

## §334-A. Nursing facility projects

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

[PL 2011, c. 424, Pt. B, §9 (RP); PL 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 [PL 2011, c. 424, Pt. B, §10 (NEW); PL 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. [PL 2011, c. 648, §5 (AMD).]

[PL 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 [PL 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. [PL 2011, c. 424, Pt. B, §11 (AMD); PL 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.

[PL 2011, c. 424, Pt. B, §11 (AMD); PL 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. [PL 2011, c. 424, Pt. B, §12 (RP); PL 2011, c. 424, Pt. E, §1 (AFF).]

B. [PL 2011, c. 424, Pt. B, §12 (RP); PL 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.

[PL 2011, c. 424, Pt. B, §12 (AMD); PL 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; [PL 2011, c. 424, Pt. B, §13 (NEW); PL 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; [PL 2011, c. 424, Pt. B, §13 (NEW); PL 2011, c. 424, Pt. E, §1 (AFF).]

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

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

[PL 2011, c. 424, Pt. B, §13 (NEW); PL 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. [PL 2011, c. 424, Pt. B, §14 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

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

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

[PL 2011, c. 424, Pt. B, §14 (AMD); PL 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.

[PL 2009, c. 430, §5 (NEW).]

#### SECTION HISTORY

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

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