

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1401

S.P. 519

Received by the Secretary, April 19, 1995

**An Act Relating to the Establishment of a Continuum of Quality and  
Affordable Long-term Care and Service Alternatives.**

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Referred to the Committee on Human Resources and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script, reading "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator PENDEXTER of Cumberland.  
Cosponsored by Senators: AMERO of Cumberland, BUSTIN of Kennebec, HARRIMAN of  
Cumberland, HATHAWAY of York, McCORMICK of Kennebec, Representatives:  
MADORE of Augusta, REED of Falmouth, TRIPP of Topsham.

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

Sec. 1. 22 MRSA c. 1457-A, as amended, is repealed.

Sec. 2. 22 MRSA c. 1457-B is enacted to read:

**CHAPTER 1457-B**

**ASSISTED LIVING AND CONGREGATE HOUSING**  
**FOR MAINE'S ELDERLY**

**§5171. Definitions**

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

**1. Assisted living.** "Assisted living" means residential housing for senior citizens who may or may not be able to live independently, but who choose to live in a congregate setting of private quarters with lockable doors and includes a program of optional services that are designed to respond to the resident's individual needs for assistance with the activities of daily living and instrumental activities of daily living. "Assisted living" includes the availability of 24-hour care provided in a manner that promotes resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality and independence in homelike surroundings.

**2. Assisted living facility.** "Assisted living facility" is a senior citizen congregate residential setting in which a range of services is offered to residents by a licensed or certified home-based care provider through a senior support services program. An assisted living facility is not a nursing home as defined in section 1812-A or a residential care facility as defined in section 7901-A.

**3. Congregate housing.** "Congregate housing" means senior citizen residential housing consisting of private quarters and central dining facilities for individuals who do not require the constant supervision or intensive health care available at residential care facilities or intermediate care or skilled nursing facilities. "Congregate housing" may or may not include the provision to residents of support services.

**4. Facility.** "Facility" means assisted living facility or congregate housing.

**5. Resident.** "Resident" means any individual, 62 years of age or older, who chooses to live in an assisted living facility

or congregate housing. The department may not review the eligibility for residency unless public funds are to be expended to pay the cost of residence or services in an assisted living facility or congregate housing.

**6. Senior support services program.** "Senior support services program" means a comprehensive program of support services, including meals, housekeeping and chore assistance, personal care assistance, case management and other health-care-related services that are delivered on the site of congregate housing or assisted living facilities for the purpose of providing assistance to the residents of those facilities in the management of activities of daily living or instrumental activities of daily living.

**§5172. Certification of assisted living and congregate housing**

**1. Requirement.** A provider may not establish an assisted living facility or congregate housing in this State unless the provider obtains and maintains an appropriate certificate issued by the commissioner pursuant to this chapter.

**2. Requirements for issuance of certificate.** The commissioner shall issue a certificate within 60 days of the date the following conditions have been met.

A. The provider has submitted an application to the commissioner. The application must be brief and include the name and address of the facility; the name of the manager or principal on-site authority at the facility; the telephone number of the facility; the number of units at the facility; the name, address and telephone number of each service provider, if different from the principal provider; and a brief description of the facility and services provided.

B. The provider has submitted a copy of the basic organizational document of the provider including the articles of incorporation, the articles of agreement, the certificate of organization or incorporation or the charter and all amendments to that document.

C. The provider has submitted a copy of the provider's bylaws, if applicable.

D. The provider has submitted a list of the names and addresses of any stockholders and those persons who hold official positions responsible for the conduct of the affairs of the provider, including members of the board of directors; principal officers; and persons having a 10% or greater equity or beneficial interest in the provider.

2       E. The provider has submitted a description of any action  
4       within the past 10 years against any individual listed in  
6       paragraph D for criminal activity or the revocation of any  
8       state or federal license or permit.

10       F. The provider has submitted a disclosure statement of any  
12       real or potential conflict of interest for each principal  
14       officer and director of the provider.

16       G. The provider has submitted a copy of any management  
18       agreement between the provider and the person or persons  
20       responsible for the daily management of the facility, if the  
22       provider is not responsible for the daily management of the  
24       facility.

26       H. The provider has submitted a description of the type and  
28       manner of provision of services offered to residents,  
30       including copies of all contracts executed by the provider  
32       with 3rd parties that provide for the performance of health  
34       care or support services for the benefit of residents.

36       I. The provider has submitted a copy of the application  
38       form, if any, that prospective residents are required to  
40       complete, including any lease or subscription agreement,  
42       house rules or residential regulations and circumstances  
44       under which a resident may be asked to leave the facility.

46       J. The provider has submitted a description of procedures  
48       developed by the provider to resolve complaints initiated by  
50       the residents concerning health care or support services and  
      general operating procedures.

K. The provider has submitted a copy of all advertising or  
      marketing materials being used at the time of application  
      for certification for the facility.

L. The provider has submitted a statement signed by a  
      representative of the Office of the State Fire Marshal that  
      the facility complies with the National Fire Protection  
      Association's Life Safety Code, chapter 18 or 19, 1994  
      edition.

3. Dual certification. Providers may seek certification of  
      a facility as both an assisted living facility and congregate  
      housing whether that facility is self-contained under one roof or  
      arranged in a campus setting on abutting parcels of land.  
      Assisted living facilities and congregate housing may provide  
      different levels of senior support services programs within one  
      facility.

2        **4. Term.** The department shall issue a certificate to an  
4 assisted living facility or congregate housing for a period of 2  
6 years. During that period, if a facility has material changes to  
8 the information submitted pursuant to subsection 2, paragraphs A  
10 to J, the facility must notify the commissioner in writing of  
12 those changes.

14        **§5173. Capital financing**

16        Assisted living facilities and congregate housing qualify  
18 for financing by the Maine Health and Higher Educational  
20 Facilities Authority as community health or social services  
22 facilities.

24        **Sec. 3. 22 MRSA §7901-A, sub-§3,** as amended by PL 1993, c.  
26 661, §7, is further amended to read:

28        **3. Residential care facility.** "Residential care facility"  
30 means a house or other place that, for consideration, is  
32 maintained wholly or partly for the purpose of providing  
34 residents with residential care as defined in subsection 2. A  
36 residential care facility includes, but is not limited to,  
38 facilities formerly defined and regulated as adult foster homes  
40 and boarding homes under this section. A "residential care  
42 facility" does not include a licensed nursing home, a supported  
44 living arrangement certified by the Department of Mental Health  
46 and Mental Retardation or certified congregate housing or an  
48 assisted living facility.

50        **Sec. 4. PL 1993, c. 661, §25** is repealed.

**Sec. 5. Legislative intent; rulemaking.** It is the intent of the  
Legislature to establish assisted living facilities and  
congregate housing as affordable and cost-effective types of  
residential housing serving Maine's elderly. Assisted living  
facilities and congregate housing must be subject to a lesser  
regulatory burden than nursing homes and residential care  
facilities in order to allow residents of assisted living  
facilities and congregate housing to make informed decisions in a  
setting that maximizes flexibility, cost-effectiveness and  
consumer choice. The Department of Human Services shall adopt  
rules establishing a certification process for assisted living  
facilities and congregate housing that adheres to this  
legislative intent by establishing administrative tasks a  
facility must fulfill in order to receive certification. These  
rules must provide the fewest restrictions necessary to ensure  
protection of the public and provide the consumer with the  
appropriate level of information to make an informed decision  
while maintaining the individual's and health care provider's

2 right to negotiate in good faith in the long-term care  
marketplace. The department shall modify the existing congregate  
4 housing services program rules to make them consistent with the  
intent, purposes and provisions of this Act. The department  
6 shall adopt these rules within 90 days of the effective date of  
this Act.

8 **Sec. 6. Transition.** A facility that is licensed or certified  
as either an assisted living facility or congregate housing under  
10 any law, regulation, rule or procedure in effect on the effective  
date of this section may apply for certification under this Act  
12 and, upon certification under this Act, is no longer subject to  
the law, regulation, rule or procedure originally governing the  
14 facility.

16

## 18 **STATEMENT OF FACT**

20 This bill replaces current law governing congregate housing  
for the elderly with a law of broader scope. The bill seeks to  
22 establish a more flexible, and cost-effective regulatory scheme  
for long-term care facilities serving senior citizens who do not  
24 need the level of care provided by nursing facilities and choose  
to maintain the maximum level of independence possible.

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