

**§337. Application process for certificate of need**

**1. Letter of intent.** Prior to filing an application for a certificate of need, an applicant shall file a letter of intent with the department. The letter of intent forms the basis for determining the applicability of this chapter to the proposed expenditure or action. A letter of intent is deemed withdrawn one year after receipt by the department, unless sooner superseded by an application, except that the applicant is not precluded from resubmitting the same letter of intent.

[PL 2001, c. 664, §2 (NEW).]

**2. Application filed.** Paragraphs A to C apply in the given order to the application process for certificate of need.

A. After receiving the letter of intent, the department shall issue a letter or checklist, or both, to an applicant that stipulates and clarifies what will be required in the application. [PL 2001, c. 664, §2 (NEW).]

B. Within 15 days of filing the letter of intent, the applicant shall schedule a meeting with the department staff in order to assist the department in understanding the application and to receive technical assistance concerning the nature, extent and format of the documentary evidence, statistical data and financial data required for the department to evaluate the proposal. The applicant may waive the technical assistance meeting requirement under this paragraph. [PL 2011, c. 648, §13 (AMD).]

C. After receiving notice from the department that a certificate of need is required for a proposed expenditure or action, if the applicant wishes to proceed with the project, the applicant must file an application for a certificate of need. [PL 2001, c. 664, §2 (NEW).]

[PL 2011, c. 648, §13 (AMD).]

**3. Application content; department-approved forms.** An application for a certificate of need must describe with specificity how the proposed project meets each of the standards for granting a certificate of need that are applicable to the project. A statement or statements that the project will meet the standards without supporting facts backed by relevant documentation and analysis constitute sufficient cause to deny the application. An application subject to an expanded review must contain, if available and relevant to the particular service or technology, information on health status, public health need for the service or technology, quality assurance processes and prevention programs.

A. The department shall make available on the department's publicly accessible website multiple project-specific, department-approved certificate of need forms for at least the following certificate of need categories:

- (1) Nursing facility projects;
- (2) Hospital projects; and
- (3) Other projects subject to review. [PL 2011, c. 648, §14 (NEW).]

B. The department-approved forms must set forth application elements that are relevant to each category and must elicit the information and data reasonably necessary to permit the department to carry out the review and approval process in a timely and cost-effective manner, with consideration for the costs and responsibilities imposed on applicants. [PL 2011, c. 648, §14 (NEW).]

C. Submission of the completed applicable department-approved forms and required information, together with other information that is appropriate to the application, and the applicant's certification that the application is complete pursuant to subsection 4 constitutes a sufficient record for the department to make a determination regarding the application for a certificate of need, unless a hearing is requested either by the department or by a person directly affected by a review. [PL 2011, c. 648, §14 (NEW).]

D. If an application is contested by another provider of services or a person directly affected by a review or the department determines that a public hearing must be held pursuant to section 339, subsection 2, additional information may be required by the department. [PL 2011, c. 648, §14 (NEW).]

[PL 2011, c. 648, §14 (AMD).]

**4. Application complete.** An application is certified as complete when the applicant delivers to the department a certification in writing that states that the application should be considered complete by the department. Subsequent to the applicant's certification under this subsection, the applicant may submit information that is responsive to any concern, issue, question or allegation of facts contrary to those in the application made by the department or any other person.

[PL 2001, c. 664, §2 (NEW).]

**5. Public notice; public informational meeting.** Within 5 business days of the filing of a certificate by an applicant that a complete certificate of need application is on file with the department, public notice that the application has been filed must be given by publication in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed expenditure will occur. If an existing health care facility may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed, the department shall notify the municipal officers of the municipality in which that health care facility is located and the members of the State House of Representatives and the State Senate representing any part of that municipality. The notice must also be provided to all persons who have requested notification by means of asking that their names be placed on a mailing list maintained by the department for this purpose. The notice must also be published on the department's publicly accessible website. This notice must include:

A. A brief description of the proposed expenditure or other action, including the name and location of any existing health care facility that may close or lose bed capacity as a result of a proposal for which a certificate of need application has been filed; [PL 2013, c. 424, Pt. A, §11 (RPR).]

B. A description of the review process and schedule; [PL 2013, c. 424, Pt. A, §11 (RPR).]

C. A statement that any person may examine the application, submit comments in writing to the department regarding the application and examine the entire record assembled by the department at any time from the date of publication of the notice until the application process is closed for comment; [PL 2013, c. 424, Pt. A, §11 (RPR).]

D. If a public informational meeting is being held, the time and location of the public informational meeting, a statement that any person may appear at the meeting to question the applicant regarding the project or the department regarding the conditions the applicant must satisfy in order to receive a certificate of need for the project, and a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the public informational meeting pursuant to the provisions of section 339, subsection 2; and [PL 2013, c. 424, Pt. A, §11 (RPR).]

E. If a public informational meeting is not being held, a statement that a public hearing may be requested by any person directly affected by a review if the request is received by the commissioner within 15 days following the publication of the notice that an application has been filed. [PL 2013, c. 424, Pt. A, §11 (RPR).]

The department shall make an electronic or stenographic record of the public informational meeting.

A public informational meeting is not required for the simplified review and approval process in section 336 unless requested by the applicant, the department or a person directly affected by a review.

[PL 2013, c. 424, Pt. A, §11 (RPR).]

**6. Voluntary withdrawal of application.** During the review period, prior to the date that department staff submits a final report to the commissioner, an applicant may withdraw an application

without prejudice by filing written notice of the withdrawal with the department. A withdrawn application may be resubmitted and will be processed as an entirely new application under this chapter. [PL 2001, c. 664, §2 (NEW).]

**7. Fees.** The department shall adopt rules setting minimum and maximum filing fees under this chapter. A nonrefundable filing fee must be paid at the time an application is filed. If the approved capital expenditure or operating cost upon which a fee is based is higher than the initially proposed capital expenditure, then the filing fee must be recalculated and the difference, if any, must be paid before the certificate of need may be issued. In addition to filing fees, the department shall adopt rules to establish reasonable and necessary fees to carry out the provisions of this chapter. All fees received by the department under this subsection must be placed in a separate, nonlapsing account to be used in accordance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 648, §16 (AMD).]

**8. Suspension of review.** An applicant may request and be granted a suspension of the review process prior to the date on which the department staff submits its final analysis to the commissioner.

A. A request for suspension of the review process must be for specific periods of no less than 10 days and not greater than 12 months. [PL 2011, c. 648, §17 (NEW).]

B. If there are no competing applicants, a request under this subsection must be granted. [PL 2011, c. 648, §17 (NEW).]

C. If there are competing applicants, the request under this subsection must be reviewed and approved or disapproved within 3 business days, taking into account the interests of the public and of competing applicants. [PL 2011, c. 648, §17 (NEW).]

D. If a request to suspend the review is granted, the department shall determine:

(1) If the suspension will suspend review of all competing applications; or

(2) If the suspension will not affect competing applications, which will continue to be reviewed without interruption. [PL 2011, c. 648, §17 (NEW).]

E. Failure to reactivate an application within the time period approved by the department results in automatic withdrawal of the suspended application. [PL 2011, c. 648, §17 (NEW).]

[PL 2011, c. 648, §17 (NEW).]

#### SECTION HISTORY

PL 2001, c. 664, §2 (NEW). PL 2009, c. 383, §§10, 11 (AMD). PL 2011, c. 424, Pt. D, §§1, 2 (AMD). PL 2011, c. 424, Pt. E, §1 (AFF). PL 2011, c. 636, §1 (AMD). PL 2011, c. 648, §§13-17 (AMD). PL 2013, c. 424, Pt. A, §11 (AMD).

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