

**§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. [PL 2001, c. 664, §2 (NEW).]

A certificate of need from the department is required for: [PL 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;

[PL 2015, c. 453, §1 (AMD).]

**2. Acquisitions of major medical equipment.**

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

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

[PL 2011, c. 424, Pt. A, §3 (AMD); PL 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;  
[PL 2011, c. 424, Pt. A, §4 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

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

A. [PL 2003, c. 469, Pt. C, §7 (RP).]

B. [PL 2003, c. 469, Pt. C, §7 (RP).]

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

[PL 2011, c. 424, Pt. A, §5 (AMD); PL 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%;

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

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

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

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

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

[PL 2011, c. 424, Pt. B, §1 (AMD); PL 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 [PL 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 [PL 2007, c. 440, §6 (AMD).]

[PL 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.

[PL 2001, c. 664, §2 (NEW).]

#### SECTION HISTORY

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

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