

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2039

S.P. 717

In Senate, March 24, 1999

An Act to Improve Access to Residential Care in Rural Maine.

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, current law is resulting in undue hardship to
6 residents of rural communities in this State by requiring them to
travel excessive distances in order to receive residential care;
8 and

10 Whereas, prompt development of community-based, long-term
resources is necessary for the safety and comfort of the elderly
12 and disabled population of this State; and

14 Whereas, in circumstances in which residents would have no
access to residential care services, either because they live in
16 a rural area where no residential care facility exists or they
currently live in a nursing facility and their health improves to
18 the extent that they require only residential care services and
the nearest residential care facility is located more than 25
20 miles from a nursing facility, this Act enables them to receive
residential care services without undertaking a major geographic
22 relocation; and

24 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
26 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
28 safety; now, therefore,

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

32 **Sec. 1. 22 MRSA §303, sub-§12-C is enacted to read:**

34 12-C. Nursing facility flex bed. "Nursing facility flex
bed" means any bed defined under section 1812-I.

36 **Sec. 2. 22 MRSA §304-A, sub-§8-A, as enacted by PL 1997, c.
38 689, Pt. B, §10 and affected by Pt. C, §2, is amended to read:**

40 **8-A. Nursing facilities.** The obligation by a nursing
facility, when related to nursing services provided by the
42 nursing facility, of any capital expenditures of \$500,000 or
more, as adjusted pursuant to section 305-A.

44 A certificate of need is not required for a nursing facility to
46 convert beds used for the provision of nursing services to beds
to be used for the provision of residential care services. If
48 such a conversion occurs, public funds are not obligated for
payment of services provided in the converted beds; and

50

2 A certificate of need is not required for a nursing facility to
3 use nursing facility flex beds as defined in section 1812-I; and

4 **Sec. 3. 22 MRSA §1708, sub-§3, ¶C**, as amended by PL 1995, c.
5 696, Pt. A, §32, is further amended to read:

6 C. Are consistent with federal requirements relative to
7 limits on reimbursement under the federal Social Security
8 Act, Title XIX; and

9 **Sec. 4. 22 MRSA §1708, sub-§3, ¶D**, as enacted by PL 1995, c.
10 696, Pt. A, §33, is amended to read:

11 D. Ensure that any calculation of an occupancy percentage
12 or other basis for adjusting the rate of reimbursement for
13 nursing facility services to reduce the amount paid in
14 response to a decrease in the number of residents in the
15 facility or the percentage of the facility's occupied beds
16 excludes all beds that the facility has removed from service
17 for all or part of the relevant fiscal period in accordance
18 with section 304-F. If the excluded beds are converted to
19 residential care beds or another program for which the
20 department provides reimbursement, nothing in this paragraph
21 precludes the department from including those beds for
22 purposes of any occupancy standard applicable to the
23 residential care or other program pursuant to duly adopted
24 rules of the department.; and

25 **Sec. 5. 22 MRSA §1708, sub-§3, ¶E** is enacted to read:

26 E. Determine how nursing facilities are reimbursed for
27 providing services in nursing facility flex beds as defined
28 in section 1812-I.

29 **Sec. 6. 22 MRSA §1812-I** is enacted to read:

30 **§1812-I. Nursing facility flex beds**

31 "Nursing facility flex beds" means nursing facility beds
32 licensed by the department for use also as residential care beds.

33 **Sec. 7. 22 MRSA §1813**, as amended by PL 1997, c. 488, §1, is
34 further amended by adding at the end a new paragraph to read:

35 For nursing facilities providing nursing facility flex beds
36 as defined in section 1812-I, the department shall issue a single
37 license reflecting the nursing and residential facility levels of
38 care and the number of nursing facility beds allowed to be used
39 as nursing facility flex beds. Nursing facility flex beds may be
40 established only in nursing facilities that are farther than 25

2 miles from the nearest licensed residential care facility at the
3 time of licensing the nursing facility flex beds. The number of
4 nursing facility flex beds in any one nursing facility may not
5 exceed 50% of the total number of beds licensed in that
6 facility. The commissioner shall adopt rules, which are routine
7 technical rules pursuant to Title 5, chapter 375, subchapter
8 II-A, to implement this paragraph.

9
10 **Emergency clause.** In view of the emergency cited in the
11 preamble, this Act takes effect when approved.

12 SUMMARY

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14
15 This bill addresses the issue identified in the Final Report
16 of the Commission to Examine Rate Setting and the Financing of
17 Maine's Long-Term Care Facilities, dated November 20, 1998,
18 regarding resident access to long-term care in rural communities
19 by allowing the use of "nursing facility flex beds," through
20 which nursing facilities may use a designated number of beds for
21 nursing or residential care. In circumstances when residents
22 would otherwise have no access to residential care services,
23 either because they live in a rural area where no residential
24 care facility exists or they currently live in a nursing facility
25 and their health improves to the extent that they require only
26 residential care services and the nearest residential care
27 facility is located more than 25 miles from a nursing facility,
28 this bill enables them to receive residential care without
29 undertaking a major geographic relocation. This bill also allows
30 nursing facilities reimbursement in such circumstances, in
31 accordance with the level of care provided and in accordance with
32 rules adopted by the Commissioner of Human Services.