPLEMENTATION REPORTS (REALLOCATED FROM TITLE 22,  
SECTION 353)..... 35



**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 103-A: CERTIFICATE OF NEED**

**§326. SHORT TITLE**

This chapter may be known and cited as the "Maine Certificate of Need Act of 2002." [ 2001, c. 664, §2 (NEW). ]

SECTION HISTORY

2001, c. 664, §2 (NEW).

**§327. DECLARATION OF FINDINGS AND PURPOSES**

The Legislature makes the following statements of findings and purposes. [ 2001, c. 664, §2 (NEW). ]

**1. Findings.** The Legislature finds that unnecessary construction or modification of health care facilities and duplication of health services are substantial factors in the cost of health care and the ability of the public to obtain necessary medical services.

[ 2001, c. 664, §2 (NEW) . ]

**2. Purposes.** The purposes of this chapter are to:

A. Support effective health planning; [ 2001, c. 664, §2 (NEW). ]

B. Support the provision of quality health care in a manner that ensures access to cost-effective services; [ 2001, c. 664, §2 (NEW). ]

C. Support reasonable choice in health care services while avoiding excessive duplication; [ 2001, c. 664, §2 (NEW). ]

D. Ensure that state funds are used prudently in the provision of health care services; [ 2001, c. 664, §2 (NEW). ]

E. Ensure public participation in the process of determining the array, distribution, quantity, quality and cost of these health care services; [ 2001, c. 664, §2 (NEW). ]

F. Improve the availability of health care services throughout the State; [ 2001, c. 664, §2 (NEW). ]

G. Support the development and availability of health care services regardless of the consumer's ability to pay; [ 2001, c. 664, §2 (NEW). ]

H. Seek a balance, to the extent a balance assists in achieving the purposes of this subsection, between competition and regulation in the provision of health care; and [ 2001, c. 664, §2 (NEW). ]

I. Promote the development of primary and secondary preventive health care services. [ 2001, c. 664, §2 (NEW). ]

[ 2001, c. 664, §2 (NEW) . ]

SECTION HISTORY

2001, c. 664, §2 (NEW).

## §328. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 664, §2 (NEW).]

**1. Access to care.** "Access to care" means the ability to obtain in a timely manner needed personal health services to achieve the best possible health outcomes balanced by the health system's resource limitations. Access to care may be influenced by many factors, including, without limitation, travel, distance, waiting time, available resources, availability of a source of care and the health status of the population served.

[ 2001, c. 664, §2 (NEW) .]

**2. Ambulatory surgical facility.** "Ambulatory surgical facility" means a facility, not part of a hospital, that provides surgical treatment to patients not requiring hospitalization. "Ambulatory surgical facility" does not include the offices of private physicians or dentists, whether in individual or group practice.

[ 2001, c. 664, §2 (NEW) .]

**3. Capital expenditure.** "Capital expenditure" means an expenditure, including a force account expenditure or predevelopment activities, that under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and, for the purposes of this chapter, includes capitalized interest on borrowed funds and the fair market value of any property or equipment that is acquired under lease or comparable arrangement or by donation.

[ 2001, c. 664, §2 (NEW) .]

### 3-A. Capital investment fund.

[ 2011, c. 213, §2 (RP) .]

**4. Construction.** "Construction," when used in connection with "health care facility," means the establishment, erection, building, purchase or other acquisition of a health care facility.

[ 2001, c. 664, §2 (NEW) .]

**5. Development.** "Development," when used in connection with health service, means the undertaking of those activities that on their completion will result in the offering of a new health service to the public.

[ 2001, c. 664, §2 (NEW) .]

**6. Expenditure minimum for annual operating costs.** "Expenditure minimum for annual operating costs" means, for services commenced after October 1, 1998, \$400,000 for the 3rd fiscal year, including a partial first year.

[ 2001, c. 664, §2 (NEW) .]

**7. Generally accepted accounting principles.** "Generally accepted accounting principles" means accounting principles approved by the American Institute of Certified Public Accountants or a successor organization.

[ 2001, c. 664, §2 (NEW) .]

**8. Health care facility.** "Health care facility" means a hospital, psychiatric hospital, nursing facility, kidney disease treatment center including a freestanding hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization

center or cancer treatment center. "Health care facility" does not include the office of a private health care practitioner, as defined in Title 24, section 2502, subsection 1-A, whether in individual or group practice. In an ambulatory surgical facility that functions also as the office of a health care practitioner, the following portions of the ambulatory surgical facility are considered to be a health care facility:

- A. Operating rooms; [ 2003, c. 469, Pt. C, §3 (NEW) . ]
- B. Recovery rooms; [ 2003, c. 469, Pt. C, §3 (NEW) . ]
- C. Waiting areas for ambulatory surgical facility patients; [ 2009, c. 383, §1 (AMD) . ]
- C-1. Any space with major medical equipment; and [ 2009, c. 383, §2 (NEW) . ]
- D. Any other space used primarily to support the activities of the ambulatory surgical facility. [ 2003, c. 469, Pt. C, §3 (NEW) . ]

[ 2009, c. 383, §§1, 2 (AMD) . ]

**9. Health maintenance organization.** "Health maintenance organization" means a public or private organization that:

- A. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health services: usual physician services, hospitalization services, laboratory services, x-ray services, emergency and preventive health services and out-of-area coverage; [ 2001, c. 664, §2 (NEW) . ]
- B. Is compensated, except for copayments, for the provision of the basic health services to enrolled participants on a predetermined periodic rate basis; and [ 2001, c. 664, §2 (NEW) . ]
- C. Provides physicians' services primarily through physicians who are either employees or partners of the organization or through arrangements with individual physicians or one or more groups of physicians. [ 2001, c. 664, §2 (NEW) . ]

[ 2001, c. 664, §2 (NEW) . ]

**10. Health need.** "Health need" means a situation or a condition of a person, expressed in health outcome measures such as mortality, morbidity or disability, that is considered undesirable and is likely to exist in the future.

[ 2001, c. 664, §2 (NEW) . ]

**11. Health planning.** "Health planning" means data assembly and analysis, goal determination and the formulation of action recommendations regarding health services.

[ 2001, c. 664, §2 (NEW) . ]

**12. Health services.** "Health services" means clinically related services that are diagnostic, treatment, rehabilitative services or nursing services provided by a nursing facility. "Health services" includes alcohol or drug dependence, substance use disorder and mental health services.

[ 2017, c. 407, Pt. A, §64 (AMD) . ]

**13. Health status.** "Health status" means patient or population measures, or both, of good and poor health practices, rates of death and disease, both chronic and infectious, and the prevalence of symptoms or conditions, or both, of illness and wellness.

[ 2001, c. 664, §2 (NEW) . ]

**14. Hospital.** "Hospital" means an institution that primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or rehabilitation services for the rehabilitation of injured, disabled or sick persons. "Hospital" also includes psychiatric and tuberculosis hospitals.

[ 2001, c. 664, §2 (NEW) .]

**15. Hospital swing bed.** "Hospital swing bed" means an acute care bed licensed by the Bureau of Medical Services, Division of Licensing and Regulatory Services for the use also as a nursing care bed. Swing beds may be established only in rural hospitals with fewer than 100 licensed acute care beds.

[ 2001, c. 664, §2 (NEW); 2007, c. 324, §17 (REV) .]

**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 \$3,200,000 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 January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

[ 2011, c. 424, Pt. A, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**17. Modification.** "Modification" means the alteration, improvement, expansion, extension, renovation or replacement of a health care facility or health maintenance organization or portions thereof, including the initial equipment, and the replacement of equipment or existing buildings.

[ 2001, c. 664, §2 (NEW) .]

**17-A. New health service.** "New health service" means:

A. The obligation of any capital expenditures by or on behalf of a new or existing health care facility of \$3,000,000 or more that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered; [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. The addition of a health service that is to be offered by or on behalf of a new or existing health care facility that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered and that, for the 3rd fiscal year of operation, including a partial first year following addition of that service, is projected to entail incremental annual operating costs directly attributable to the addition of that health service of at least \$1,000,000. For the purposes of this paragraph, the compensation attributable to the health care practitioner is not included in the calculation of 3rd-year operating costs; or [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

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 \$3,200,000 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.

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. [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

Beginning January 1, 2013 and annually thereafter, the threshold amounts for review in paragraphs A, B and C must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

"New health service" does not include a health care facility that extends a current service within the defined primary service area of the health care facility by purchasing within a 12-month time period new equipment costing in the aggregate less than the threshold provided in subsection 16;

[2007, c. 681, §2 (AMD); 2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**18. Nursing facility.** "Nursing facility" means any facility defined under section 1812-A.

[2001, c. 664, §2 (NEW) .]

**18-A. Nursing facility MaineCare funding pool.** "Nursing facility MaineCare funding pool" means that limit established in accordance with section 333-A for nursing facility projects.

[2007, c. 440, §1 (NEW) .]

**19. Obligation.** An "obligation" for a capital expenditure that is considered to be incurred by or on behalf of a health care facility:

A. When a contract, enforceable under the law of the State, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; [2001, c. 664, §2 (NEW) .]

B. When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or [2001, c. 664, §2 (NEW) .]

C. In the case of donated property, on the date on which the gift is completed under the applicable law of the State. [2001, c. 664, §2 (NEW) .]

[2001, c. 664, §2 (NEW) .]

**20. Offer.** "Offer," when used in connection with "health services," means that the health care facility or health maintenance organization holds itself out as capable of providing or having the means to provide a health service.

[2001, c. 664, §2 (NEW) .]

**21. Person.** "Person" means an individual; trust or estate; partnership; corporation, including associations, joint stock companies and insurance companies; the State or a political subdivision or instrumentality of the State, including a municipal corporation of the State; or any other legal entity recognized by state law.

[2001, c. 664, §2 (NEW) .]

**22. Person directly affected by a review.** "Person directly affected by a review" includes:

A. The applicant; [2001, c. 664, §2 (NEW) .]

B. A group of 5 persons residing or located within the health service area served or to be served by the applicant; [2011, c. 648, §1 (AMD).]

C. A health care facility, a health maintenance organization or a health care practitioner that demonstrates that it provides similar services or, by timely filing a letter of intent with the department for inclusion in the record, indicates an intention to provide similar services in the future to patients residing in the health service area and whose services would be directly and substantially affected by the application under review; [2001, c. 664, §2 (NEW).]

D. A 3rd-party payor, including, without limitation, a health maintenance organization, that pays health care facilities for services in the health service area in which the project is proposed to be located and whose payments would be directly and substantially affected by the application under review; and [2001, c. 664, §2 (NEW).]

E. A person who demonstrates a direct and substantial effect upon that person's health care as a result of the application under review. [2001, c. 664, §2 (NEW).]

[ 2011, c. 648, §1 (AMD) .]

**23. Predevelopment activity.** "Predevelopment activity" means any appropriately capitalized expenditure by or on behalf of a health care facility made in preparation for the offering or development of a new health service for which a certificate of need would be required and arrangements or commitments made for financing the offering or development of the new health service and includes site acquisitions, surveys, studies, expenditures for architectural designs, plans, working drawings and specifications.

[ 2001, c. 664, §2 (NEW) .]

**24. Project.** "Project" means any acquisition, capital expenditure, new health service or change in a health service, predevelopment activity or other activity that requires a certificate of need under section 329.

[ 2001, c. 664, §2 (NEW) .]

**25. Rehabilitation facility.** "Rehabilitation facility" means an inpatient facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical services and other services that are provided under competent professional supervision.

[ 2001, c. 664, §2 (NEW) .]

**26. Replacement equipment.** "Replacement equipment" means a piece of capital equipment that replaces another piece of capital equipment that performs essentially the same functions as the replaced equipment.

[ 2001, c. 664, §2 (NEW) .]

### **27. State Health Plan.**

[ 2011, c. 90, Pt. J, §3 (RP) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). RR 2003, c. 1, §15 (COR). 2003, c. 469, §§C2-6 (AMD). 2007, c. 324, §17 (REV). 2007, c. 440, §1 (AMD). 2007, c. 681, §§1, 2 (AMD). 2009, c. 383, §§1-4 (AMD). 2011, c. 90, Pt. J, §§2, 3 (AMD). 2011, c. 213, §2 (AMD). 2011, c. 424, Pt. A, §§1, 2 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §1 (AMD). 2017, c. 407, Pt. A, §64 (AMD).



## §329. CERTIFICATE OF NEED REQUIRED

A person may not enter into any commitment for financing a project that requires a certificate of need or incur an expenditure for the project without having sought and received a certificate of need, except that this prohibition does not apply to obligations for financing conditioned upon the receipt of a certificate of need or to obligations for predevelopment activities. [2001, c. 664, §2 (NEW).]

A certificate of need from the department is required for: [2001, c. 664, §2 (NEW).]

**1. Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control.** Any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department or except if the transfer of ownership or acquisition of control involves only entities or health care facilities that are direct or indirect subsidiaries of the same parent corporation, is between a parent corporation and its direct or indirect subsidiaries or is between entities or health care facilities all under direct or indirect ownership of or ultimate control by the same parent corporation immediately prior to the transfer or acquisition;

[2015, c. 453, §1 (AMD).]

### 2. Acquisitions of major medical equipment.

[2007, c. 440, §2 (RP).]

**2-A. Acquisitions of major medical equipment.** Acquisitions of major medical equipment. The following provisions apply to acquisitions of major medical equipment.

A. The cost of all major medical equipment must be declared at fair market value.

(1) If an entity purchases major medical equipment from an unrelated entity, the purchase price is assumed to reflect the fair market value.

(2) If an entity purchases major medical equipment from a related entity and the department finds that the fair market value is greater than the purchase price, the department may revise the cost of the major medical equipment to reflect the correct fair market value. [2007, c. 440, §3 (NEW).]

B. The following acquisitions of major medical equipment do not require a certificate of need:

(1) Major medical equipment being replaced by the owner; and

(2) The use of major medical equipment on a temporary basis in the case of a natural disaster, major accident or major medical equipment failure. [2011, c. 424, Pt. A, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

C. All replaced major medical equipment must be removed from service. [2007, c. 440, §3 (NEW).]

[2011, c. 424, Pt. A, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

**3. Capital expenditures.** Except as provided in subsection 6, the obligation by or on behalf of a new or existing health care facility of any capital expenditure of \$10,000,000 or more. Capital expenditures in the case of a natural disaster, major accident or equipment failure or for replacement equipment that is not major medical equipment as defined in section 328, subsection 16 or for parking lots and garages, information and communications systems or physician office space or projects directed solely at reducing energy costs through energy efficiency, renewable energy technology or smart grid technology and that have been certified as likely to be cost-effective by the Efficiency Maine Trust pursuant to Title 35-A, section 10122 do not require a certificate of need. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must

be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year;

[ 2011, c. 424, Pt. A, §4 (AMD); 2011, c. 424, Pt. E, §1 (AFF) . ]

**4. New health service.** The offering or development of any new health service;

A. [2003, c. 469, Pt. C, §7 (RP).]

B. [2003, c. 469, Pt. C, §7 (RP).]

[ 2003, c. 469, Pt. C, §7 (AMD) . ]

**4-A. New health care facility.** The construction, development or other establishment of a new health care facility. The following requirements apply to certificate of need for new health care facilities.

A. A new health care facility that is a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than \$5,000,000; or

(2) If it proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, in which case it must satisfy all applicable requirements of section 334-A. [2011, c. 424, Pt. A, §5 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

B. A new health care facility other than a nursing facility must obtain a certificate of need:

(1) If it requires a capital expenditure of more than \$3,000,000; or

(2) If it is a new health service; [2011, c. 424, Pt. A, §5 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

[ 2011, c. 424, Pt. A, §5 (AMD); 2011, c. 424, Pt. E, §1 (AFF) . ]

**5. Changes in bed complement.** An increase in the existing licensed bed complement or an increase in the licensed bed category of a health care facility, other than a nursing facility, of greater than 10%;

[ 2001, c. 664, §2 (NEW) . ]

**6. Nursing facilities.** The obligation by a new or existing nursing facility, when related to nursing services provided by the nursing facility, of any capital expenditures of \$5,000,000 or more. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

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. In order to approve a conversion under this paragraph, the department must determine that any increased MaineCare residential care costs associated with the converted beds are fully offset by reductions in the MaineCare costs from the reduction in MaineCare nursing facility costs associated with the converted beds; [2011, c. 424, Pt. B, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. Capital expenditures in the case of a natural disaster, major accident or equipment failure; [2009, c. 652, Pt. A, §29 (RPR).]

C. Replacement equipment, other than major medical equipment as defined in section 328, subsection 16; [2009, c. 652, Pt. A, §29 (RPR).]

D. Information systems, communication systems, parking lots and garages; and [2009, c. 652, Pt. A, §29 (RPR).]

E. Certain energy-efficient improvements, as described in section 334-A, subsection 4. [2009, c. 652, Pt. A, §29 (RPR).]

[2011, c. 424, Pt. B, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**7. Other circumstances.** The following circumstances:

A. Any proposed use of major medical equipment to serve inpatients of a hospital, if the equipment is not located in a health care facility and was acquired without a certificate of need, except acquisitions exempt from review under subsection 3; or [2007, c. 440, §5 (AMD).]

B. If a person adds a health service not subject to review under subsection 4 at the time it was established and not reviewed and approved prior to establishment at the request of the applicant, and its actual 3rd fiscal year operating cost exceeds the expenditure minimum for annual operating costs in the 3rd fiscal year of operation following addition of these services; and [2007, c. 440, §6 (AMD).]

[2007, c. 440, §§5, 6 (AMD) .]

**8. Related projects.** Any projects that the department determines are related projects if such projects, considered in the aggregate, would otherwise require a certificate of need under this section.

[2001, c. 664, §2 (NEW) .]

SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 469, §C7 (AMD). 2007, c. 440, §§2-6 (AMD). 2007, c. 681, §3 (AMD). 2009, c. 383, §§5, 6 (AMD). 2009, c. 383, §16 (AFF). 2009, c. 429, §1 (AMD). 2009, c. 430, §1 (AMD). 2009, c. 652, Pt. A, §29 (AMD). 2011, c. 424, Pt. A, §§3-5 (AMD). 2011, c. 424, Pt. B, §1 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2015, c. 453, §1 (AMD).

**§330. EXCEPTIONS**

Notwithstanding section 329, the requirements of this Act do not apply with respect to: [2001, c. 664, §2 (NEW).]

**1. Healing through prayer.** A health care facility operated by a religious group relying solely on spiritual means through prayer for healing;

[2001, c. 664, §2 (NEW) .]

**2. Activities; acquisitions.** Activities or acquisitions by or on behalf of a health maintenance organization or a health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations to the extent mandated by the National Health Policy, Planning and Resources Development Act of 1974, as amended, and its accompanying regulations;

[2001, c. 664, §2 (NEW) .]

**3. Home health care services.** Home health care services offered by a home health care provider;

[2001, c. 664, §2 (NEW) .]

**4. Hospice.** Hospice services and programs;

[ 2001, c. 664, §2 (NEW) .]

**5. Assisted living.**

[ 2003, c. 510, Pt. B, §6 (RP) .]

**5-A. Assisted housing.** Assisted housing programs and services regulated under chapter 1664;

[ 2003, c. 510, Pt. A, §15 (NEW) .]

**6. Existing capacity.** The use by an ambulatory surgical facility licensed on January 1, 1998 of capacity in existence on January 1, 1998; and

[ 2001, c. 664, §2 (NEW) .]

**7. Critical access hospitals.** Conversion by a critical access hospital or a hospital in the process of becoming a critical access hospital of licensed acute care beds to hospital swing beds.

[ 2003, c. 621, §1 (AMD) .]

## SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 510, §§A15,B6 (AMD). 2003, c. 621, §1 (AMD).

**§331. SUBSEQUENT REVIEW FOLLOWING CHANGES IN PROJECT**

When a certificate of need has been issued and changes occur as specified in this section, a subsequent review is required. [2001, c. 664, §2 (NEW).]

**1. Criteria for subsequent review.** The following activities require subsequent review and approval if the department has previously issued a certificate of need and one or more of the following circumstances occur within 3 years after the approved activity is undertaken:

- A. There is a significant change in financing; [2001, c. 664, §2 (NEW).]
- B. There is a change affecting the licensed or certified bed capacity as approved in the certificate of need; [2001, c. 664, §2 (NEW).]
- C. There is a change involving the addition or termination of the health services proposed to be rendered; [2001, c. 664, §2 (NEW).]
- D. There is a change in the site or the location of the proposed health care facility; or [2001, c. 664, §2 (NEW).]
- E. There is a substantial change proposed in the design of the health care facility or the type of construction. [2001, c. 664, §2 (NEW).]

[ 2001, c. 664, §2 (NEW) .]

**2. Procedures for subsequent review.** Any person proposing to undertake any activity requiring subsequent review and approval shall file with the department, within 30 days of the time that person first has actual knowledge of the circumstances requiring subsequent review, a notice setting forth the following information:

- A. The nature of the proposed change; [2001, c. 664, §2 (NEW).]

B. The rationale for the change including, where appropriate, an explanation of why the change was not set forth in the original application or letter of intent; and [2001, c. 664, §2 (NEW).]

C. Other pertinent detail subject to the procedures and criteria set forth in section 335. [2001, c. 664, §2 (NEW).]

The department shall, within 30 days of receipt of the information, advise that person in writing whether the proposed change is approved. If not approved, the application must be treated as a new application under this Act. If approved, the department shall amend the certificate of need as appropriate.

[2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §332. SUBSEQUENT REVIEW

**1. Subsequent review following approval.** When the commissioner has approved an application filed unconditionally or subject to conditions pursuant to section 335, subsection 8, the commissioner may conduct a subsequent review to ensure compliance with any terms or conditions of approval within 3 years after the approved activity is undertaken. In this subsequent review, the commissioner may hold a public hearing and may consider any material or significant changes in factors or circumstances relied upon by the commissioner in approving the application and significant and relevant information that either is new or was withheld by the applicant at the time of the process under section 335. If, upon review, the commissioner determines that any terms or conditions of the approval have not been met, the commissioner may take enforcement action consistent with subsection 3 and other applicable provisions of this Act.

[2007, c. 440, §7 (NEW).]

**2. Subsequent review following determination of nonapplicability.** The commissioner may hold a public hearing to determine whether the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered. The commissioner may take enforcement action consistent with the provisions of this Act if, upon review, the commissioner determines that:

A. At the time the nonapplicability determination was rendered the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations; and [2007, c. 440, §7 (NEW).]

B. If the proponent had provided proper information, a certificate of need would have been required for the expenditure or action. [2007, c. 440, §7 (NEW).]

[2007, c. 440, §7 (NEW).]

**3. Enforcement actions.** When the commissioner determines, following the procedures set forth in subsections 1 and 2, that the holder of a certificate of need when properly required has failed to meet the conditions set forth in the certificate of need approval or that a person covered by this Act has improperly obtained a nonapplicability ruling, the commissioner may take one or more of the following actions.

A. The commissioner may, pursuant to section 347, condition the person's license to prohibit the unauthorized activity and determine the ongoing conduct of that activity to be in violation of the respective chapter under which the person is licensed. A person that is subject to a ruling under this paragraph may request, and the commissioner shall grant pursuant to the Maine Administrative Procedure Act, a stay of the effect of any such determination to condition the person's license to prohibit the particular activity pending final agency action. [2007, c. 440, §7 (NEW).]

- B. The commissioner may seek to enjoin the unlawful activity pursuant to section 349. [ 2007, c. 440, §7 (NEW). ]
- C. The commissioner may impose civil penalties against the person pursuant to section 350. [ 2007, c. 440, §7 (NEW). ]
- D. The commissioner may, pursuant to section 348, petition the Superior Court to withhold prospectively the reimbursement, payment or other financial assistance, either directly or indirectly, from a state agency or other 3rd-party payor that is directly related to the project or activity that required a certificate of need. [ 2007, c. 440, §7 (NEW). ]
- E. In determining the appropriate sanction, the commissioner or the court shall consider a range of factors and public interests, as applicable to the circumstances, including but not limited to:
- (1) The degree of negligent or intentional conduct;
  - (2) The clarity or vagueness of the relevant statute or rule;
  - (3) The clarity or vagueness of the prior approval or condition;
  - (4) The efforts of the person to maintain compliance;
  - (5) Whether the person knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered;
  - (6) The public interest in maintaining the service; and
  - (7) All other proper factors at law and in equity. [ 2007, c. 440, §7 (NEW). ]

[ 2007, c. 440, §7 (NEW) . ]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2001, c. 710, §9 (AMD). 2001, c. 710, §10 (AFF). 2007, c. 440, §7 (RPR).

### §333. PROCEDURES AFTER VOLUNTARY NURSING FACILITY REDUCTIONS

**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:

- A. Give notice of the number of beds it is reserving no later than 30 days after the effective date of the license reduction; [ 2007, c. 440, §8 (AMD). ]
- 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 [ 2011, c. 648, §2 (AMD). ]
- 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. [2011, c. 424, Pt. B, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

[ 2011, c. 648, §2 (AMD) .]

**2. Expedited review.** Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a person directly affected by a review. The department shall consider and decide upon these applications as follows:

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; and [2001, c. 664, §2 (NEW).]

B. If the nursing facility fails to provide the annual notices required by subsection 1, paragraph B, the nursing facility's ability to convert beds back under this section lapses, and the beds must be treated as lapsed beds for purposes of this section and sections 333-A and 334-A. [2011, c. 424, Pt. B, §4 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

[ 2007, c. 440, §9 (AMD); 2011, c. 424, Pt. B, §4 (AMD); 2011, c. 424, Pt. E, §1 (AFF); 2011, c. 648, §3 (AMD) .]

**3. Effect on other review proceedings.** Lapsed beds may not be treated as available nursing facility beds for the purpose of evaluating need under section 335. Reserved beds must be counted as available nursing facility beds for the purpose of evaluating need under section 335 only if:

A. The nursing facility retains the ability to convert the reserved beds back to nursing facility use under the terms of this section; [2007, c. 440, §10 (NEW).]

B. The nursing facility having the reserved beds is located within a reasonable distance of the population projected to be served by the project under review; and [2007, c. 440, §10 (NEW).]

C. The nursing facility having the reserved beds is willing to convert them to meet a need identified in that project review. The department shall inquire of facilities having reserved beds in the area of the State to be served by a proposed project before determining whether reserved beds will be counted as available. [2007, c. 440, §10 (NEW).]

[ 2007, c. 440, §10 (RPR) .]

**4. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 383, §7 (AMD) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2007, c. 440, §§8-10 (AMD). 2009, c. 383, §7 (AMD). 2011, c. 424, Pt. B, §§2-4 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§2, 3 (AMD).

## §333-A. PROCEDURES FOR ALLOWING REALLOCATION OF NURSING FACILITY CAPACITY

**1. Nursing facility MaineCare funding pool.** Except as set forth in subsection 3-A 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. For those nursing facility projects that propose to add new nursing facility beds to the inventory of beds within the State, 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 such projects unless such projects are approved under applicable provisions of section 334-A. Nursing facility projects that do not add new nursing facility beds to the inventory of beds within the State are not subject to the nursing facility MaineCare funding pool.

[ 2011, c. 424, Pt. B, §5 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**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.

[ 2011, c. 424, Pt. B, §6 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

### 3. Emergencies and necessary renovations.

[ 2011, c. 424, Pt. B, §7 (RP); 2011, c. 424, Pt. E, §1 (AFF) .]

**3-A. Transfers between nursing facility and residential care facility.** A nursing facility may delicense and sell or transfer beds to a residential care facility for the purpose of permitting the residential care facility to add MaineCare-funded beds to meet identified needs for such beds. Such a transfer does not require a certificate of need but is subject to prior approval of the department on an expedited basis. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such transfers on an expedited basis. When the average then current occupancy rate for existing state-funded residential care beds within 30 miles of the applicant facility is 80% or less, the department in its review under section 335 shall evaluate the impact that the proposed additional state-funded residential care beds would have on these existing state-funded residential care beds and facilities. Beds and MaineCare resources transferred pursuant to this subsection are not subject to the nursing facility MaineCare funding pool. In order for the department to approve delicensing, selling or transferring under this subsection, the department must determine that any increased MaineCare residential care costs associated with the converted beds are fully offset by reductions in the MaineCare costs from the reduction in MaineCare nursing facility costs associated with the converted beds.

[ 2011, c. 648, §4 (AMD) .]



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

[ 2007, c. 681, §6 (AMD) .]

#### SECTION HISTORY

2007, c. 440, §11 (NEW). 2007, c. 681, §§4-6 (AMD). 2009, c. 429, §2 (AMD). 2011, c. 90, Pt. J, §4 (AMD). 2011, c. 424, Pt. B, §§5-8 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §4 (AMD).

### **§334. NURSING FACILITY PROJECTS**

*(REPEALED)*

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 416, §1 (AMD). 2007, c. 440, §12 (RP).

### **§334-A. NURSING FACILITY PROJECTS**

#### **1. Projects that expand current bed capacity.**

[ 2011, c. 424, Pt. B, §9 (RP); 2011, c. 424, Pt. E, §1 (AFF) .]

**1-A. 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 considered under either of the following 2 options:

A. These projects may be grouped for competitive review purposes consistent with funds available from the nursing facility MaineCare funding pool and may be approved if 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; or [2011, c. 424, Pt. B, §10 (NEW); 2011, c. 424, Pt. E, §1 (AFF)].

B. Petitioners proposing such projects may elect not to participate in a competitive review under paragraph A and the projects may be approved if:

(1) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof 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 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

(2) The petitioner, or one or more nursing facilities or residential care facilities or combinations thereof under common ownership or control, has 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 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. The divisions within the department that are responsible for licensing and MaineCare reimbursement for nursing facilities and residential care facilities shall work cooperatively to review and consider whether to approve such projects.

With respect to the option described in this paragraph, when the average then current occupancy rate for existing nursing facility beds at facilities within 30 miles of the applicant facility exceeds 85%, the department in its review under section 335 shall evaluate the impact that the proposed additional nursing facility beds would have on those existing nursing facility beds and facilities and shall determine whether to approve the request based on current certificate of need criteria and methodology.

Certificate of need projects described in this paragraph are not subject to or limited by the nursing facility MaineCare funding pool. [2011, c. 648, §5 (AMD).]

[ 2011, c. 648, §5 (AMD) .]

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

A. May also propose renovation, replacement or other actions requiring certificate of need review; and [2007, c. 440, §13 (NEW).]

B. May be approved by the department upon a showing by the petitioner that the project fulfills all pertinent requirements and the review criteria set forth in section 335. [2011, c. 424, Pt. B, §11 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

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

[ 2011, c. 424, Pt. B, §11 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**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, transfer of ownership or other actions requiring certificate of need review, such as capital expenditures for equipment and renovations that are above applicable thresholds, may be approved by the department upon a showing that the project fulfills all pertinent requirements and the review criteria set forth in section 335.

A. [2011, c. 424, Pt. B, §12 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

B. [2011, c. 424, Pt. B, §12 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

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

[ 2011, c. 424, Pt. B, §12 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**2-B. Emergencies and necessary nursing facility projects.** If the department determines that an emergency exists, it may approve a necessary nursing facility certificate of need application on an expedited basis when the applicant proposes capital expenditures for renovations and improvements that are necessary:

A. To achieve compliance with code and related regulatory requirements; [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

B. To comply with the federal Health Insurance Portability and Accountability Act of 1996 and related patient privacy standards; [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

C. To address other patient safety requirements and standards; or [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

D. To address other necessary and time-sensitive patient safety or compliance issues. [2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

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

[ 2011, c. 424, Pt. B, §13 (NEW); 2011, c. 424, Pt. E, §1 (AFF) .]

**3. Evaluating costs.** Beginning with all applications pending on February 15, 2012, in evaluating whether a project will increase MaineCare expenditures for a nursing facility for the purposes of this section, the department shall:

A. Allow gross square footage per licensed bed of not less than 500 square feet unless the applicant specifies a smaller allowance for the project. [2011, c. 424, Pt. B, §14 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

B. [2011, c. 424, Pt. B, §14 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

C. [2011, c. 424, Pt. B, §14 (RP); 2011, c. 424, Pt. E, §1 (AFF).]

[ 2011, c. 424, Pt. B, §14 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**4. Cost associated with energy-efficient improvements.** The cost associated with energy-efficient improvements in nursing facilities, as set forth in rules governing special reimbursement provisions for energy-efficient improvements adopted by the department, must be excluded from the cost of a project in determining whether the project is subject to review.

[ 2009, c. 430, §5 (NEW) .]

#### SECTION HISTORY

2007, c. 440, §13 (NEW). 2009, c. 429, §§3-5 (AMD). 2009, c. 430, §§2-5 (AMD). 2011, c. 424, Pt. B, §§9-14 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §5 (AMD).

### §335. APPROVAL; RECORD

This section applies to determinations by the commissioner under this chapter. [2001, c. 664, §2 (NEW) .]

**1. Basis for decision.** Based solely on a review of the record maintained under subsection 6, the commissioner shall approve an application for a certificate of need if the commissioner determines that the project:

A. Meets the conditions set forth in subsection 7; [2003, c. 469, Pt. C, §8 (NEW).]

B. [2011, c. 90, Pt. J, §5 (RP).]

C. Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers; [2003, c. 469, Pt. C, §8 (NEW).]

D. Does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum, as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application; and [2011, c. 424, Pt. B, §15 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

E. [2013, c. 424, Pt. A, §10 (RP).]

F. In the case of a nursing facility project that proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A. [2011, c. 424, Pt. B, §15 (NEW); 2011, c. 424, Pt. E, §1 (AFF).]

[ 2007, c. 440, §14 (AMD); 2013, c. 424, Pt. A, §10 (AMD) .]

**1-A. Competitive review.** The commissioner may review applications on a competitive basis if the applications propose the same or similar services.

[ 2011, c. 648, §6 (AMD) . ]

**2. Communications.** Staff of the department with responsibility for the certificate of need program may meet with, or otherwise communicate with, any person who is not a department employee and who wants to provide information to be considered in connection with an application for a certificate of need.

[ 2011, c. 648, §7 (AMD) . ]

**3. Limited communications.** All communications regarding any letter of intent or application with the commissioner or with department staff responsible for the certificate of need program from any person who is not a department employee that the department staff reasonably believes is intended to influence the analyses relating to or the decision regarding an application for certificate of need must be made part of the record described in subsection 5-A. If such communications are not in written form or part of public meetings, these communications must be noted in writing by the commissioner or by department staff and that notation must be made part of the application record.

[ 2011, c. 648, §8 (AMD) . ]

**4. Decision.** The commissioner's decision must be in writing and must contain appropriate references to the record. If the application is denied, the decision must specifically address comments received and made part of the record that favor granting the application. If the application is approved, the decision must specifically address comments received and made part of the record that favor denial of the application.

[ 2001, c. 664, §2 (NEW) . ]

## **5. Record.**

[ 2007, c. 440, §17 (RP) . ]

**5-A. Record.** The record created by the department in the course of its review of an application must contain the following:

A. The letter of intent described in section 337, subsection 1, all other materials submitted by the applicant relating to the letter of intent and any written materials relating to the letter of intent; [ 2007, c. 440, §18 (NEW) . ]

B. The application and all other materials submitted by the applicant for the purpose of making those documents part of the record; [ 2007, c. 440, §18 (NEW) . ]

C. All information generated by or for the department in the course of gathering material to assist the commissioner in determining whether the conditions for granting an application for a certificate of need have or have not been met. This information may include, without limitation, the report of consultants, including reports by panels of experts assembled by the department to advise it on the application, memoranda of meetings or conversations with any person interested in commenting on the application, letters, memoranda and documents from other interested agencies of State Government and memoranda describing officially noticed facts; [ 2007, c. 440, §18 (NEW) . ]

D. Stenographic or electronic recordings of any public hearing held by the commissioner or the staff of the department at the direction of the commissioner regarding the application; [ 2007, c. 440, §18 (NEW) . ]

E. Stenographic or electronic recording of any public informational meeting held by the department pursuant to section 337, subsection 5; [ 2007, c. 440, §18 (NEW) . ]

F. Any documents submitted by any person for the purpose of making those documents part of the record regarding any application for a certificate of need or for the purpose of influencing the outcome of any analyses or decisions regarding an application for certificate of need, except documents that have been submitted anonymously. Such source-identified documents automatically become part of the record upon receipt by the department; [2007, c. 440, §18 (NEW).]

G. Preliminary and final analyses of the record prepared by the staff; [2007, c. 440, §18 (NEW).]

H. Except with regard to a project related to nursing facility services, a written assessment by the Director of the Maine Center for Disease Control and Prevention of the impact of the project on the health of Maine citizens; and [2007, c. 440, §18 (NEW).]

I. Except with regard to a project related to nursing facility services, or a project that qualifies for a simplified review process under section 336, a written assessment by the Superintendent of Insurance of the impact of the project on the cost of insurance in the region and the State when required by the commissioner. The superintendent may request additional information from the applicant for the purpose of reviewing the application. Any such request must be transmitted through the department and becomes part of the official record. The applicant shall respond to the request within 30 days. Any such response must be transmitted through the department and becomes part of the official record. The inability of the superintendent to complete the review of the application due to the failure of the applicant to respond timely must be noted in the superintendent's assessment filed with the department and may be cause for the commissioner to deny approval of the project. [2013, c. 424, Pt. B, §9 (AMD).]

[2011, c. 648, §9 (AMD); 2013, c. 424, Pt. B, §9 (AMD).]

**6. Maintenance of the record.** The record created pursuant to subsection 5-A first opens on the day the department receives a certificate of need application. From that day, all of the record is a public record. The letter of intent becomes a public record upon the receipt of the letter and is available for review from the date of receipt. Any person may examine all or part of the public record and purchase copies of any or all of that record during the normal business hours of the department.

A. The department shall accept public comments and additional information from the applicant for a period of 30 days after the public informational meeting held under section 337, subsection 5 or the public hearing held under section 339, subsection 2, whichever is later. The record will then close until public notice that the preliminary staff analysis has been made part of the record. [2011, c. 648, §10 (NEW).]

B. A technical assistance meeting with the department must be scheduled at least 10 days before the department publishes the preliminary analysis of a certificate of need application. At the technical assistance meeting the department shall:

- (1) Give applicants an opportunity to hear whether the certificate of need application is likely to be approved or denied;
- (2) Give applicants an opportunity to address issues and concerns expressed by the department regarding compliance with this chapter; and
- (3) Give applicants an opportunity to offer additional information to the department.

Any additional information submitted by the applicant becomes part of the public record. The department shall complete its review after the technical assistance meeting and before the department publishes the preliminary analysis. [2011, c. 648, §10 (NEW).]

C. The department shall give notice that the preliminary analysis is complete and part of the public record by publication in a newspaper of general circulation in Kennebec County, in a newspaper published within the service area of the project and on the department's publicly accessible website. [2011, c. 648, §10 (NEW).]

D. The public and the applicant may submit comments on the preliminary analysis for 15 business days after the notice is published under paragraph C. [2011, c. 648, §10 (NEW).]

E. The department may determine to reopen the record in circumstances that it determines to be appropriate for a limited time to permit submission of additional information, as long as the department gives public notice consistent with the provisions of this subsection. [2011, c. 648, §10 (NEW).]

[2011, c. 648, §10 (RPR).]

**7. Expanded review process; approval.** Except as provided in section 334-A, subsection 2-B with respect to emergency nursing facility projects, section 336 with respect to the simplified review process and subsection 9 of this section with respect to emergency certificates of need, the commissioner, or the commissioner's designee in the case of a simplified review under section 336 or an emergency review, shall issue a certificate of need if the commissioner or the commissioner's designee determines and makes specific written findings regarding that determination that:

A. The applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards. If the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards; [2011, c. 648, §11 (AMD).]

B. The economic feasibility of the proposed services is demonstrated in terms of the:

(1) Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

(2) Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules. If the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this subparagraph if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards; [2011, c. 648, §11 (AMD).]

C. There is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

(1) Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

(2) Whether the project will have a positive impact on the health status indicators of the population to be served;

(3) Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and

(4) Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project; [2003, c. 469, Pt. C, §11 (AMD).]

D. The proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

(1) The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

(2) The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

(3) The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available; and [2003, c. 469, Pt. C, §11 (AMD).]

E. The project meets the criteria set forth in subsection 1. [2003, c. 469, Pt. C, §12 (NEW).]

In making a determination under this subsection, the commissioner may use data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner to the extent such data and information is applicable to the determination being made. The commissioner may give appropriate weight to information that indicates that the proposed health services are innovations in high-quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

[2011, c. 648, §11 (AMD).]

**8. Conditional approvals.** The commissioner may grant an application subject to conditions that relate to the criteria for approval of the application.

[2001, c. 664, §2 (NEW).]

**9. Emergency certificate of need.** Upon the written or oral request of an applicant asserting that an emergency situation exists, the department shall immediately determine whether an emergency situation exists and upon finding that an emergency situation does exist shall issue a certificate of need for a project necessary on account of the emergency situation. The scope of the certificate of need may not exceed that which is necessary to remedy or otherwise effectively address the emergency situation. The certificate of need may be subject to conditions consistent with the purpose of this Act that do not interfere with the applicant's ability to respond effectively to the emergency.

The commissioner shall find an emergency situation exists whenever the commissioner finds that an applicant has demonstrated:

A. The necessity for immediate or temporary relief due to a natural disaster, a fire, an unforeseen safety consideration, a major accident, equipment failure, foreclosure, receivership or an action of the department or other circumstances determined appropriate by the department; [2001, c. 664, §2 (NEW).]

B. The serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular requirements of this chapter and the rules adopted by the department; and [2001, c. 664, §2 (NEW).]

C. The lack of substantial change in the facility or services that existed before the emergency situation. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 469, §§C8-12 (AMD). 2003, c. 514, §1 (AMD). 2005, c. 369, §§7,8 (AMD). 2007, c. 440, §§14-19 (AMD). 2009, c. 383, §8 (AMD). 2011, c. 90, Pt. J, §§5, 6 (AMD). 2011, c. 213, §3 (AMD). 2011, c. 424, Pt. B, §15 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§6-11 (AMD). 2013, c. 424, Pt. A, §10 (AMD). 2013, c. 424, Pt. B, §9 (AMD).

### §336. SIMPLIFIED REVIEW AND APPROVAL PROCESS

Notwithstanding the requirements set forth in section 335, the department shall conduct a simplified review and approval process in accordance with this section unless a public hearing has been requested pursuant to section 339, subsection 2, paragraph D, in which case the project is subject to the expanded review in section 335. The department shall by rule set forth this simplified review and approval process. To the extent practicable, a simplified review must be completed and the commissioner shall make a decision within 60 days after the application has been certified as complete by the applicant pursuant to section 337, subsection 4, unless a hearing is requested by a person directly affected by a review or the commissioner determines to hold a hearing. The following projects may qualify for a simplified review process: [ 2011, c. 648, §12 (AMD). ]

**1. Maintenance projects.** The commissioner shall issue a certificate of need for a project that primarily involves the maintenance of a health facility if the commissioner determines that the project:

- A. Will result in no or a minimal additional expense to the public or to the health care facility's clients; [ 2001, c. 664, §2 (NEW). ]
- B. Will be in compliance with other applicable state and local laws and regulations; and [ 2001, c. 664, §2 (NEW). ]
- C. Will significantly improve or, in the alternative, not significantly adversely affect the health and welfare of any person currently being served by the health care facility. [ 2001, c. 664, §2 (NEW). ]

[ 2001, c. 664, §2 (NEW). ]

**2. Life safety codes; previous certificate of need.** The commissioner shall issue a certificate of need for a project that is required to meet federal, state or local life safety codes.

[ 2011, c. 648, §12 (AMD). ]

**3. Acquisition of control.** The commissioner shall issue a certificate of need for a project that involves the acquisition of control of a health facility when the acquisition consists of a management agreement or similar arrangement and primarily involves the day-to-day operation of the facility in its current form, or transfers ownership of a nursing facility to an existing provider of nursing facility services licensed in this State if the commissioner determines that the project meets the requirements of section 335, subsection 7, paragraph B and that the project is economically feasible in light of its impact on:

- A. The operating budget of the facility and the applicant; and [ 2001, c. 664, §2 (NEW). ]
- B. The applicant's ability to operate the facility without increases in the facility's rates beyond those that would otherwise occur absent the acquisition. [ 2001, c. 664, §2 (NEW). ]

[ 2011, c. 648, §12 (AMD). ]

**4. Capital expenditures for compliance or quality improvement.** The commissioner shall issue a certificate of need for a proposed capital expenditure upon determining that:

- A. The capital expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life safety codes and regulations; to comply with state licensure standards; to provide demonstrable improvements in patient safety or quality of care; or to comply with accreditation or certification standards that must be met to receive reimbursement under the United States Social Security Act, Title XVIII or payments under a state plan for medical assistance approved under Title XIX of that Act; [ 2011, c. 648, §12 (AMD). ]
- B. The economic feasibility of the project is demonstrated in terms of its effects on the operating budget of the applicant, including its existing rate structure; [ 2001, c. 664, §2 (NEW). ]



C. There remains a public need for the service to be provided; and [2001, c. 664, §2 (NEW).]

D. The corrective action proposed by the applicant is a cost-effective alternative available under the circumstances. [2011, c. 648, §12 (AMD).]

[2011, c. 648, §12 (AMD) .]

**5. Major medical equipment.** The commissioner shall issue a certificate of need for replacement of major medical equipment that is not otherwise exempt from review pursuant to section 329, subsection 2-A, paragraph B, subparagraph (1) upon determining that a project meets the requirements of section 335, subsection 7.

[2009, c. 383, §9 (NEW) .]

**6. Other projects.** The commissioner may by rule identify other categories of projects that qualify for simplified review under this section that are consistent with the purposes of this section and will foster timely review and approval for qualifying projects.

[2011, c. 648, §12 (NEW) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2009, c. 383, §9 (AMD). 2011, c. 648, §12 (AMD) .

### §337. APPLICATION PROCESS FOR CERTIFICATE OF NEED

**1. Letter of intent.** Prior to filing an application for a certificate of need, an applicant shall file a letter of intent with the department. The letter of intent forms the basis for determining the applicability of this chapter to the proposed expenditure or action. A letter of intent is deemed withdrawn one year after receipt by the department, unless sooner superseded by an application, except that the applicant is not precluded from resubmitting the same letter of intent.

[2001, c. 664, §2 (NEW) .]

**2. Application filed.** Paragraphs A to C apply in the given order to the application process for certificate of need.

A. After receiving the letter of intent, the department shall issue a letter or checklist, or both, to an applicant that stipulates and clarifies what will be required in the application. [2001, c. 664, §2 (NEW) .]

B. Within 15 days of filing the letter of intent, the applicant shall schedule a meeting with the department staff in order to assist the department in understanding the application and to receive technical assistance concerning the nature, extent and format of the documentary evidence, statistical data and financial data required for the department to evaluate the proposal. The applicant may waive the technical assistance meeting requirement under this paragraph. [2011, c. 648, §13 (AMD) .]

C. After receiving notice from the department that a certificate of need is required for a proposed expenditure or action, if the applicant wishes to proceed with the project, the applicant must file an application for a certificate of need. [2001, c. 664, §2 (NEW) .]

[2009, c. 383, §10 (AMD); 2011, c. 424, Pt. D, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF); 2011, c. 648, §13 (AMD) .]

**3. Application content; department-approved forms.** An application for a certificate of need must describe with specificity how the proposed project meets each of the standards for granting a certificate of need that are applicable to the project. A statement or statements that the project will meet the standards

without supporting facts backed by relevant documentation and analysis constitute sufficient cause to deny the application. An application subject to an expanded review must contain, if available and relevant to the particular service or technology, information on health status, public health need for the service or technology, quality assurance processes and prevention programs.

A. The department shall make available on the department's publicly accessible website multiple project-specific, department-approved certificate of need forms for at least the following certificate of need categories:

- (1) Nursing facility projects;
- (2) Hospital projects; and
- (3) Other projects subject to review. [2011, c. 648, §14 (NEW).]

B. The department-approved forms must set forth application elements that are relevant to each category and must elicit the information and data reasonably necessary to permit the department to carry out the review and approval process in a timely and cost-effective manner, with consideration for the costs and responsibilities imposed on applicants. [2011, c. 648, §14 (NEW).]

C. Submission of the completed applicable department-approved forms and required information, together with other information that is appropriate to the application, and the applicant's certification that the application is complete pursuant to subsection 4 constitutes a sufficient record for the department to make a determination regarding the application for a certificate of need, unless a hearing is requested either by the department or by a person directly affected by a review. [2011, c. 648, §14 (NEW).]

D. If an application is contested by another provider of services or a person directly affected by a review or the department determines that a public hearing must be held pursuant to section 339, subsection 2, additional information may be required by the department. [2011, c. 648, §14 (NEW).]

[ 2011, c. 648, §14 (AMD) . ]

**4. Application complete.** An application is certified as complete when the applicant delivers to the department a certification in writing that states that the application should be considered complete by the department. Subsequent to the applicant's certification under this subsection, the applicant may submit information that is responsive to any concern, issue, question or allegation of facts contrary to those in the application made by the department or any other person.

[ 2001, c. 664, §2 (NEW) . ]

**5. Public notice; public informational meeting.** Within 5 business days of the filing of a certificate by an applicant that a complete certificate of need application is on file with the department, public notice that the application has been filed must be given by publication in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed expenditure will occur. If an existing health care facility may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed, the department shall notify the municipal officers of the municipality in which that health care facility is located and the members of the State House of Representatives and the State Senate representing any part of that municipality. The notice must also be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose. The notice must also be published on the department's publicly accessible website. This notice must include:

A. A brief description of the proposed expenditure or other action, including the name and location of any existing health care facility that may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed; [2013, c. 424, Pt. A, §11 (RPR).]

B. A description of the review process and schedule; [2013, c. 424, Pt. A, §11 (RPR).]

C. A statement that any person may examine the application, submit comments in writing to the department regarding the application and examine the entire record assembled by the department at any time from the date of publication of the notice until the application process is closed for comment; [2013, c. 424, Pt. A, §11 (RPR).]

D. If a public informational meeting is being held, the time and location of the public informational meeting, a statement that any person may appear at the meeting to question the applicant regarding the project or the department regarding the conditions the applicant must satisfy in order to receive a certificate of need for the project, and a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the public informational meeting pursuant to the provisions of section 339, subsection 2; and [2013, c. 424, Pt. A, §11 (RPR).]

E. If a public informational meeting is not being held, a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the publication of the notice that an application has been filed. [2013, c. 424, Pt. A, §11 (RPR).]

The department shall make an electronic or stenographic record of the public informational meeting.

A public informational meeting is not required for the simplified review and approval process in section 336 unless requested by the applicant, the department or a person directly affected by a review.

[2013, c. 424, Pt. A, §11 (RPR).]

**6. Voluntary withdrawal of application.** During the review period, prior to the date that department staff submits a final report to the commissioner, an applicant may withdraw an application without prejudice by filing written notice of the withdrawal with the department. A withdrawn application may be resubmitted and will be processed as an entirely new application under this chapter.

[2001, c. 664, §2 (NEW).]

**7. Fees.** The department shall adopt rules setting minimum and maximum filing fees under this chapter. A nonrefundable filing fee must be paid at the time an application is filed. If the approved capital expenditure or operating cost upon which a fee is based is higher than the initially proposed capital expenditure, then the filing fee must be recalculated and the difference, if any, must be paid before the certificate of need may be issued. In addition to filing fees, the department shall adopt rules to establish reasonable and necessary fees to carry out the provisions of this chapter. All fees received by the department under this subsection must be placed in a separate, nonlapsing account to be used in accordance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 648, §16 (AMD).]

**8. Suspension of review.** An applicant may request and be granted a suspension of the review process prior to the date on which the department staff submits its final analysis to the commissioner.

A. A request for suspension of the review process must be for specific periods of no less than 10 days and not greater than 12 months. [2011, c. 648, §17 (NEW).]

B. If there are no competing applicants, a request under this subsection must be granted. [2011, c. 648, §17 (NEW).]

C. If there are competing applicants, the request under this subsection must be reviewed and approved or disapproved within 3 business days, taking into account the interests of the public and of competing applicants. [2011, c. 648, §17 (NEW).]

D. If a request to suspend the review is granted, the department shall determine:

(1) If the suspension will suspend review of all competing applications; or

(2) If the suspension will not affect competing applications, which will continue to be reviewed without interruption. [2011, c. 648, §17 (NEW).]

E. Failure to reactivate an application within the time period approved by the department results in automatic withdrawal of the suspended application. [2011, c. 648, §17 (NEW).]

[ 2011, c. 648, §17 (NEW) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2009, c. 383, §§10, 11 (AMD). 2011, c. 424, Pt. D, §§1, 2 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 636, §1 (AMD). 2011, c. 648, §§13-17 (AMD). 2013, c. 424, Pt. A, §11 (AMD).

### §338. CONSULTATION

**1. Consultation on new technologies and needs.** In connection with the development of policies and procedures to implement this Act, the commissioner may, from time to time, consult with persons with relevant skills and experience regarding:

A. New medical technologies and the impact of those technologies on the health care delivery system in the State; [2003, c. 469, Pt. C, §13 (AMD).]

B. Unmet need for health care services in the State; [2011, c. 648, §18 (AMD).]

C. The quality of health care; and [2011, c. 648, §18 (AMD).]

D. The need to replace, renovate or upgrade health care facilities to meet current and future needs. [2011, c. 648, §18 (NEW).]

[ 2011, c. 648, §18 (AMD) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2003, c. 469, §§13,14 (AMD). 2011, c. 648, §18 (AMD).

### §339. REVIEW PROCESS; PUBLIC HEARING

**1. Review process.** The review process consists of an evaluation of the project application for a certificate of need by the department in light of:

A. The application itself; [2001, c. 664, §2 (NEW).]

B. Material collected or developed by or for the department staff to test the assertions in the application; [2001, c. 664, §2 (NEW).]

C. All comments received by any person regarding the project; and [2001, c. 664, §2 (NEW).]

D. Any other material made part of the record. [2001, c. 664, §2 (NEW).]

[ 2001, c. 664, §2 (NEW) .]

**2. Public hearing.** The following provisions apply to a public hearing under this chapter.

A. The commissioner or the commissioner's designee may hold a public hearing regarding the application. [2001, c. 664, §2 (NEW).]

B. The commissioner, or the commissioner's designee, shall hold a public hearing if any person directly affected by a review requests, in writing, that such a public hearing be held and the request is timely received by the commissioner. If a public informational meeting on the application is conducted pursuant

to section 337, subsection 5, the request for a public hearing must be received by the commissioner no later than 15 days following the informational hearing. If no public informational meeting is conducted, the request for a public hearing must be received within 15 days following the publication of the public notice required by section 337, subsection 5. [2011, c. 648, §19 (AMD).]

C. An electronic or stenographic record of the public hearing must be made part of the record. [2001, c. 664, §2 (NEW).]

D. A public hearing is not required for the simplified review and approval process set forth in section 336 unless requested by the applicant, the department or a person directly affected by a review. [2011, c. 648, §20 (AMD).]

[2009, c. 383, §12 (AMD); 2011, c. 424, Pt. D, §3 (AMD); 2011, c. 424, Pt. E, §1 (AFF); 2011, c. 648, §§19, 20 (AMD).]

**3. Preliminary staff analyses.** As soon as practicable, the department staff shall provide the preliminary analyses of the application and the record to the applicant, the commissioner and any person who requests the analyses and record. Notice of the availability of the analyses must be published in a newspaper in general circulation in Kennebec County and a newspaper of general circulation serving the area in which the project is to be located and on the department's publicly accessible site on the Internet.

[2001, c. 664, §2 (NEW).]

**4. Final department staff analysis.** A final department staff analysis must be submitted to the commissioner, together with the documentary record described in section 335, subsection 2, as soon as practicable after the closing of the record.

[2001, c. 664, §2 (NEW).]

**5. Reviews.** To the extent practicable, a review must be completed and the commissioner shall make a decision within 60 days after the application has been certified as complete by the applicant for a simplified review, or within 90 days for an expanded review. The department shall establish criteria for determining when it is not practicable to complete a review within these time frames. Whenever it is not practicable to complete a review within these time frames, the department may extend the review period for up to an additional 30 days.

[2011, c. 648, §21 (AMD).]

**6. Public necessity.** The department may delay action on an otherwise complete application for up to 120 days from the time the application has been certified as complete by the applicant if the department finds that a public necessity exists. The department shall provide written notice of the delay to the applicant and any other person who has requested in writing information regarding the application. For purposes of this subsection, the department shall find that a public necessity exists if:

A. The application represents a new service or technology not previously provided within the State; [2001, c. 664, §2 (NEW).]

B. The application represents a potential significant impact on health care system costs; [2001, c. 664, §2 (NEW).]

C. The application represents a new service or technology for which a health care system need has not been previously established; or [2001, c. 664, §2 (NEW).]

D. There are several applications for the same or similar projects before the department. [2001, c. 664, §2 (NEW).]

[2011, c. 648, §22 (AMD) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2009, c. 383, §12 (AMD). 2011, c. 424, Pt. D, §§3-5 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §§19-22 (AMD).

### §340. RECONSIDERATION

Any person directly affected by a review under this chapter may, for good cause shown, request in writing a hearing for the purpose of reconsideration of the decision of the department to issue or to deny a certificate of need. [2001, c. 664, §2 (NEW).]

**1. Timing for request.** A request for hearing for reconsideration under this section must be received within 30 days of the department's decision.

[2001, c. 664, §2 (NEW) .]

**2. Hearing.** If the department determines that good cause for a hearing under this section has been demonstrated, the department shall commence a hearing within 30 days of receipt of the request. For purposes of this section, a request for a hearing is considered to show good cause if it:

A. Presents significant, relevant information not previously considered by the department; [2001, c. 664, §2 (NEW).]

B. Demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; [2001, c. 664, §2 (NEW).]

C. Demonstrates that the department has materially failed to follow its adopted procedures in reaching its decision; or [2001, c. 664, §2 (NEW).]

D. Provides other bases for a hearing that the department has determined constitute good cause. [2001, c. 664, §2 (NEW).]

[2001, c. 664, §2 (NEW) .]

**3. Decision.** A decision must be rendered within 60 days of the commencement of a hearing under this section, except that the parties may agree to a longer time period.

[2001, c. 664, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §341. REMEDY

Any person aggrieved by a final decision of the department made under the provisions of this Act is entitled to review in accordance with this chapter and with Title 5, chapter 375, subchapter VII. [2001, c. 664, §2 (NEW).]

**1. Finality.** A decision of the department to issue a certificate of need or to deny an application for a certificate of need is not considered final until the department has taken final action on a request for reconsideration under section 340. A decision by the department is not final when opportunity for reconsideration exists with respect to matters involving new information or changes in circumstances pursuant to section 340, subsection 2, paragraphs A and B.

[ 2001, c. 664, §2 (NEW) .]

**2. Competitive reviews.** If a person or persons file for review under Title 5, chapter 375, regarding competitive reviews of proposals to construct new nursing facility beds, the court shall require the party seeking judicial review to give security in such sums as the court determines proper for the payment of costs and damages that may be incurred or suffered by any other party who is found to have been wrongfully delayed or restrained from proceeding to implement the certificate of need, except that, for good cause shown and recited in the order, the court may waive the giving of security. A surety upon a bond or undertaking under this subsection submits the surety to the jurisdiction of the court and irrevocably appoints the clerk of the court as the agent for the surety upon whom any papers affecting liability on the bond or undertaking may be served. The liability of the surety may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall mail copies to the persons giving the security if their addresses are known.

[ 2001, c. 664, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

## §342. RULES

The department shall adopt any rules, standards, criteria, plans or procedures that may be necessary to carry out the provisions and purposes of this Act. The department shall provide for public notice and hearing on all proposed rules, standards, criteria, plans, procedures or schedules pursuant to Title 5, chapter 375. Unless otherwise provided by this chapter, rules adopted pursuant to this chapter are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [2001, c. 664, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

## §343. PUBLIC INFORMATION

The department shall prepare and publish at least annually a report on its activities conducted pursuant to this Act. The annual report must include information on all certificates of need granted and denied and on the assessment of penalties. With regard to all certificates granted on a conditional basis, the report must include a summary of information reported pursuant to section 332 and any accompanying statements by the commissioner or department staff submitted regarding the reports. [2009, c. 383, §13 (AMD) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2009, c. 383, §13 (AMD).

### §344. CONFLICT OF INTEREST

In addition to the limitations of Title 5, section 18, a member or employee of the department who has a substantial economic or fiduciary interest that would be affected by a recommendation or decision to issue or deny a certificate of need or who has a close relative or economic associate whose interest would be so affected is ineligible to participate in the review, recommendation or decision-making process with respect to any application for which the conflict of interest exists. [2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §345. DIVISION OF PROJECT TO EVADE COST LIMITATION PROHIBITED

A health care facility or other party required to obtain a certificate of need may not separate portions of a single project into components, including, but not limited to, site facility and equipment, to evade the cost limitations or other requirements of section 329. [2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §346. SCOPE OF CERTIFICATE OF NEED

**1. Application determinative.** A certificate of need is valid only for the defined scope, premises and facility or person named in the application and is not transferable or assignable.

[ 2001, c. 664, §2 (NEW) .]

**2. Maximum expenditure.** In issuing a certificate of need, the department shall specify the maximum capital expenditures that may be obligated under this certificate. The department shall adopt rules regarding the determination of capital expenditure maximums, procedures to monitor capital expenditures obligated under certificates and procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

[ 2001, c. 664, §2 (NEW) .]

**3. Issued certificate; duration and expiration.** After the issuance of a certificate of need, the department shall periodically review the progress of the holder of the certificate in meeting the timetable for making the service or equipment available or for completing the project specified in the approved application. A certificate of need expires if the project for which the certificate has been issued is not commenced within 24 months following the issuance of the certificate. The department may grant an extension of a certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced. The department may require evidence of the continuing feasibility and availability of financing for a project as a condition for extending the life of the certificate. In addition, if on the basis of its periodic review of progress under the certificate the department determines that the holder of a certificate is not otherwise meeting the timetable and is not making a good faith effort to meet it, the department may, after a hearing, withdraw the certificate of need. The department shall adopt rules for the withdrawal of certificates of need.

[ 2011, c. 648, §23 (AMD) .]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2011, c. 648, §23 (AMD).



### §347. WITHHOLDING OF LICENSE

A new health care facility, as defined in section 328, is eligible to obtain a license under the applicable state law if the facility has obtained a certificate of need as required by this chapter. The license of any facility does not extend to include and may not otherwise be deemed to allow the delivery of any services, the use of any equipment that has been acquired, the use of any portion of a facility or any other change for which a certificate of need as required by this chapter has not been obtained. Any unauthorized delivery of services, use of equipment or a portion of a facility or other change is in violation of the respective chapter under which the facility is licensed. [2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §348. WITHHOLDING OF FUNDS

A health care facility or other provider may be eligible to apply for or receive any reimbursement, payment or other financial assistance from any state agency or other 3rd-party payor, either directly or indirectly, for any capital expenditure or operating costs attributable to any project for which a certificate of need is required by this chapter only if the certificate of need has been obtained. Reimbursement, payment or other financial assistance, either directly or indirectly, from a state agency or other 3rd-party payor may be subject to an enforcement action by the commissioner to withhold or deny reimbursement, in whole or in part, with respect to a project granted a certificate of need when the commissioner determines that the applicant fails to meet any of the conditions set forth in the certificate of need approval in accordance with the procedures set forth in section 332. For the purposes of this section, the department shall determine the eligibility of a facility to receive reimbursement for all projects subject to the provisions of this chapter. [2007, c. 440, §20 (AMD).]

#### SECTION HISTORY

RR 2001, c. 2, §A29 (COR). 2001, c. 664, §2 (NEW). 2007, c. 440, §20 (AMD).

### §349. INJUNCTION

The Attorney General, upon the request of the department, shall seek to enjoin any project for which a certificate of need as required by this chapter has not been obtained and shall take any other action as may be appropriate to enforce this chapter. [2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

2001, c. 664, §2 (NEW).

### §349-A. COMPLIANCE INVESTIGATION

To ensure compliance with this chapter or rules adopted under this chapter, the department may investigate a health care facility or other entity subject to this chapter when the department has a reasonable basis to suspect that a violation has occurred. The health care facility or other entity subject to this chapter may not interfere with or impede the investigation. [2009, c. 556, §1 (NEW).]

**1. Right of entry.** The department may enter and inspect the premises of a health care facility or other entity subject to this chapter with the permission of the owner or person in charge, or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated. The right of entry extends to any premises that the department has reason to believe is operated and maintained in violation of this chapter or rules adopted under this chapter. A letter of intent or an application for a certificate of need made pursuant to this

chapter and rules adopted under this chapter constitutes permission for entry or inspection of the premises for which the certificate of need is sought in order to facilitate verification of the information submitted on or in connection with a letter of intent or an application for a certificate of need.

[ 2009, c. 556, §1 (NEW) . ]

**2. Access to information.** The department, at any reasonable time, upon demand, has the right to inspect and copy books, accounts, papers, records and other documents or information, whether stored electronically, on paper or in other forms, including, but not limited to, documents and information regarding total capital expenditures and operating costs for a project, ownership or control of a health care facility or other entity subject to this chapter or health services provided, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated.

[ 2009, c. 556, §1 (NEW) . ]

**3. Findings of fact.** Upon completion of an investigation pursuant to this section, the department shall prepare findings of fact and make a recommendation to the commissioner as to whether a provision of this chapter or a rule adopted under this chapter has been violated. If the commissioner determines that a violation has occurred, the commissioner may pursue one or more of the remedies authorized under this Act.

[ 2009, c. 556, §1 (NEW) . ]

**4. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 556, §1 (NEW) . ]

#### SECTION HISTORY

2009, c. 556, §1 (NEW) .

## §350. PENALTY

**1. Violation.** An individual, partnership, association, organization, corporation or trust that violates any provision of this chapter or any rate, rule or regulation pursuant to this chapter is subject to a fine imposed in conformance with the Maine Administrative Procedure Act and payable to the State of not more than \$10,000. The department may hold these funds in a special revenue account that may be used only to support certificate of need reviews, such as for hiring expert analysts on a short-term consulting basis.

[ 2009, c. 383, §14 (NEW) . ]

**2. Administrative hearing and appeal.** To contest the imposition of a fine under this section, the individual, partnership, association, organization, corporation or trust shall submit to the department a written request for an administrative hearing within 10 days of notice of imposition of a fine pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[ 2009, c. 383, §14 (NEW) . ]

#### SECTION HISTORY

2001, c. 664, §2 (NEW). 2009, c. 383, §14 (RPR) .

## §350-A. COST-OF-LIVING ADJUSTMENT

*(REPEALED)*

*(REALLOCATED FROM TITLE 22, SECTION 351)*

## SECTION HISTORY

RR 2001, c. 2, §A30 (RAL). 2007, c. 440, §21 (AMD). 2007, c. 681, §7 (AMD). 2009, c. 383, §15 (RP).

**§350-B. FEDERAL FUNDING**

*(REALLOCATED FROM TITLE 22, SECTION 352)*

The department is authorized to accept any federal funds to be used for the purposes of carrying out this chapter. [2001, c. 2, Pt. A, §31 (RAL).]

## SECTION HISTORY

RR 2001, c. 2, §A31 (RAL).

**§350-C. IMPLEMENTATION REPORTS**

*(REALLOCATED FROM TITLE 22, SECTION 353)*

The holder of a certificate of need shall make written reports as provided in this section and as required by rule adopted by the department. [2001, c. 2, Pt. A, §32 (RAL).]

**1. Final plans and specifications.** A holder of a certificate of need that has been issued for the construction or modification of a facility or portion of a facility shall file final plans and specifications for the project as required by the department to determine that the plans and specifications are in compliance with the certificate of need and with applicable licensure, life safety code and accreditation standards.

[ 2001, c. 2, Pt. A, §32 (RAL) .]

**2. Reports.** The department may require periodic reports, summary reports and cost and utilization reports as well as reports regarding the effect of the project on the health status, quality of care and health outcomes of the population served for no longer than 3 years following the completion of the project as set out in rule.

[ 2011, c. 648, §24 (AMD) .]

**3. Summary report.**

[ 2011, c. 648, §24 (RP) .]

**4. Cost and utilization reports.**

[ 2011, c. 648, §24 (RP) .]

**5. Department action.** The department may revoke any certificate of need the department has issued when the person to whom it has been issued fails to file reports or plans and specifications required by the department on a timely basis. The department shall review services that fall below the required volume and quality standards of a certificate of need.

[ 2011, c. 648, §24 (AMD) .]

## SECTION HISTORY

RR 2001, c. 2, §A32 (RAL). 2011, c. 648, §24 (AMD).

---

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Special Session of the 128th Maine Legislature and is current through November 1, 2018. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.