

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 525

H.P. 404

House of Representatives, February 6, 2001

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

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative LOVETT of Scarborough.

Cosponsored by Representatives: FULLER of Manchester, STEDMAN of Hartland, Senators:
LONGLEY of Waldo, MILLS of Somerset.

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

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

4 12-C. Nursing facility flex bed. "Nursing facility flex
6 bed" means any bed defined under section 1812-I.

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

12 **8-A. Nursing facilities.** The obligation by a nursing
14 facility, when related to nursing services provided by the
nursing facility, of any capital expenditures of \$500,000 or
more, as adjusted pursuant to section 305-A.

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

22 A certificate of need is not required for a nursing facility to
24 use nursing facility flex beds; and

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

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

32 **Sec. 4. 22 MRSA §1708, sub-§3, ¶D**, as enacted by PL 1995, c.
34 696, Pt. A, §33, is amended to read:

36 D. Ensure that any calculation of an occupancy percentage
or other basis for adjusting the rate of reimbursement for
38 nursing facility services to reduce the amount paid in
response to a decrease in the number of residents in the
40 facility or the percentage of the facility's occupied beds
excludes all beds that the facility has removed from service
42 for all or part of the relevant fiscal period in accordance
with section 304-F. If the excluded beds are converted to
44 residential care beds or another program for which the
department provides reimbursement, nothing in this paragraph
46 precludes the department from including those beds for
purposes of any occupancy standard applicable to the
48 residential care or other program pursuant to duly adopted
rules of the department; ~~and~~

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

2 E. Determine how nursing facilities are reimbursed for
4 nursing facility flex beds as defined in section 1812-I.
6 Reimbursement must be commensurate with the level of care
8 provided, rather than applying a days' waiting placement
10 rate.

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

10 **§1812-I. Nursing facility flex beds**

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

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

18 For nursing facilities providing nursing facility flex beds
20 as defined in section 1812-I, the department shall issue a single
22 license reflecting the nursing and residential facility levels of
24 care and the number of nursing facility beds allowed to be used
26 as nursing facility flex beds. Nursing facility flex beds may be
28 established only in nursing facilities that are farther than 25
30 miles from the nearest available licensed residential care
32 facility at the time of licensing the nursing facility flex beds,
34 or if necessary to meet the care needs of an existing resident.
36 The number of nursing facility flex beds in any one nursing
38 facility may not exceed 30% of the total number of beds licensed
40 in that facility. The commissioner shall adopt rules, which are
42 routine technical rules pursuant to Title 5, chapter 375,
44 subchapter II-A, to implement this paragraph.

38 **Sec. 8. Application for pilot program required.** The Department of
40 Human Services shall seek federal matching funds for a pilot
42 program utilizing all nursing facilities with nursing facility
44 flex beds.

38 **SUMMARY**

40 This bill addresses the issue identified in the Final Report
42 of the Commission to Examine Rate Setting and the Financing of
44 Maine's Long-Term Care Facilities, dated November 20, 1998,
46 regarding resident access to long-term care in rural communities
48 by allowing the use of "nursing facility flex beds," through
50 which nursing facilities may use a designated number of beds for
nursing or residential care. In circumstances when residents
would otherwise have no access to residential care services,
either because they live in a rural area where no residential
care facility exists or they currently live in a nursing facility
and their health improves to the extent that they require only

2 residential care services and the nearest residential care
3 facility is located more than 25 miles from a nursing facility,
4 this bill enables them to receive residential care without
5 undertaking a major geographic relocation. This bill also allows
6 a resident to remain in that resident's current nursing facility,
7 even if that resident's care needs fluctuate between nursing
8 facility and residential care levels. This bill also allows
9 nursing facilities reimbursement in such circumstances, in
10 accordance with the level of care provided and in accordance with
11 rules adopted by the Commissioner of Human Services. This bill
12 also directs the Department of Human Services to seek federal
matching funds for a pilot project utilizing nursing facility
flex beds.