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

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

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

Whereas, this legislation is necessary to ensure the availability of an orderly and efficient certificate of need procedure that supports effective health planning; and

Whereas, this legislation is necessary immediately to advance the development of health care services in the State; and

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

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

Sec. 1. 22 MRSA §328, sub-§8, ¶C, as enacted by PL 2003, c. 469, Pt. C, §3, is amended to read:

C. Waiting areas for ambulatory surgical facility patients; and

Sec. 2. 22 MRSA §328, sub-§8, ¶C-1 is enacted to read:

C-1. Any space with major medical equipment; and

Sec. 3. 22 MRSA §328, sub-§14, as enacted by PL 2001, c. 664, §2, is amended to read:

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 and medical office buildings owned or subsidized by a hospital or a hospital's parent company.

Sec. 4. 22 MRSA §328, sub-§16, as amended by PL 2007, c. 681, §1, is further amended to read:

16. Major medical equipment. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs \$1,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and

11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. ~~Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year.~~

Sec. 5. 22 MRSA §328, sub-§17-A, ¶C, as amended by PL 2007, c. 681, §2, is further amended to read:

C. The addition in the private office of a health care practitioner, as defined in Title 24, section 2502, subsection 1-A, of new technology that costs \$1,200,000 or more. The department shall consult with the Maine Quality Forum Advisory Council established pursuant to Title 24-A, section 6952, prior to determining whether a project qualifies as a new technology in the office of a private practitioner. ~~Beginning September 30, 2004 and annually thereafter through 2007, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index. Beginning January 1, 2009 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the Consumer Price Index medical index, with an effective date of January 1st each year.~~ With regard to the private office of a health care practitioner, "new health service" does not include the location of a new practitioner in a geographic area.

Sec. 6. 22 MRSA §328, sub-§26, as enacted by PL 2001, c. 664, §2, is repealed.

Sec. 7. 22 MRSA §329, sub-§2-A, ¶B, as enacted by PL 2007, c. 440, §3, is repealed and the following enacted in its place:

B. The use of major medical equipment on a temporary basis in the case of a natural disaster, major accident or major medical equipment failure does not require a certificate of need.

Sec. 8. 22 MRSA §329, sub-§3, as amended by PL 2007, c. 681, §3, is further amended to read:

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

Sec. 9. 22 MRSA §333, sub-§4, as enacted by PL 2001, c. 664, §2, is amended to read:

4. Rulemaking. Rules adopted pursuant to this section are ~~major-substantive~~routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A2-A~~.

Sec. 10. 22 MRSA §334-A, sub-§3, ¶A, as enacted by PL 2007, c. 440, §13, is amended to read:

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; ~~and~~

Sec. 11. 22 MRSA §334-A, sub-§3, ¶B, as enacted by PL 2007, c. 440, §13, is amended to read:

B. Exclude the projected incremental cost associated with replacement of equipment; ~~and~~

Sec. 12. 22 MRSA §334-A, sub-§3, ¶C is enacted to read:

C. Exclude the incremental cost of energy-efficient improvements as defined in the rules governing MaineCare reimbursement for nursing facilities.

Sec. 13. 22 MRSA §334-A, sub-§4 is enacted to read:

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 included in the cost of a project in determining whether the project is subject to review.

Sec. 14. 22 MRSA §335, sub-§6, as amended by PL 2007, c. 440, §19, is further amended to read:

6. Maintenance of the record. The record created pursuant to subsection 5-A first opens on the day the department receives a ~~letter of intent~~certificate of need application. From that day, all of the record is a public record, and any person may examine that record and purchase copies of any or all of that record during the normal business hours of the department.

The department must receive 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.

The record will reopen for 10 business days following the publication that the preliminary staff review is complete and will close 10 business days after a public notice of the closing of the record has been published 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 site on the Internet, as long as the notice is not published until after the preliminary staff analysis of the application is made part of the record.

The department may also determine to reopen the record in other 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.

Sec. 15. 22 MRSA §337, sub-§2, ¶B, as enacted by PL 2001, c. 664, §2, is amended to read:

B. Within 30 days of filing the letter of intent, the applicant shall ~~meetschedule~~ 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 department may not accept an application for review until the applicant has satisfied this technical assistance requirement.

Sec. 16. 22 MRSA §337, sub-§5, as enacted by PL 2001, c. 664, §2, is amended to read:

5. Public notice; public informational meeting. Within 510 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 and that a public informational meeting must be held regarding the application 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. 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. This notice must include:

- A. A brief description of the proposed expenditure or other action;
- B. A description of the review process and schedule;
- 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; and
- D. The time and location of the public informational meeting and a statement that any person may appear at the meeting to question the applicant regarding the project or the department regarding the conditions that the applicant must satisfy in order to receive a certificate of need for the project.

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.

Sec. 17. 22 MRSA §339, sub-§2, ¶D is enacted to read:

D. A public hearing is not required for the simplified review and approval process set forth in section 336.

Sec. 18. 22 MRSA §350, as enacted by PL 2001, c. 664, §2, is repealed and the following enacted in its place:

§ 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 civil fine payable to the State of not more than \$50,000. 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.

2. Appeal. To appeal 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.

Sec. 19. 22 MRSA §350-A, as amended by PL 2007, c. 681, §7, is repealed.

Sec. 20. 22 MRSA §1844, sub-§2, ¶E is enacted to read:

E. Notwithstanding any other provision of this chapter, applicants seeking both a certificate of public advantage under this section and a certificate of need under chapter 103-A shall submit a department-approved combined application format, and the certificate of need timelines in chapter 103-A and rules adopted pursuant to that chapter apply to this combined application. After review of the combined application and based on the relevant statutes and rules, the commissioner shall render a decision on the application for a certificate of public advantage and a separate decision on the application for a certificate of need. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 21. Application. Notwithstanding the limitations of the capital investment fund established pursuant to the Maine Revised Statutes, Title 2, section 102, the approval of certificates of need for those projects or activities that require a certificate of need as a result of the changes enacted in this Act are not subject to the limitations established under the capital investment fund until the certificate of need review cycle that begins January 1, 2013.

Sec. 22. Cost associated with energy-efficient improvements. For purposes of the Maine Revised Statutes, Title 9-B, section 334-A, subsection 4, the rules governing special reimbursement provisions for energy-efficient improvements are set forth in the Department of Health and Human Services MaineCare Benefits Manual, Chapter III, Section 67, subsection 44.2.4.

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

SUMMARY

This bill clarifies that a portion of an ambulatory surgical facility functioning as the office of a health care practitioner that contains major medical equipment is considered to be a health care facility.

This bill adds medical office buildings owned or subsidized by a hospital or a hospital's parent company to the definition of "hospital" and deletes the definition of "replacement equipment."

This bill eliminates indexing and changes the capital expenditure threshold from \$2,400,000 to \$2,000,000.

This bill eliminates the exemption of replacement equipment from the certificate of need requirements.

This bill changes the category of rules adopted for procedures after voluntary nursing facility reductions from major substantive to routine technical rules.

This bill exempts energy-efficient improvements in nursing facilities from MaineCare neutrality calculations. This bill includes the cost of energy-efficient improvements in nursing facilities in the overall improvement cost when determining whether the thresholds are triggered.

This bill states that the certificate of need record opens on the day the Department of Health and Human Services receives a certificate of need application instead of the day the department receives a letter of intent.

This bill requires the certificate of need applicant to schedule a meeting within 30 days of filing a letter of intent, instead of requiring the meeting to occur within 30 days. The department is required to give public notice that there will be a public informational meeting within 10 business days, instead of 5, of receipt of an applicant's certificate that the complete certificate of need application is on file with the department.

This bill eliminates the requirement for a public informational meeting and a public hearing for simplified reviews.

This bill authorizes the department to collect fines without a civil court action and gives the recipient of the notice of imposition of a fine an opportunity to request an administrative hearing on the matter. This bill increases the civil fine from a maximum of \$5,000 to not more than \$50,000.

This bill removes redundancies and aligns the procedural timelines when applicants seek both a certificate of public advantage and a certificate of need.

This bill specifies that activity newly subject to certificate of need as a result of this Act is not subject to the capital investment fund until the certificate of need review cycle beginning January 1, 2013.