



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 825

H.P. 621

House of Representatives, March 3, 2011

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

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

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

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

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

4 **1. Nursing facility MaineCare funding pool.** Except as set forth in ~~subsection~~  
5 subsections 1-A and 3 and section 334-A, savings to the MaineCare program as a result  
6 of delicensing of nursing facility beds on or after July 1, 2005, including savings from  
7 lapsed beds but excluding savings from reserved beds, must be credited to the nursing  
8 facility MaineCare funding pool, which must be maintained by the department to provide  
9 for the development of new beds or other improvements requiring a certificate of need.  
10 The balance of the nursing facility MaineCare funding pool, as adjusted to reflect current  
11 costs consistent with the rules and statutes governing reimbursement of nursing facilities,  
12 serves as a limit on the MaineCare share of all incremental 3rd-year operating costs of  
13 nursing facility projects requiring review under this chapter, except as set forth in  
14 ~~subsection~~ subsections 1-A and 3 and section 334-A.

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

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

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

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

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

34 C. The petitioner, or one or more nursing facilities or residential care facilities, or  
35 combinations thereof, under common ownership or control, ~~has~~ have acquired bed  
36 rights from another nursing facility or facilities or residential care facility or facilities,  
37 or combinations thereof, that agree to delicense beds or that are ceasing operations or  
38 otherwise reconfiguring their operations, and that the MaineCare revenues associated  
39 with these acquired bed rights and related actions are sufficient to cover the  
40 additional requested MaineCare costs associated with the project.

1           **Sec. 5. 22 MRSA §334-A, sub-§2, ¶B**, as amended by PL 2009, c. 429, §4, is  
2 further amended to read:

3           B. May be approved by the department upon a showing by the petitioner that the  
4 petitioner has acquired bed rights from another nursing facility or facilities or another  
5 residential care facility or facilities, or combinations thereof, that agree to delicense  
6 beds, or that are ceasing operations or otherwise reconfiguring their operations, and  
7 that the MaineCare revenues associated with these acquired bed rights and related  
8 actions are sufficient to cover the additional requested MaineCare costs associated  
9 with the project.

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

12           **2-A. Other types of certificate of need projects.** Other types of nursing facility  
13 projects that do not add new nursing facility beds to the inventory of nursing facility beds  
14 within the State and do not propose to relocate beds from one facility to another existing  
15 or new facility and that propose any renovation, replacement or other actions requiring  
16 certificate of need review, such as capital expenditures for equipment and renovations  
17 that are above applicable thresholds, or that propose actions that do not require a  
18 certificate of need, such as the addition of residential care beds to be funded by the  
19 MaineCare program, may be approved by the department upon a showing that:

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

28           B. The petitioner, or one or more nursing facilities or residential care facilities, or  
29 combinations thereof, under common ownership or control, ~~has~~ have acquired bed  
30 rights from another nursing facility or facilities or residential care facilities, or  
31 combinations thereof, that agree to delicense beds or that are ceasing operations or  
32 otherwise reconfiguring their operations, and that the MaineCare revenues associated  
33 with these acquired bed rights and related actions are sufficient to cover the  
34 additional requested MaineCare costs associated with the project.

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

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

38           **2-B. Project for transfer of ownership.** The department may approve a nursing  
39 facility certificate of need application that fulfills other applicable review criteria and  
40 proposes a transfer of ownership or control as long as:

41           A. The project does not increase MaineCare costs;



