

**§333. Procedures after voluntary nursing facility reductions**

**1. Procedures.** A nursing facility that voluntarily reduces the number of its licensed beds at any time prior to July 1, 2007, for any reason except to create private rooms may convert the beds back and thereby increase the number of nursing facility beds to no more than the previously licensed number of nursing facility beds, after obtaining a certificate of need in accordance with this section, as long as the nursing facility has been in continuous operation without material change of ownership. For purposes of this section and sections 333-A and 334-A, beds voluntarily removed from service prior to July 1, 2007 and available to be reinstated under this section are referred to as "reserved beds." Reserved beds remain facility property until they lapse as provided for in this section or are transferred. To reinstate reserved beds under this subsection, the nursing facility must:

A. Give notice of the number of beds it is reserving no later than 30 days after the effective date of the license reduction; [PL 2007, c. 440, §8 (AMD).]

A-1. Annually provide notice to the department no later than July 1st of each year of the nursing facility's intent to retain these reserved beds, subject to the limitations set forth in subsection 2, paragraph B. Notice provided under this paragraph preserves the reserved beds through June 30th of the following year. The annual notice on reserved beds may be filed by an individual nursing facility or by multiple nursing facilities through a membership organization approved by the department by a single filing; and [PL 2011, c. 648, §2 (AMD).]

B. Obtain a certificate of need to convert beds back under section 335, except that, if no construction is required for the conversion of beds back, the application must be processed in accordance with subsection 2. The department in its review shall evaluate the impact that the nursing facility beds to be converted back would have on those existing nursing facility beds and facilities within 30 miles of the applicant's facility and shall determine whether to approve the request based on current certificate of need criteria and methodology. [PL 2011, c. 424, Pt. B, §3 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

[PL 2011, c. 648, §2 (AMD).]

**2. Expedited review.** Except as provided in subsection 1, paragraph B, an application for a certificate of need to reopen beds reserved in accordance with this section must be processed on an expedited basis in accordance with rules adopted by the department providing for shortened review time and for a public hearing if requested by a person directly affected by a review. The department shall consider and decide upon these applications as follows:

A. Review of applications that meet the requirements of this section must be based on the requirements of section 335, subsection 7, except that the determinations required by section 335, subsection 7, paragraph B must be based on the historical costs of operating the beds and must consider whether the projected costs are consistent with the costs of the beds prior to closure, adjusted for inflation; and [PL 2001, c. 664, §2 (NEW).]

B. If the nursing facility fails to provide the annual notices required by subsection 1, paragraph B, the nursing facility's ability to convert beds back under this section lapses, and the beds must be treated as lapsed beds for purposes of this section and sections 333-A and 334-A. [PL 2011, c. 424, Pt. B, §4 (AMD); PL 2011, c. 424, Pt. E, §1 (AFF).]

[PL 2011, c. 648, §3 (AMD).]

**3. Effect on other review proceedings.** Lapsed beds may not be treated as available nursing facility beds for the purpose of evaluating need under section 335. Reserved beds must be counted as available nursing facility beds for the purpose of evaluating need under section 335 only if:

A. The nursing facility retains the ability to convert the reserved beds back to nursing facility use under the terms of this section; [PL 2007, c. 440, §10 (NEW).]

B. The nursing facility having the reserved beds is located within a reasonable distance of the population projected to be served by the project under review; and [PL 2007, c. 440, §10 (NEW).]

C. The nursing facility having the reserved beds is willing to convert them to meet a need identified in that project review. The department shall inquire of facilities having reserved beds in the area of the State to be served by a proposed project before determining whether reserved beds will be counted as available. [PL 2007, c. 440, §10 (NEW).]

[PL 2007, c. 440, §10 (RPR).]

**4. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[PL 2009, c. 383, §7 (AMD).]

#### SECTION HISTORY

PL 2001, c. 664, §2 (NEW). PL 2007, c. 440, §§8-10 (AMD). PL 2009, c. 383, §7 (AMD). PL 2011, c. 424, Pt. B, §§2-4 (AMD). PL 2011, c. 424, Pt. E, §1 (AFF). PL 2011, c. 648, §§2, 3 (AMD).

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