

CON recommendation:

A Certificate of Need from DHHS is needed for new nursing facility services, relocation of beds, replacement facilities, changes in ownership and control, building modifications and capital expenditures by nursing facilities. Criteria established in 22 MRSA §335, sub-§§1 and 7 (attached), as well as in department rule. Criteria include:

- Applicant able to provide the proposed services at the proper standard of care.
- Economic feasibility of the proposed services demonstrated in terms of the capacity of the applicant to support the project financially and operate in accordance with existing and anticipated future changes in federal, state and local licensure and rules.
- There is a public need for the proposed services including specific health problems in the area to be served, impact of health status indicators of population to be served, accessible to residents in the area, and improvements in quality and outcome measures applicable to the service proposed.
- Consistent with the orderly and economic development of health facilities and health resources for the state – impact on total health care expenditures, availability of state funds to cover increase state costs associated with utilization of services, and likelihood that more effective, more accessible or less costly alternatives for service delivery may become available.
- Ensures high quality outcomes and does not negatively affect quality of care delivery by existing service providers.
- Does not result in inappropriate increases in service utilization.
- Consistent with NF MaineCare funding pool.

Commission recommendation: Add a requirement that when beds are available because of a change in circumstance of another facility with the beds being relocated, the CON process **take into account the region where the beds were previously located OR account for a substantial negative effect on services in the region where the beds were located.**

DHHS would have to determine a process in rules that weighs the criteria of the area where the beds are coming from and the need of the area where the beds are proposed to be placed.

Title 22, c. 103-A Certificate of Need

§335. Approval; record

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;
- B. rp.
- C. Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;
- 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
- E. 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. [

...

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;
- 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;

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;

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

E. The project meets the criteria set forth in subsection 1.

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.