STATE OF MAINE
117TH LEGISLATURE
SECOND REGULAR SESSION

Report of

THE ASSISTED LIVING TASK FORCE

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EXECUTIVE SUMMARY

I. OVERVIEW

The charge to the task force, taken from Public Law 1995, chapter 362 is broad. The duties of the task force include reviewing and evaluating state law and rules on housing and supportive services for adults outside of nursing facilities; reviewing and evaluating the development of housing and supportive services for adults; reviewing nd making recommendations on the laws and rules to ensure the provision of adequate information to the public and the adults utilizing the housing and services; consulting with consumers, advocates, providers and other interested parties, including the Maine State Housing Authority and the Maine Health and Higher Education Facilities Authority; reviewing, evaluating and making recommendations regarding the rules of practice of the State Board of Nursing and the home health care rules; and reviewing, evaluating and making recommendations regarding application to the different types of housing facilities of the National Fire Protection Association Life Safety Code 101.

II. Task Force Recommendations

A. Narrative

The Task Force agreed that the term "assisted living" should be the umbrella under which a range of services would be provided in group residential settings consisting of private apartments, called congregate housing, and in residential care facilities.

Three levels of licensure are proposed for congregate housing in order to provide some basic safeguards for the quality of services provided, while still affording the residents autonomy, choice and the option of "aging in place." Licensure would be offered, but not required, when the housing provider is employing staff, either directly or under contract with an outside agency, to provide personal care assistance, which could include the supervision of self-administered medications. Housing agencies supported the option of licensure for these services and indicated they would make this a requirement. Licensure does offer some degree of consumer protection. However, there are a number of elderly and disabled housing projects throughout the state that are probably providing some minimum level of "hands-on" personal care which would not choose to become licensed.

The second category of licensure for private apartments would be Personal Care Assistance with Administration of Medication for which a license would be required, and the third category for private units, also requiring licensure, would be Nursing Services. Nursing Services would include personal care assistance, certified nursing assistants and the range of care that can be provided with on-staff professional nursing supervision. Several retirement communities in the state are presently providing 24-hour licensed nursing coverage for their residents, with no suitable licensure category. They are presently being required to become Home Health Agencies.

Residential Care includes the homes formerly defined and regulated as boarding homes and adult foster care homes and the most recent category of Adult Family Care Homes. Licensure is presently required for these facilities.

The proposed legislation authorizes the Department of Human Services to develop regulations for all the licensure categories included under "Assisted Living". In the appendix is a suggested outline of the regulations. The Nursing Services regulations would include many of the provisions of the existing Home Health Agency regulations as appropriate to the provision of services in housing complexes. A mark-up of those regulations was presented to Task Force members. The regulations for Personal Care Assistance with or without Administration of Medications would be totally new. All these regulations would go through the administrative rule-making requirements.

The existing regulations for the three categories of residential care would remain in effect. The Task Force identified some recommended changes, which can be made through the Administrative Procedures for rule-making, once the detailed review of the rules, as recommended in this report, has been completed.

Section B summarizes other recommendations of the Task Force as a result of the discussions and review of existing regulations and barriers to providing services efficiently that were identified.

B.

1. "Aging in Place" standards which support consumer choice and consumer autonomy.

2. Define assisted living settings to include multiple level programs and corresponding regulations.

3. Permit shared staffing among multiple levels of care on the same premises.

4. Modify Life Safety Code requirements to permit apartment standards for congregate settings.

5. Extend Long Term Care Ombudsman Program to cover all areas of Assisted Living.

6. Revise Certified Nursing Assistants (CNA) registry standards to allow CNA eligibility.

7. Modify Nurse Practice Act to cover oversite of unlicensed assistive personnel

8. Future review of all residential care statutes and rules.

9. Review medications administration training for unlicensed assistive personnel with the goal of standardization and quality.

10. Amend Maine Health and Higher Education Facilities Authority's act to allow funding for facilities.

III. Challenges for the Future

1. Increased staffing and funding of Long Term Care Ombudsman Program.

2. Identify Eating & Lodging facilities providing services beyond the level of their license.

3. Develop & implement a statewide universal tool for assessment to determine an individuals needs and ensure good care management.

4. Streamline the survey and license process for multiple level facilities.

5. Explore other options for state and federal funding of assisted living facilities.

6. Public education regarding assisted living.

7. Review training for all care personnel for the purpose of standardization of training and improving quality of care in assistive living settings.

8. The Assisted Living Task Force would like to recommend to the committee that a group with a composition similar to this Task Force continue to work on assisted living issues.

REPORT

I. Task Force Formation

In the spring of 1995 the Joint Standing Committee on Human Resources heard and considered LD 1401, An Act Relating to the Establishment of a Continuum of Quality and Affordable Long-term Care and Service Alternatives. During the public hearing and the work sessions on the bill, the committee examined the complexities of assisted living, congregate housing, residential care, certification, licensing, financing, fire and safety code issues and the provision of care by the staff of housing facilities and by health aides, certified nursing assistants, nurses, physicians, and other licensed health care providers and unlicensed assistive personnel.

The committee reported out LD 1401 in a rewritten form which did the following: (1) redefined congregate housing, (2) enabled congregate housing projects for the elderly to be finances by the Maine Health and Higher Education Facilities Authority, (3) required that congregate housing meet certain specified provisions of the 1994 Life Safety Code of the National Fire Protection Association as verified by the Office of the State Fire Marshal, and (4) created the Assisted Living Task Force. The legislation directed the task force, composed of 16 members representing residents, providers, regulators, and advocates, to meet as often as necessary but at least once per month and to submit its report and any accompanying legislation to the Second Regular Session of the 117th Legislature by February 15, 1996. This rewritten version of LD 1401 was enacted as Public Law 1995, chapter 362.

II. TASK FORCE PROCESS

A. Meetings and process

Delays in the appointment of members brought about a late start for the task force. Once appointed, members met frequently and worked on an ambitious schedule, meeting in Augusta weekly from October through February.

A list of interested parties was maintained and mailings were made regularly to all persons on the list. Meeting summaries were sent to all interested parties. Official notice of the task force meetings was published in

the Weekly Legislative Calendar. Meetings of the task force included presentations from representatives of the Maine Health and High Education Finance Authority, the Maine Housing Authority, the State Board of Nursing, the Bureau of Elder and Adult Services, representatives of the Area Agencies on Aging, Disabilities Advocates, Division of Licensing and Certification, (Home Health Care, Audit, Case Mix, Residential Care).

Representative Elizabeth H. Mitchell, Vice-Chair of the Legislative Council, convened the first meeting. Stephen Dodge was elected chair and a schedule of meetings was set. At a later meeting Elaine Fuller was elected vice-chair. The Office of the State Fire Marshal generously hosted most of the meetings of the task force. Other meetings were held at the Bureau of Elder and Adult Services in Augusta.

Staffing was provided by Betty Forsythe,of the Bureau of Elder and Adult Services, and by Jane Orbeton, of the Legislature's Office of Policy and Legal Analysis. Additional assistance was provided by Paula Nadeau of the Office of the State Fire Marshal.

III. Charge to the Assisted Living Task Force

Duties of the task force: The task force shall perform the following tasks:

A. Review and evaluate state law and regulations governing the provision of housing and supportive services for adults in settings outside of nursing facilities, including congregate housing, assisted living and residential care facilities. Attention must be given to emerging models for delivering housing and supportive services to older and disabled adults. The task force shall consider the goals of consumer choice and independence, cost-effectiveness, flexibility, protection of consumer rights and personal and community safety;

B. Review and evaluate the development of the provision of supportive housing and services for adults nationwide;

C. Review and incorporate in its recommendations proposed laws and regulations that range from less restrictive to more restrictive as necessary to provide adequate information and to protect the public, the residents of the housing and the recipients of the services. The

proposed laws and regulations must recognize the differences among consumers, housing situations and services provided and distinguish among them in the level of regulation required;

D. Prior to making its recommendations the task force shall consult with consumers, advocates for consumers, providers and other interested parties, including the Maine State Housing Authority and the Maine Health and Higher Educational Facilities Authority;

E. Review and evaluate the existing rules of practice of the State Board of Nursing and the home health care rules currently in effect as adopted by the Department of Human Services for the purpose of providing flexibility, cost effectiveness and consumer protection. The task force shall make recommendations for revisions to these rules; and

F. Review and evaluate the 1994 edition of the National Fire Protection Association Life Safety Code 101 and make recommendations concerning the applicability of certain provisions to the different types of housing facilities.

IV. ASSISTED LIVING: TOWARD A DEFINITION

As the task force considered the charge to it and began its work, it encountered the practical and theoretical questions that are central to assisted living. Starting with the broad question of public policy, one encounters critical areas that are already regulated, such as home health and nursing practice rules. Circling around and approaching from the opposite direction, the details lead quite promptly to broad public policy questions, such as the role of regulation, how to protect the public and keep costs at an affordable level, and issues of consumer choice. Defining assisted living straight from policy questions leads also to questions on the purpose of state regulation, and then how best to achieve those purposes.

A. Another approach to defining assisted living is to look at the essential characteristics of assisted living. What is assisted living made up of?

* It is people. People who live in assisted living residences. People who work in the residential

facilities and provide care and supportive services.

* It is housing and meals service. Housing that feels like home in the resident's own room and private bathroom and communal rooms for shared activities. Meals are nutritious and are served in a family-like setting.

* It is services that supplement and complement the housing and that are requested by the residents. These are personal and supportive services and health care, providing help with activities of daily living, assistance with medications. They are available both on a scheduled basis, 24-hours a day, and on an unscheduled basis. There are laundry and housekeeping and transportation for shopping and appointments. There are recreational and supportive services. There is a personal needs assessment and care management is available.

* It is a philosophy that encourages independence, respects individuality, provides privacy, responds to individual needs and enhances the quality of life of the residents.

B. Still another approach in defining assisted living is to focus directly on existing state and local regulations and how they treat the combination of housing and services called assisted living. The Guide to Assisted Living and State Policy, published in May 1995, by the National Academy for State Health Policy provides four models for defining and regulating assisted living and a wealth of information from researchers and more than half of the 50 states. The four models include: (1) a program approach in a new model of housing and services, offered through licensed or certified facilities, (2) a service model in an apartment setting, in which services and the building are regulated, (3) a service model in multiple settings in which some residents receive assistance and some are totally independent and in which the service provider is licensed but not the physical facility, and (4) an institutional model focusing on the housing unit and the level of skilled services needed by the resident. This task force chose after a great deal of deliberation to focus on (3) a service model in multiple settings, which seems to better offer wider consumer choice and flexibility.

V. TASK FORCE RECOMMENDATIONS

A. MODEL: The proposed legislation utilizes a service model in multiple settings in which some residents receive assistance and some live independently without assistance. This approach allow flexibility in licensing based upon the services provided. The legislation as proposed puts all housing and service programs for adults except nursing homes and supported living certified by Department of Mental health and Mental Retardation under the umbrella of "assisted living." The task force approach to the congregate housing services program was to poll the diversified task force as to possible barriers within current regulations, then to set about creating the solutions. To facilitate "aging in place" each of the following has been addressed in the proposed legislation.

B. POLICY ISSUES

1. The system should be driven by the ideal of consumer autonomy as its guiding ethic. An autonomy honoring system would emphasize and nurture independence, privacy, dignity and informed choice. The environment of the individual's residence, physical and social, would encourage the expression of personal values, individual lifestyles, and seek to normalize the living setting to the fullest extent possible.

2. Development and training for professionals and staff in a values orientation which would focus on the ethic of consumer autonomy and on honoring and encouraging the themes of independence, privacy, dignity and choice.

3. Consumer control. There must be a substantial consumer policy and oversight role at every level including at the state administrative level. It is important that the senior and disabled communities have a strong role at the top and at each descending level.

4. There should be the broadest possible range of programs and services gathered under a single state administrative roof. This alone will help to reduce the perceived fragmentation and confusion in the system. Included where possible would be the administration and determination of the many programs which are available to support the frail or needy elderly and persons with disabilities as for example

Medicaid, Medicare, SSI, food stamps and others. Both program administration and funding would be funnelled through this singular state body. In practice separated strands may be considered for the elder and disabled communities.

5. There ought to be single points of entry where users can engage in one-stop shopping. This entry point ought to be in the community as centrally located for people in the region served as possible. Among other things this would mean that all applications, assessments, care management, monitoring of programs and other essential program functions would be handled within the concept. As is common, some of these functions may be constracted out with service entities, but control and oversight would remain clearly in the community agency.

ASSISTED LIVING TASK FORCE
OUTLINE OF PROPOSED REGULATIONS

I. Purpose/Philosophy of Assisted Living Licensure Rules

II. Definitions

III. Statutory Citations

IV. Rights and Responsibilities of Tenants/Residents

V. General Provisions/Prohibitions

- A. Resident Contracts
- B. Resident Councils/Grievance Process
- C. Quality Assurance Programs
- D. Protection of Vulnerable Tenants
- E. Criteria for Re-Location

VI. Licensure Requirements

- A. Application Procedures
- B. Fees
- C. License Amendments
- D. Oversight/Monitoring-Including Right of Entry
- E. Sanctions
- F. Licensure Revocation

VII. Personal Care Services

- A. Need for License
- B. Standards
- C. Other Conditions

VIII. Medication Administration/Handling

- A. License Required
- B. Standards
- C. Other

IX. Nursing Services

- A. License Required
- B. Standards
- C. Other

X. Foster Homes

XI. Family Care Homes

XII. Residential Care

ASSISTED LIVING TASK FORCE MEMBERSHIP

(CHAPTER 372, P.L. 1995)

The Assisted Living Task Force members were appointed by the Governor, the President of the Senate and the speaker of the House of Representatives. The members were appointed as follows

Appointments by the President

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Long Term Care Ombudsman Program

Our presence in long term care facilities makes a real difference in improving the quality of life and quality of care for residents. Long Term Care residents are often unaware of their rights and are afraid to make complaints because of their dependence upon caregivers. Residents need an impartial advocate to represent their interests.

History

1978	The federal Older Americans Act requires that each state provide an Ombudsman Program for nursing home residents
1981	Board and care facilities added to program mandate
1986	State legislation added advocacy for home care consumers

Duties

The Older Americans Act requires the Ombudsman Program to:

- -- investigate and resolve complaints on behalf of long term care consumers
- -- train and supervise volunteers
- -- establish and maintain a presence in long term care facilities
- -- provide education on resident rights for facility staff, residents and family members
- -- monitor the development of federal, state and local laws, regulations and policies related to long term care
- -- provide public agencies with information about problems faced by long term care residents
- -- promote the development of consumer coalitions
- -- inform the public about long term care issues

Budget

	$ 48,465	General Fund
	175,345	Federal
TOTAL:	$ 223,810	

Caseload

137	nursing homes	10,040 beds	-- 40 calls daily for information and assistance
219	boarding homes	3,551 beds	
331	adult foster homes	973 beds	-- FY 1993 150 cases opened
TOTAL 687	facilities	14,564 beds	-- FY 1994 248 cases opened
			-- FY 1995 342 cases opened

Staffing

1 full time Ombudsman
1 full time Assistant Ombudsman
1 full time Volunteer Coordinator
3/4 time Regional Ombudsman (Aroostook County)
3/4 time Intake Worker/Admin. Assistant
Staff to Bed ratio (field staff): 1:3884
(recommended standard: 1:2000)

If the Ombudsman Program is to establish a presence in all long term care facilities throughout the state, additional financial resources will need to be developed.
Breakdown of additional appropriations:

1996		1997	
$ 80,403	(3 caseworkers @ $26,801)	$ 84,423	(3 caseworkers @ $28,141)
14,472	(taxes & fringe, est. at 18%)	15,196	(taxes & fringe, est. at 18%)
94,875		**99,619**	
10,800	travel ($300/mo. ea)	10,000	travel
9,930	addit. to support 100 volunteers	9,930	support for 100 volunteer
2,400	additional rent	2,400	rent
1,200	additional phone	1,200	phone
2,000	additional insurance	2,000	insurance
1,200	office supplies	1,200	office supplies
1,200	office furniture	**26,730**	
10,000	computers (3)		
38,730			
133,605 total		**126,349 total**	

117th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1996

Legislative Document No.

An Act to Provide for Assisted Living Services.

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

PART A

Sec. A-1. 22 MRSA chapter 1457-A is repealed.

Sec. A-2. The heading to Chapter 1665, Residential Care Facilities, is repealed, and the following heading enacted in its place:

Chapter 1665
Assisted Living Programs

Sec. A-3. 22 M.R.S.A. §7901-A is repealed.

Sec. A-4. 22 MRSA §7901-B is enacted to read:

§7901-B. Assisted living programs and services authorized

Assisted living programs and services are authorized under this chapter subject to the following standards and in the following settings.

1. Standards. Assisted living programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to continue to reside at home as the resident ages, except when to do so would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. Assisted living services provided to residents must be consumer oriented and of high quality.

2. **Settings.** Assisted living services may be provided in the following settings:

A. Congregate housing licensed under chapter 1457-A. A congregate housing program providing assisted living services may operate under the following models of assisted living. A license is not required for providers operating under subparagraph (1), is optional for providers operating under subparagraph (2), and is required for providers operating under subparagraphs (3) and (4).

(1) Providing congregate housing.

(2) Providing congregate housing with personal care assistance.

(3) Providing congregate housing with personal care assistance and administration of medication.

(4) Providing congregate housing with nursing services, which includes personal care assistance and administration of medication; and

B. Residential care facilities licensed under chapter 1663.

Sec. A-5. 22 M.R.S.A. §7901-C is enacted to read:

§7901-C. Definitions

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings.

1. **Activities of daily living.** Activities of daily living means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, dressing, eating, toileting, bathing and personal hygiene.

2. **Assisted living services.** Assisted living services means the provision directly or under contract with a agency, by a single entity, of housing and assistance with activities of daily living and instrumental activities of daily living. Assisted living services may include personal supervision, protection from environmental hazards, diet care, supervision and assistance in the administration of medications, diversional or motivational activities, assistance in activities of daily living or physical exercise and nursing services.

3. **Congregate housing.** Congregate housing means residential housing consisting of private dwelling units with individual bathroom and individual food preparation area, in

addition to central dining facilities, and within which a congregate housing supportive services program serves occupants.

4. Congregate housing services program. Congregate housing services program means a comprehensive program of supportive services, including meals, housekeeping and chore assistance, case management and other services which are delivered on the site of congregate housing and assist occupants to manage activities of daily living and instrumental activities of daily living. Congregate housing services may also include personal care assistance, with or without supervision, assistance in the administration of medication, and nursing services subject to the licensing requirements of Chapter 1663.

5. Instrumental activities of daily living. Instrumental activities of daily living include but are not limited to meal preparation, taking medication, using the telephone, handling finances, banking and shopping, light housekeeping, heavy housekeeping and getting to appointments..

6. Long-term care facility. Long-term care facility means any program of assisted living licensed pursuant to chapters 1663 and 1665, and any nursing facility or unit licensed pursuant to chapter 405.

7. Nursing services. Nursing services means services provided by professional nurses licensed pursuant to Title 32, section 2102(2), including personal care assistance and administration of medication. For the purposes of this subtitle, nursing services includes coordination and oversight of patient care services provided by unlicensed health care assistive personnel, provided in group residential settings consisting of private apartments.

8. Personal care assistance. Personal care assistance means services that are provided in group residential settings consisting of private apartments that include assistance with activities of daily living and instrumental activities of daily living and the supervision of residents self-administering medication. Personal care assistance, as defined in this subtitle, does not include the administration of medication.

9. Personal care assistance with administration of medication. Personal care assistance with administration of medication means personal care assistance and the administration of medication to the resident by provider staff.

10. Private apartment. Private apartment means a private dwelling unit with individual bathroom and food preparation area.

11. Resident. Resident means any person 18 years of age or older who is not related by blood or marriage to the owner or person in charge of the facility in which the resident lives and receives assisted living services.

12. Residential care facility. Residential care facility means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services as defined in subsection 2. A residential care facility includes, but is not limited to, facilities formerly defined and regulated as adult foster care homes and boarding homes under section 7901-A and adult family care homes regulated under this chapter. Residential care facility does not include a licensed nursing home, a supported living arrangement certified by the Department of Mental Health and Mental Retardation or congregate housing.

13. Shared staffing. Shared staffing means the use of licensed and unlicensed personnel who are employed, directly or under a contract with a licensed agency, by a long-term care facility in more than one level of care provided by a single entity on the same premises.

Sec. A-6. 22 M.R.S.A. §7902, sub-§1, first paragraph is amended to read:

1. Rules. The commissioner shall adopt rules for the various types and levels of residential care facilities. These rules must be developed in consultation with the long-term care ombudsman program, providers of assisted living services and consumer representatives. These rules must include but are not limited to rules pertaining to administration, staffing, the number of residents, the quality of care, the quality of treatment, if applicable, the health and safety of staff and residents, the rights of residents, community relations, the administration of medication, criteria for placement of residents who are 17 years of age or older and under 18 years of age and licensing procedures. ~~-The commissioner may adopt separate rules for various types of residential care facilities.~~ Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. A-7. 22 MRSA §§7914 to 7918 are enacted to read:

§7914. Shared staffing

The department shall permit staff in residential care facilities to be shared with other levels of assisted living on

the same premises provided there is a clear, documented audit trail and the staffing in the residential care facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the time utilized by the assisted living program by determining an average number of hours used per week or month.

§7915. Administration of congregate housing services programs funded by the State

The Department of Human Services, Bureau of Elder and Adult Services, with advice from the Maine State Housing Authority, the Rural Housing Services or other housing agency financing the congregate housing facility, shall administer state funded congregate housing services programs. Administration shall include, but not be limited to:

1. Rules; operations of congregate housing services programs. Promulgating and adopting rules governing the operation of congregate housing services programs;

2. Compliance with standards and guidelines. Reviewing the compliance of congregate housing services programs with standards and guidelines established for the program; and

3. Awarding of grants. Awarding of grants, when available and necessary, to subsidize the cost of congregate housing services programs for eligible clients.

4. Eligible clients. Eligible clients means adults who have been determined through an approved assessment by the Department of Human Services to be functionally or cognitively impaired and in need of financial assistance to access congregate housing supportive services.

§7916. Fire safety inspection

In accordance with this section, The State Fire Marshals Office shall adopt rules pursuant to Title 5, chapter 375, for the inspection of congregate housing facilities and the fees for inspection. Rules adopted pursuant to this section regarding fees are major substantive rules, as defined by Title 5, chapter 375, subchapter II-A.

1. Permit; inspection. Each congregate housing services program must be inspected by the State Fire Marshals Office at the request of the department prior to licensure. Each facility must be reinspected every 2 years.

2. Certificate of compliance. The office must issue a certificate of compliance to the department.

3. **Requirements.** All facilities must be inspected using Chapter 18 New Apartment Buildings of the National Fire Protection Association Life Safety Code 101, 1994 edition. All buildings must be protected throughout by an approved, supervised automatic sprinkler system.

§7917. Fees for licenses

The department shall charge annual fees for congregate housing services programs as follows: $50 for a program to be licensed to provide personal care assistance; $100 to be licensed to provide personal care assistance with administration of medication; and $200 to be licensed to provide nursing services.

§7918. Rules

The commissioner shall adopt rules for the various types of congregate housing services programs. The rules must be developed in consultation with the long-term care ombudsman program, providers of congregate housing and congregate housing services programs and consumer representatives. The rules must include but are not limited to rules pertaining to administration, quality of care, quality of treatment, qualifications of staff, rights of residents, contracts and administration of medication. The rules must promote the efficiencies inherent in providing services in a congregate setting. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

PART B

Sec. B-1. 22 M.R.S.A. §1812-C, sub-§6-A is enacted to read:

§1812-C, sub-§6-A. Shared staffing

The department shall permit staff in nursing facilities to be shared with other levels of assisted living on the same premises provided there is a clear, documented audit trail and the staffing in the nursing facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the time utilized by the assisted living program by determining an average number of hours used per week or month.

Sec. B-2. 22 MRSA §5107-A is amended to read:

§5107-A. Long-term care ombudsman program

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman may enter onto the premises of any ~~boarding care facility~~ long-term care facility

as defined in section 7901-C and licensed according to section 7801 assisted living facility and any nursing ~~home~~ facility licensed according to section 1817 to investigate complaints concerning those facilities or to perform any other functions authorized by this section or other applicable law or rules. The ombudsman shall investigate complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home health agencies, assisted living services providers, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any staff member or volunteer authorized by the ombudsman may enter onto the premises of any ~~adult foster care facility, boarding care~~ residential care facility, assisted living facility or nursing home during the course of an investigation, speak privately with any individual in the facility or home who consents to the conversation and inspect and copy all records pertaining to a resident as long as the resident or the legal representative of the resident consents in writing to that inspection. The consent, when required and not obtainable in writing, may be conveyed orally or otherwise to the staff of the facility or home. When a resident is not competent to grant consent and has no legal representative, the ombudsman may inspect the resident's records and may make copies without the written consent of a duly appointed legal representative. The ombudsman may authorize as many individuals as necessary, in addition to staff, to carry out this function except that these individuals may not make copies of confidential client information. Appropriate identification must be issued to all such persons. In accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, a person may not serve as an ombudsman without training as to the rights and responsibilities of an ombudsman or without a specific plan of action under direction of the ombudsman. The ombudsman shall renew the authorization and issue identification annually. The findings of the ombudsman must be available to the public upon request.

The ombudsman and volunteers shall visit, talk with and make personal, social and legal services available to residents; inform residents of their rights, entitlements and obligations under federal and state laws by distributing education materials and meeting with groups or individuals; assist residents in asserting their legal rights regarding claims for public assistance, medical care and social security benefits or in actions against agencies responsible for those programs, as well as in all other matters in which residents are aggrieved, including, but not limited to, advising residents to litigate; investigate complaints received from residents or concerned parties regarding care or other matters concerning residents; and participate as observer and resource in any on-site survey or other regulatory review performed by state agencies pursuant to state or federal law.

Information or records maintained by the ombudsman concerning complaints may not be disclosed unless the ombudsman authorizes the disclosure. The ombudsman may not disclose the identity of any complainant or resident unless the complainant, the resident or a legal representative of either consents in writing to the disclosure or a court orders the disclosure.

A complainant, a resident or a legal representative of either, in providing the consent, may specify to whom such identity may be disclosed and for what purposes, in which event no other disclosure is authorized.

Any person, official or institution that in good faith participates in the registering of a complaint pursuant to this section or in good faith investigates that complaint or provides access to those persons carrying out the investigation about an act or practice in any ~~boarding~~ residential care facility licensed according to section 5154 or 7801, assisted living facility or program or any nursing ~~home~~ facility licensed according to section 1817 or that participates in a judicial proceeding resulting from that complaint is immune from any civil or criminal liability that otherwise might result from these actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith.

Sec. B-3. 22 M.R.S.A. §7801, sub-§1, para. A-1, is enacted to read:

A-1. In accordance with subparagraphs (1) to (3), a congregate housing services program directly, or by contract with an agency, providing to its residents any of the following services: personal care assistance, the administration of medication, or nursing services.

(1) A congregate housing services program may directly provide to its residents meals, housekeeping and chore assistance, case management and personal care assistance delivered on the site of congregate housing without obtaining a separate license to do so.

(2) A congregate housing services program licensee may hold at any one time only one license under section 7901-C, subsection 2. A qualified congregate housing services program may obtain a license for a different category under section 7901-C, subsection 2, upon application and surrender of the prior license.

Sec. B-4. 22 MRSA §7802, sub-§1, paragraph E is amended to read:

E. A 2-year full license may be issued by the department when an individual or agency is licensed as a residential care facility for one or 2 adults or a congregate housing services program as long as it is in substantial compliance with licensing rules and has no history of health or safety violations.

Sec. B-5. 22 M.R.S.A. §7922, sub-§1 is amended to read:

1. Long-term care facility. Long-term care facility means any ~~residential care facility with more than 5 residents~~ program of assisted living licensed pursuant to chapters 1663 and 1665, and any nursing facility or unit licensed pursuant to chapter 405.

PART C

Sec. C-1. 22 MRSA §1812-G, sub-§3 is amended to read:

3. Eligibility requirements for listing. The State Board of Nursing shall adopt rules pursuant to the Maine Administrative Procedure Act defining eligibility requirements for listing on the Maine Registry of Certified Nursing Assistants, including rules regarding temporary listing of nursing assistants who have received training in another jurisdiction. The rules most permit nursing assistants to work under the supervision of a registered professional nurse in a facility providing assisted living services as defined in chapter 1457-A and must recognize work in those facilities for the purpose of qualifying for and continuing listing on the registry. Rules adopted regarding the work of nursing assistants in facilities providing assisted living services are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. The board shall submit a report of the adopted rules to the joint standing committee of the Legislature over ~~business~~ human resources matters by January ~~15, 1992~~ 1, 1996.

Sec. C-2. 22 MRSA §2053, sub-§2-C is repealed.

Sec. C-3. 22 MRSA §2053, sub-§3-A is amended to read:

3-A. Health care facility. Health care facility means a nursing home that is, or will be upon completion, licensed under chapter 405; a residential care facility that is, or will be upon completion, licensed under chapter 1663; a continuing care retirement community that is, or will be upon completion, licensed under Title 24-A, chapter 73; an assisted living

facility that is, or will be upon completion, licensed under chapter 1665; a community mental health facility; or a community health center.

Sec. C-4. 22 MRSA §2053, sub§5 is amended to read:

5. Participating health care facility. "Participating health care facility" means a health care or ~~congregate housing~~ licensed assisted living facility that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of existing indebtedness as provided in and permitted by this chapter.

Sec. C-5. 32 M.R.S.A. §2102, sub-§2, paragraph F, as amended by PL 1993, c.600, Pt. A, §110, is further amended to read:

F. Administration of medications and treatment as prescribed by a legally authorized individual. Nothing in this section may be construed as limiting the administration of medication by licensed or unlicensed personnel as provided in other laws; ~~and~~

Sec. C-6. 32 M.R.S.A. §2102, sub-§2, paragraph G, as enacted by PL 1985, c. 724, §2, is amended to read:

G. Teaching activities of daily living to care providers designated by the patient and family~~.~~; and

Sec. C-7. 32 M.R.S.A. §2102, sub-§2, paragraph H, is enacted to read:

H. Coordination and oversight of patient care services provided by unlicensed health care assistive personnel.

PART D

Sec. D-1. Report of the Commissioner of Human Services. The Commissioner of Human Services shall review the laws and rules on residential care facilities and assisted living programs in consultation with providers of residential care and assisted living services and consumer representatives. In the review, the commissioner shall consider the report due to the joint standing committee having jurisdiction over human resources matters by October 1, 1996, from the commissioner, the Commissioner of Mental Health and Mental Retardation and the State Board of Nursing. By January 1, 1997 the commissioner shall report to the joint standing committee of

the legislature having jurisdiction over human resources matters with the recommendations of the Department of Human Services and any legislation necessary to implement those recommendations.

Sec. D-2. Report of the Commissioner of Human Services, the Commissioner of Mental Health and Mental Retardation and the State Board of Nursing. By October 1, 1996 the Commissioner of Human Services, the Commissioner of Mental Health and Mental Retardation and the State Board of Nursing shall report to the joint standing committee having jurisdiction over human resources matters on recommendations for standardization of educational courses and utilization of unlicensed assistive personnel who administer medications in long-term care facilities as defined in Title 22, section 7901-C.

Sec. D-3. Effective date. This Act takes effect on January 1, 1997 except for that Part which repeals and reenacts Title 22, section 5155, which takes effect October 1, 1996.

Statement of Fact

Part A of this bill makes changes to the statutes on residential care facilities, repeals Title 22, chapter 1457-A moving its content to Title 22, chapter 1665, changing the chapter heading to read Assisted Living. The various types of assisted living programs are defined, including residential care facilities and congregate housing facilities, as are the types of services they may provide. This part authorizes the Commissioner to promulgate rules for assisted living programs in consultations with providers, advocates and consumer representatives. It makes changes to the Congregate Housing Services Act, extending the act to cover younger adults with disabilities as well as the elderly. It eliminates the process of certification of congregate housing services programs, replacing it with a process of licensing those programs which as assisted living providers offer personal care assistance, personal care assistance with administration of medication, or nursing services. It makes the necessary changes to the licensing statute s. It sets the fees for those congregate housing programs seeking licenses as assisted living programs. It sets forth fire safety requirements for congregate housing programs operating assisted living programs.

Part B adds to the facilities that come under the jurisdiction of the long-term care ombudsman assisted living facilities. It sets forth requirements for shared staffing in assisted living programs, residential care facilities and long-term care facilities. It extends the residents rights statute to assisted living programs. It allows 2-year licenses for congregate housing services programs.

Part C amends the provisions of law regarding the Maine Health and Higher Education Facilities Authority to reflect the definition of assisted living adopted in the other provisions of the bill. It requires the State Board of Nursing to adopt rules allowing certified nursing assistants to work under the supervision of a registered professional nurse in a facility providing assisted living services. It makes changes to the Nurse Practices Act which allow professional nurses to coordinate and oversee patient care services provided by unlicensed personnel.

Part D requires the Commissioner of Human Services, the Commissioner of Mental Health and Mental Retardation and the State Board of Nursing to develop recommendations for standardization of educational courses and utilization of unlicensed assistive personnel who administer medications in long-term care facilities. It requires the Commissioner of Human Services to review laws and rules on residential care facilities and assisted living programs and make recommendations for legislative changes. It states that the Act shall take effect on January 1, 1997 except for the fire safety requirements, which take effect October 1, 1996.

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Community Options

Program	Number served
Medicaid	
Home Health	
Private Duty Nursing Personal Care	100
Adult Day Health	39
Consumer Directed PCA	93
Waiver Programs	
Physically Disabled	167
Elderly	700
Adults with Disabilities	115
Home Based Care	
Physically disabled consumer directed	121
Other physically disabled	50
Elderly	700
BEAS Homemaker	
Alzheimer's support	450

Residential Options

Residential Care Facilities and Adult Foster Homes (includes MR)	4,534
Congregate Housing Services (AAA programs only)	178

Department of Human Services

Community Options

Source: BEAS 10/95

Program	Fund Source	Age Limit	Income/assets	Medical Criteria	Services	Program cost Cap	Copay/cost sharing
Medicare	Social Security	65+(unless disab)	NA	Skilled need, Hombnd MD ord.	RN, LPN, HHA, PT, OT, ST, MSW	Up to 28 hours/week	
Medicaid							
Home Health	State/federal	none	100% pov Assets: 2,000/1, 3,000/2	Based on need, MD ordered	RN,LPN,HHA,PT,OT,ST, MSW, MH	none	
Private Duty Nurs Personal Care	State/federal	none	100% poverty Assets: 2,000 for 1, 3,000 for 2	NF eligible only for age 21 and under "At risk" any age "Extended" level	RN, LPN, HHA	75% NF ($2264/month) "At risk" ($600/month) "Extended" ($15923/mon)	$5/month
Adult Day health	State/federal	19+	100% poverty Assets: 2,000 for 1, 3,000 for 2	Limited assistance and 1 person physical support in 2 ADLs or cueing in 5 ADLs	Monitor health care, nursing, rehab counseling, exercise, health promotion	Attend minimum 4 hours weekly	
Consumer directed PCA	State/federal	19+	100% poverty Assets: 2,000 for 1, 3,000 for 2	Limited assistance and 1 person physical support in 2 ADLs	Personal care asistance and skills training	$1,200/month	$5/month
Waiver Programs							
Physically Disabled	State/federal	18 +	218% poverty Assets $2,000	NF eligible	Case Mgmt, PCA, Skills training, night attendant	$36,226 ($3018/month)	Countable income greater than 125% of poverty(11/94)
Elderly	State/federal	60-64 disabled 65+	218% poverty Assets $2000	NF eligible	Case Mgmt, RN, HHA, PT, OT, ST, PCA, Hmkr, ADH, ER, MH, Trans	75% NF ($2264/month)	Countable income greater than 125% of poverty
Adults with disabilities	State/federal	18 - 59	218% poverty Assets $2000	NF eligible	Case Mgmt, RN, HHA, PT, OT, ST, PCA, Hmkr, ADH, ER, MH, Trans	75% NF ($2264/month)	Countable income greater than 125% of poverty
Home Based Care							
Physically disabled cons. directed	State	18+	none	Physically disabled and capable of directing PCA employees	Case Mgmt, PCA, skills training, night attendant	$36,226 ($3018/month)	Calculated by formula
Other Physically disabled	State	18 - 60	none	Total of 3 below - w/min of 1 ADL (ADL, IADLs, nursing service) or cueing in 5 ADLs	Case Mgmt, RN, HHA, PT, OT, ST, PCA, Hmkr, ADH, ER, MH, Trans	Level 1: $460.00/month Level 2: $2264/month	5% of monthly income, 3% of assets > 3,000 for one, 12,000 for 2
Elderly	State	60+	none	Total of 3 below - w/min of 1 ADL (ADL, IADLs, nursing service) or cueing in 5 ADLs	Case Mgmt, RN, HHA, PT, OT, ST, PCA, Hmkr, ADH, ER, MH, Transportation	Level 1: $460.00/month Level 2: $2264/month	5% of monthly income, 3% of assets > 3,000 for one, 12,000 for 2
BEAS Homemaker	State	21+	140% poverty Assets: less than 8,000 for 1, 12,000 for 2	Needs assistance or dependency in nutrition, routine cleaning, groceries or laundry	Homemaking, chore, grocery shopping, laundry, Trans		$1.00/hour of service
Alzheimer's Support	State and Federal	18+	none	Need based	In-home respite; institutional respite and adult day care	None, but funds are limited	Yes - sliding scale

Department of Human Services

Residential Options

Source: BEAS 10/95

Program	Fund Source	Age Limit	Income/assets	Medical Criteria	Services	Program cost Cap	Copay/cost sharing
Residential Care Facilities	State/private/ Medicaid	18+	SSI eligible ($695gross income) $2000 in assets	Below NF eligible	Room & board, medical, remedial services	Difference between $627/month &Medicaid reimbursement rate	Depends on income. Generally, residents can keep up to $70
Adult Foster Homes	State/private	18+	SSI eligible ($527 gross income) $2000 in assets	none	Medical and remedial services, room + board	$457/month Maximum amount Medicaid will pay	Depends on income. Generally, residents can keep up to $70
Congregate Housing Svcs	State	60+	none	2 IADL	Case mgmt,housekeep, PCA, 1 meal per day, chore services, HH	$460/month	5% of monthly income, 3% of assets > 8,000 for one, 12,000 for 2
Adult Family Care Homes	State/private/ Medicaid	18+	SSI eligible ($695gross income) $2000 in assets	Proposed	Room & board, medical, remedial services	Based on needs of resident	Depends on income. Generally, residents can keep up to $70