

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1835

S.P. 731

In Senate, March 11, 1996

An Act to Provide for Assisted Living Services.

Reported by Senator PENDEXTER of Cumberland for the Assisted Living Task Force pursuant to Public Law 1995, chapter 362.

Reference to the Committee on Human Resources suggested and ordered printed pursuant to Joint Rule 20.

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name and title.

MAY M. ROSS
Secretary of the Senate

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

PART A

Sec. A-1. 21-A MRSA §751, sub-§7, as amended by PL 1991, c. 466, §24, is further amended to read:

7. **Residence in certain facilities.** ~~Resident-of~~ Residence in a licensed nursing home, as defined in Title 22, chapter 405, licensed boarding home, as defined in Title 22, chapter 1665, or certified congregate housing unit, as defined in Title 22, chapter 1457-A, 1665. Residents of those facilities may cast absentee ballots only when the clerk is present;

Sec. A-2. 21-A MRSA §753, sub-§3-A, as amended by PL 1991, c. 862, §6, is further amended to read:

3-A. **Alternate method of balloting by residents of licensed nursing homes, licensed boarding homes or certified congregate housing units.** The municipal clerk shall designate one or more times during the 30-day period prior to an election during which the municipal clerk must be present in any licensed nursing home, as defined in Title 22, chapter 405; licensed boarding home, as defined in Title 22, chapter 1665; or certified congregate housing unit, as defined in Title 22, chapter 1457-A 1665, for the purpose of absentee balloting by the residents of these homes or units. The clerk shall designate which areas in these facilities constitute the voting place, the voting booth and the guardrail enclosure. Sections 681 and 682 apply to voting in these facilities within the areas designated by the clerk.

Sec. A-3. 22 MRSA §5107-A, last ¶, as enacted by PL 1991, c. 622, Pt. QQ, §2, is amended to read:

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 or any nursing home 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. A-4. 22 MRSA c. 1457-A, as amended, is repealed.

2 Sec. A-5. 22 MRSA c. 1665 is amended by repealing the chapter
headnote and enacting the following in its place:

4 CHAPTER 1665

6 ASSISTED LIVING PROGRAMS

8 Sec. A-6. 22 MRSA §7901-A, as amended by PL 1993, c. 661,
§7, is repealed.

10 Sec. A-7. 22 MRSA §§7901-B and 7901-C are enacted to read:

12 §7901-B. Assisted living programs and services authorized

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

20 1. Standards. Assisted living programs further the
22 independence of the resident and respect the privacy and
24 personal choices of the resident, including the choice to
26 continue to reside at home as the resident ages, except when that
 choice 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.

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

32 A. Congregate housing licensed under this subsection. A
34 congregate housing program providing assisted living
 services may operate under the following models of assisted
 living.

36 (1) A license is not required for providers operating
38 congregate housing.

40 (2) A license is optional for providers operating
 congregate housing with personal care assistance.

42 (3) A license is required for providers operating
44 congregate housing with personal care assistance and
 administration of medication.

46 (4) A license is required for providers operating
48 congregate housing with nursing services including
 personal care assistance and administration of
50 medication; and

2 B. Residential care facilities licensed under chapter 1663.

4 §7901-C. Definitions

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

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

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

22 3. Congregate housing. "Congregate housing" means
residential housing that consists of private dwelling units with
24 an individual bathroom and an individual food preparation area,
in addition to central dining facilities, and within which a
26 congregate housing supportive services program serves occupants.

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

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

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

2 **7. Nursing services.** "Nursing services" means services
4 provided by professional nurses licensed pursuant to Title 32,
6 section 2102, subsection 2, including personal care assistance
8 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 in group residential settings consisting of
 private apartments.

10 **8. Personal care assistance.** "Personal care assistance"
12 means services provided in group residential settings consisting
14 of private apartments including assistance with the activities of
16 daily living and the instrumental activities of daily living and
 supervision of residents self-administering medication.
 "Personal care assistance," does not include the administration
 of medication.

18 **9. Personal care assistance with administration of**
20 **medication.** "Personal care assistance with administration of
22 medication" means personal care assistance that includes the
 administration of medication to the resident by provider staff.

24 **10. Private apartment.** "Private apartment" means a private
26 dwelling unit with an individual bathroom and an individual food
 preparation area.

28 **11. Resident.** "Resident" means any person 18 years of age
30 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.

32 **12. Residential care facility.** "Residential care facility"
34 means a house or other place that, for consideration, is
36 maintained wholly or partly for the purpose of providing
38 residents with assisted living services as defined in subsection
40 2. A "residential care facility" includes, but is not limited
42 to, facilities formerly defined and regulated as adult foster
 care homes and boarding homes under former 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.

44 **13. Shared staffing.** "Shared staffing" means the use of
46 licensed and unlicensed personnel who are employed, directly or
48 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.

2 **Sec. A-8. 22 MRSA §7902, sub-§1**, as amended by PL 1993, c.
661, §8, is further amended to read:

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

20 In establishing the rules for the administration of medication,
the commissioner shall consider, among other factors, the general
22 health of the persons likely to receive medication, the number of
persons served by the facility and the number of persons employed
24 by the facility. In the rules for the administration of
medication established for residential care facilities, the
26 Department of Human Services may require unlicensed personnel to
have successfully completed a program of training and
28 instruction, approved by the department for the administration of
medication, that is not limited to in-service training.

30 **Sec. A-9. 22 MRSA §§7914 to 7918** are enacted to read:

32 **§7914. Shared staffing**

34 The department shall permit staff in residential care
36 facilities to be shared with other levels of assisted living on
the same premises as long as there is a clear, documented audit
38 trail and the staffing in the residential care facilities remains
adequate to meet the needs of residents. Staffing to be shared
40 may be based on the average number of hours used per week or
month within the assisted living program.

42 **§7915. Administration of congregate housing services programs**
44 **funded by the State; eligible clients**

46 The Department of Human Services, Bureau of Elder and Adult
Services, with advice from the Maine State Housing Authority, the
48 Rural Housing Services or any other housing agency financing the
congregate housing facility, shall administer state-funded

congregate housing services programs. Administration must include, but is not limited to:

1. Rules; operation of congregate housing services programs. 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.

For the purposes of this subsection, "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 services.

§7916. Fire safety inspection

In accordance with this section, the department shall adopt rules pursuant to Title 5, chapter 375 for the inspection of congregate housing facilities by the Office of the State Fire Marshal and the fees for that inspection. Rules regarding fees adopted pursuant to this section 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 Office of the State Fire Marshal at the request of the department prior to licensure. Each facility must be reinspected every 2 years.

2. Certificate of compliance. The Office of the State Fire Marshal 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:

2 1. Personal care assistance. To be licensed to provide
personal care assistance, \$50;

4 2. Personal care assistance with medication. To be
licensed to provide personal care assistance with administration
6 of medication, \$100; and

8 3. Nursing services. To be licensed to provide nursing
services, \$200.

10 **§7918. Rules**

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

26 **PART B**

28 **Sec. B-1. 22 MRSA §1812-C, sub-§6-A** is enacted to read:

30 6-A. Shared staffing. The department shall permit staff in
nursing facilities to be shared with other levels of assisted
32 living on the same premises as long as there is a clear,
documented audit trail and the staffing in the nursing facilities
34 remains adequate to meet the needs of residents. Staffing to be
shared may be based on the average number of hours used per week
36 or month within the assisted living program.

38 **Sec. B-2. 22 MRSA §1812-G, sub-§3,** as enacted by PL 1991, c.
40 421, §1, is amended to read:

42 **3. Eligibility requirements for listing.** The State Board
of Nursing shall adopt rules pursuant to the Maine Administrative
44 Procedure Act defining eligibility requirements for listing on
the Maine Registry of Certified Nursing Assistants, including
46 rules regarding temporary listing of nursing assistants who have
received training in another jurisdiction. The rules must permit
48 nursing assistants to work under the supervision of a registered
professional nurse in a facility providing assisted living
50 services as defined in chapter 1665 and must recognize work in

2 those facilities for the purpose of qualifying for and continuing
3 listing on the registry. Rules adopted regarding the work of
4 nursing assistants in facilities providing assisted living
5 services are routine technical rules as defined by Title 5,
6 chapter 375, subchapter II-A. The board shall submit a report of
7 the adopted rules to the joint standing committee of the
8 Legislature having jurisdiction over business-legislation human
9 resource matters by January 15, 1992.

10 **Sec. B-3. 22 MRSA §5107-A, first ¶,** as amended by PL 1993, c.
11 284, §1, is further amended to read:

12
13 In accordance with the program established pursuant to
14 section 5106, subsection 11-C, the ombudsman may enter onto the
15 premises of any boarding residential care facility, as defined in
16 section 7901-C, licensed according to section 7801, any assisted
17 living facility licensed pursuant to chapter 1663 or 1665 and any
18 nursing home facility licensed according to section 1817 to
19 investigate complaints concerning those facilities or to perform
20 any other functions authorized by this section or other
21 applicable law or rules. The ombudsman shall investigate
22 complaints received on behalf of individuals receiving long-term
23 care services provided by home-based care programs, the Medicaid
24 waiver program, licensed home health agencies, assisted living
25 services providers, certified homemaker agencies and licensed
26 adult day care agencies. To carry out this function, any staff
27 member or volunteer authorized by the ombudsman may enter onto
28 the premises of any ~~adult--foster~~ residential care facility,
29 ~~boarding-care~~ assisted living facility or nursing home facility
30 during the course of an investigation, speak privately with any
31 individual in the facility ~~or--home~~ who consents to the
32 conversation and inspect and copy all records pertaining to a
33 resident as long as the resident or the legal representative of
34 the resident consents in writing to that inspection. The
35 consent, when required and not obtainable in writing, may be
36 conveyed orally or otherwise to the staff of the facility ~~or~~
37 home. When a resident is not competent to grant consent and has
38 no legal representative, the ombudsman may inspect the resident's
39 records and may make copies without the written consent of a duly
40 appointed legal representative. The ombudsman may authorize as
41 many individuals as necessary, in addition to staff, to carry out
42 this function except that these individuals may not make copies
43 of confidential client information. Appropriate identification
44 must be issued to all such persons. In accordance with the
45 federal 1987 Older Americans Act, 42 United States Code, as
46 amended, a person may not serve as an ombudsman without training
47 as to the rights and responsibilities of an ombudsman or without
48 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.

Sec. B-4. 22 MRSA §5107-A, last ¶, as enacted by PL 1991, c. 622, Pt. QQ, §2, is amended to read:

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, any 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-5. 22 MRSA §7801, sub-§1, ¶A-1 is enacted to read:

A-1. In accordance with subparagraphs (1) and (2), 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-B, subsection 2. A qualified congregate housing services program may obtain a license for a different category under section 7901-B, subsection 2, upon application and surrender of the previous license;

Sec. B-6. 22 MRSA §7802, sub-§1, ¶E, as enacted by PL 1993, c. 661, §5, 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 ~~has---relatively deficiency-free-surveys-with~~ is in substantial compliance

with licensing rules and has no history of health or safety violations.

Sec. B-7. 22 MRSA §7922, sub-§1, as amended by PL 1993, c. 661, §20, is further 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 ~~skilled nursing or intermediate-care-facility~~ or unit licensed pursuant to chapter 405.

PART C

Sec. C-1. 22 MRSA §2053, sub-§2-C, as enacted by PL 1995, c. 362, §1, is repealed.

Sec. C-2. 22 MRSA §2053, sub-§3-A, as amended by PL 1995, c. 452, §1, is further 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 hospital; a community mental health facility; or a community health center.

Sec. C-3. 22 MRSA §2053, sub-§5, as amended by PL 1995, c. 362, §2, is further 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-4. 32 MRSA §2102, sub-§2, ¶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-5. 32 MRSA §2102, sub-§2, ¶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-6. 32 MRS §2102, sub-§2, ¶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 resource 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 resource 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 of the Legislature having jurisdiction over human resource 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 the Maine Revised Statutes, Title 22, section 7901-C.

Sec. D-3. Effective date. With the exception of sections 1 and 2 of this Part and those sections of this Act that repeal the Maine Revised Statutes, Title 22, section 5155 and enact Title 22, section 7916, this Act takes effect January 1, 1997. Those sections of this Act that repeal Title 22, section 5155 and enact Title 22, section 7916 take effect October 1, 1996. Sections 1 and 2 of this Part take effect July 15, 1996.

STATEMENT OF FACT

2
3 Part A of this bill makes changes to the statutes on
4 residential care facilities and repeals the Maine Revised
5 Statutes, Title 22, chapter 1457-A, moving its content to Title
6 22, chapter 1665 and changing the chapter heading to "Assisted
7 Living Programs." The various types of assisted living programs
8 are defined, including residential care facilities and congregate
9 housing facilities, as are the types of services they may
10 provide. This Part authorizes the Commissioner of Human Services
11 to adopt rules for assisted living programs in consultation with
12 providers, advocates and consumer representatives. It makes
13 changes to the congregate housing services laws, extending the
14 Act to cover younger adults with disabilities as well as the
15 elderly. It eliminates the process of certification of
16 congregate housing services programs, replacing it with a process
17 of optional licensing for assisted living providers that offer
18 personal care assistance and mandatory licensing for assisted
19 living providers that offer personal care assistance including
20 administration of medication and nursing services. It makes the
21 necessary changes to the licensing laws. It sets the fees for
22 congregate housing programs seeking licenses as assisted living
23 programs. It sets forth fire safety requirements for congregate
24 housing programs operating assisted living programs.

25
26 Part B adds to the assisted living facilities that come
27 under the jurisdiction of the long-term care ombudsman. It sets
28 forth requirements for shared staffing in assisted living
29 programs, residential care facilities and long-term care
30 facilities. It extends residents' rights laws to assisted living
31 programs. It allows 2-year licenses for congregate housing
32 services programs. It requires the State Board of Nursing to
33 adopt rules allowing certified nursing assistants to work under
34 the supervision of a registered professional nurse in a facility
35 providing assisted living services.

36
37 Part C amends the provisions of law regarding the Maine
38 Health and Higher Educational Facilities Authority Act to reflect
39 the definition of assisted living adopted in the other provisions
40 of the bill. It makes changes that allow professional nurses to
41 coordinate and oversee patient care services provided by
42 unlicensed personnel.

43
44 Part D requires the Commissioner of Human Services, the
45 Commissioner of Mental Health and Mental Retardation and the
46 State Board of Nursing to develop recommendations for
47 standardization of educational courses and utilization of
48 unlicensed assistive personnel who administer medications in
49 long-term care facilities. It requires the Commissioner of Human
50 Services to review laws and rules on residential care facilities

2 and assisted living programs and make recommendations for
legislative changes. It also establishes a general effective
4 date of January 1, 1997. The fire safety requirements take
effect on October 1, 1996. The provisions requiring reports to
6 the Joint Standing Committee on Human Resources take effect July
15, 1996.