

§332. Subsequent review

1. Subsequent review following approval. When the commissioner has approved an application filed unconditionally or subject to conditions pursuant to section 335, subsection 8, the commissioner may conduct a subsequent review to ensure compliance with any terms or conditions of approval within 3 years after the approved activity is undertaken. The 3-year time limitation does not apply to a subsequent review to ensure that the requirement set forth in section 335, subsection 1, paragraph G continues to be met. In any subsequent review, the commissioner may hold a public hearing and may consider any material or significant changes in factors or circumstances relied upon by the commissioner in approving the application and significant and relevant information that either is new or was withheld by the applicant at the time of the process under section 335. If, upon review, the commissioner determines that any terms or conditions of the approval have not been met, the commissioner may take enforcement action consistent with subsection 3 and other applicable provisions of this Act.

[PL 2023, c. 343, §1 (AMD).]

2. Subsequent review following determination of nonapplicability. The commissioner may hold a public hearing to determine whether the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered. The commissioner may take enforcement action consistent with the provisions of this Act if, upon review, the commissioner determines that:

A. At the time the nonapplicability determination was rendered the proponent of the expenditure knowingly withheld significant and relevant information or made any material misrepresentations; and [PL 2007, c. 440, §7 (NEW).]

B. If the proponent had provided proper information, a certificate of need would have been required for the expenditure or action. [PL 2007, c. 440, §7 (NEW).]

[PL 2007, c. 440, §7 (NEW).]

3. Enforcement actions. When the commissioner determines, following the procedures set forth in subsections 1 and 2, that the holder of a certificate of need when properly required has failed to meet the conditions set forth in the certificate of need approval or that a person covered by this Act has improperly obtained a nonapplicability ruling, the commissioner may take one or more of the following actions.

A. The commissioner may, pursuant to section 347, condition the person's license to prohibit the unauthorized activity and determine the ongoing conduct of that activity to be in violation of the respective chapter under which the person is licensed. A person that is subject to a ruling under this paragraph may request, and the commissioner shall grant pursuant to the Maine Administrative Procedure Act, a stay of the effect of any such determination to condition the person's license to prohibit the particular activity pending final agency action. [PL 2007, c. 440, §7 (NEW).]

B. The commissioner may seek to enjoin the unlawful activity pursuant to section 349. [PL 2007, c. 440, §7 (NEW).]

C. The commissioner may impose civil penalties against the person pursuant to section 350. [PL 2007, c. 440, §7 (NEW).]

D. The commissioner may, pursuant to section 348, petition the Superior Court to withhold prospectively the reimbursement, payment or other financial assistance, either directly or indirectly, from a state agency or other 3rd-party payor that is directly related to the project or activity that required a certificate of need. [PL 2007, c. 440, §7 (NEW).]

E. In determining the appropriate sanction, the commissioner or the court shall consider a range of factors and public interests, as applicable to the circumstances, including but not limited to:

- (1) The degree of negligent or intentional conduct;
- (2) The clarity or vagueness of the relevant statute or rule;
- (3) The clarity or vagueness of the prior approval or condition;
- (4) The efforts of the person to maintain compliance;
- (5) Whether the person knowingly withheld significant and relevant information or made any material misrepresentations at the time the nonapplicability determination was rendered;
- (6) The public interest in maintaining the service; and
- (7) All other proper factors at law and in equity. [PL 2007, c. 440, §7 (NEW).]

[PL 2007, c. 440, §7 (NEW).]

SECTION HISTORY

PL 2001, c. 664, §2 (NEW). PL 2001, c. 710, §9 (AMD). PL 2001, c. 710, §10 (AFF). PL 2007, c. 440, §7 (RPR). PL 2023, c. 343, §1 (AMD).

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