

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 768

S.P. 326

In Senate, February 25, 2025

An Act to Update the Laws Governing the Licensing of Intermediate Care Facilities for Persons with Intellectual Disabilities

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator INGWERSEN of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §42, sub-§1-A**, as amended by PL 2011, c. 542, Pt. A, §24, is
3 further amended to read:

4 **1-A. Administration of medication.** The administration of medication in ~~boarding~~
5 assisted housing programs, residential care facilities, drug treatment centers, day care
6 facilities, children's homes and nursery schools and ~~group home~~ intermediate care facilities
7 for persons with intellectual disabilities must be in accordance with rules established by the
8 department. In other facilities licensed or approved by the department, excluding those
9 facilities licensed under section 1811, other than ~~group home~~ intermediate care facilities
10 for persons with intellectual disabilities, the department may establish rules for the
11 administration of medication as it considers necessary. In establishing rules for each type
12 of facility, the department shall consider, among other factors, the general health of the
13 persons likely to receive medication, the number of persons served by the facility and the
14 number of persons employed at the facility who might be involved in the administration of
15 medication. Any rules for the administration of medication must be established in
16 accordance with Title 5, chapter 375.

17 **Sec. 2. 22 MRSA §1812-B**, as amended by PL 2011, c. 542, Pt. A, §28, is further
18 amended to read:

19 **§1812-B. Hospitals and nursing homes Delegating the administration of medication**

20 The administration of medication in facilities licensed under section 1811, except
21 ~~group home~~ intermediate care facilities for persons with intellectual disabilities, may be
22 delegated to unlicensed personnel when such personnel have received appropriate training
23 and instruction and the programs of training and instruction have been approved by the
24 State Board of Nursing. The administration of medication in ~~group home~~ intermediate care
25 facilities for persons with intellectual disabilities may be performed by unlicensed
26 personnel when these personnel have received appropriate training and instruction and the
27 programs of training and instruction have been approved by the department. Delegation of
28 the administration of medication does not require the personal presence of the delegating
29 professional nurse at the place where this service is performed, unless that personal
30 presence is necessary to ~~assure~~ ensure that medications are safely administered. The board
31 shall issue such rules concerning delegation as it considers necessary to ~~insure~~ ensure the
32 highest quality of health care to the patient. The department shall issue such rules as it
33 considers necessary to ~~insure~~ ensure the highest quality of health care to residents of ~~group~~
34 ~~home~~ intermediate care facilities for persons with intellectual disabilities.

35 **Sec. 3. 22 MRSA §1812-K**, as amended by PL 2013, c. 588, Pt. A, §24, is repealed.

36 **Sec. 4. 22 MRSA §1812-M** is enacted to read:

37 **§1812-M. Intermediate care facility for persons with intellectual disabilities**

38 Notwithstanding any provision of section 1817 to the contrary, the following
39 provisions apply to the licensing of intermediate care facilities for persons with intellectual
40 disabilities.

41 **1. Definitions.** For the purposes of this section, the following terms having the
42 following meanings.

1 A. "ICF/IID group facility" means a facility that provides services for clients with a
2 diagnosis of intellectual disability, or related conditions, who require less than 8 hours
3 of licensed nurse supervision per day.

4 B. "ICF/IID nursing facility" means a facility that provides services for clients with a
5 diagnosis of intellectual disability whose medical and nursing needs require the
6 presence of a licensed nurse at least 8 hours per day and 7 days per week and provides
7 nursing coverage to its clients 24 hours per day.

8 C. "Intellectual disability" means significantly subaverage intellectual functioning
9 resulting in or associated with concurrent impairments in adaptive behavior and
10 manifested during the developmental period.

11 D. "Intermediate care facility for individuals with intellectual disabilities" or
12 "ICF/IID" means a facility that furnishes services to individuals with intellectual
13 disabilities that conform with the conditions described in 42 Code of Federal
14 Regulations, Section 440.150 (2024).

15 **2. License required.** The operation of an intermediate care facility for individuals
16 with intellectual disabilities requires a license issued by the department in accordance with
17 this section.

18 **3. Licenses generally.** The department is authorized to issue a license to an ICF/IID
19 that, after inspection, is found to comply with this section and any rules adopted by the
20 department. The following general terms apply to all types of licenses issued under this
21 section:

- 22 A. A license is not assignable or transferable;
- 23 B. A license is immediately void if ownership of the ICF/IID changes; and
- 24 C. A license may not be effective earlier than the date on which the department
25 receives a completed application and payment of the required application fee.

26 **4. Provisional license.** A provisional license may be issued for a period of at least 3
27 months and not more than 12 months if, in the department's judgment, the applicant:

- 28 A. Has not previously operated an ICF/IID;
- 29 B. Has complied with all applicable laws and rules, except those that can only be
30 followed once clients are served by the applicant; and
- 31 C. Has demonstrated the ability to comply with all applicable laws and rules once
32 clients are in residence at the ICF/IID.

33 **5. Full license.** The department may issue a full license to, or renew a full license for,
34 an ICF/IID that the department determines has complied with all applicable laws and rules.
35 The term of a full license may not exceed 2 years.

36 **6. Conditional license.** The department may issue a conditional license to an ICF/IID
37 applying for an initial license, or renewing a full license, if the applicant has failed to
38 comply with applicable laws and rules or, in the judgment of the department, the best
39 interests of the public would be served by issuance of a conditional license. Conditional
40 licenses issued under this subsection are further governed by the following provisions:

- 41 A. The term of a conditional license must be:

1 (1) A specified period of time of not more than one year for applicants applying
2 for a new license; or

3 (2) The remaining period of the applicant's full license if the applicant has a full
4 license and has applied for renewal;

5 B. The department shall determine the period of the conditional license based on the
6 severity of the laws or rules violated by the conditional licensee. The department shall
7 specify the conditions imposed by the department and specify when the conditional
8 licensee must comply with those conditions;

9 C. Failure of the ICF/IID to meet any of the department's conditions immediately voids
10 the conditional license. Notification to the ICF/IID of the voiding of the conditional
11 license must be made in writing by the department to the conditional licensee or, if the
12 conditional licensee cannot be reached for personal service, by notice left at the
13 licensed premises; and

14 D. The department may consider a new application for a full license from the previous
15 holder of a voided conditional license only after the conditions set forth by the
16 department at the time of the issuance of the voided conditional license have been met
17 and satisfactory evidence of this fact has been furnished to the department.

18 **7. Licensing fees; application fees.** The department may charge a licensing fee that
19 is no less than \$200 per year and no more than \$2,000 per year. The department may
20 establish an application fee for any license issued under this section. An application fee
21 established by the department must be nonrefundable and must be due upon submission of
22 the application for licensure.

23 **8. Right of entry and inspection of ICF/IID.** The department and any duly
24 designated officer or employee of the department has the right to enter the premises of an
25 ICF/IID licensed under this section at any reasonable time in order to determine whether
26 the ICF/IID is complying with this section and any rules adopted pursuant to this section.

27 An application for an ICF/IID license made pursuant to this section constitutes permission
28 for and complete acquiescence in any entry or inspection of the premises for which the
29 license is sought in order to facilitate verification of the information submitted on or in
30 connection with the application.

31 The right of entry and inspection extends to any premises that the department has reason to
32 believe is being operated or maintained as an ICF/IID without a license, except that the
33 department may not enter or inspect any premises without the permission of the owner or
34 person in charge of that premises unless a warrant is first obtained from the District Court
35 authorizing that entry or inspection.

36 **9. Inspections.** ICF/IIDs must be periodically inspected by the department for
37 compliance with this section and the rules adopted by the department pursuant to this
38 section. An inspection for purposes of maintaining state licensure may be done
39 concurrently with a survey to ensure that the ICF/IID meets the requirements for
40 certification as an ICF/IID in federal Medicare and state Medicaid programs. The
41 department must also inspect ICF/IIDs in response to complaints of suspected violations of
42 rules adopted under this section, or suspected violations of the United States Department
43 of Health and Human Services, Centers for Medicare and Medicaid Services' conditions of
44 participation.

1 **10. Shared staffing.** The department shall permit staff in an ICF/IID nursing facility
2 to be shared with an ICF/IID group facility as long as there is a clear, documented audit
3 trail and the staffing in the ICF/IID nursing facility remains adequate to meet the needs of
4 clients. Staffing to be shared may be based on the average number of hours of coverage
5 used per week or per month within the ICF/IID group facility. The department may suspend
6 the facilities' ability to share staffing under this subsection if the most recent survey for
7 either classification of ICF/IID indicates deficiencies that are related to client care and that
8 arise from the sharing of staff.

9 **11. Notice of voluntary closure.** Any person, including a county or local
10 governmental unit, that is conducting, managing or operating an ICF/IID and that is
11 properly licensed in accordance with this section shall give:

12 A. At least 60 days' written notice of the voluntary closure date of the ICF/IID to the
13 department; and

14 B. At least 30 days' written notice of the voluntary closure date of the ICF/IID to any
15 governmental units or institutions that are primarily responsible for the welfare of the
16 ICF/IID's clients and to:

17 (1) The clients of the ICF/IID; and

18 (2) As applicable, the clients' guardians, family members and both medical and
19 financial powers of attorney.

20 The purpose of the notice under this paragraph is to provide for adequate preparation
21 for the orderly transfer of ICF/IID clients to another qualified facility.

22 **12. Intermediate sanctions.** In addition to the actions authorized in subsections 13
23 and 14, the department may impose intermediate sanctions to improve the quality of care
24 in ICF/IIDs.

25 **13. Amend, modify or refuse to renew license.** In respect to any license issued under
26 this section, the department may amend, modify or refuse to renew a license by initiating
27 proceedings consistent with the Maine Administrative Procedure Act or filing a complaint
28 with the District Court requesting suspension or revocation of that license for the following
29 conduct:

30 A. Violation of this section or any rules adopted pursuant to this section;

31 B. Permitting, aiding or abetting the commission of any illegal act in the ICF/IID to
32 which the license applies; or

33 C. Engaging in practices that are detrimental to the welfare of a client of the ICF/IID.

34 **14. Suspend or revoke license.** Whenever conditions are found in an ICF/IID that
35 violate this section or department rules issued pursuant to this section that, in the opinion
36 of the commissioner, immediately endanger the health or safety of the clients of the ICF/IID
37 or create an emergency, the department by its duly authorized agents may request, under
38 the emergency proceeding provisions of Title 4, section 184, subsection 6, that the District
39 Court suspend or revoke the ICF/IID's license.

40 **15. Appeals.** Any person that is aggrieved by the decision of the department to refuse
41 to issue a license or renew a license may request a hearing as provided by the Maine
42 Administrative Procedure Act.

1 governing the licensing of ICF/IIDs and updates these licensing standards to align with
2 similar licensing laws. The bill updates related statutory language and a headnote.

3 The bill also amends the provision of law governing the reporting of sentinel events at
4 health care facilities by removing ICF/IIDs from the list of health care facilities that are
5 required to make reports to the department under this provision.