

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2195

H.P. 1697

House of Representatives, March 20, 2002

**An Act to Implement the Recommendations of the Commission to Study
Assisted Living.**

Reported by Representative KANE for the Joint Standing Committee on Health and
Human Services pursuant to Private and Special Law 1991, chapter 36.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

PART A

Sec. A-1. 22 MRSA c. 1664 is enacted to read:

CHAPTER 1664

ASSISTED HOUSING PROGRAMS

§7851. Assisted housing programs

Assisted housing programs are authorized under this chapter in the following settings and subject to the following standards and licensure requirements.

1. Standards. Assisted housing programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2. Settings. Assisted housing programs may be provided in the following settings:

A. Independent housing with services programs, as defined in section 7852, subsection 6;

B. Assisted living programs, as defined in section 7852, subsection 4; or

C. Residential care facilities, as defined in section 7852, subsection 14.

3. Licensure requirements. Independent housing with services programs are not subject to licensure. Licensure of assisted living programs is governed by section 7801, subsection 1. Licensure of residential care facilities is governed by section 7801, subsections 1 and 3.

§7852. Definitions

As used in this chapter, 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

2 bodily functions, including bed mobility, transfers, locomotion,
3 dressings, eating, toileting, bathing and personal hygiene.

4 **2. Assisted housing program.** "Assisted housing program"
5 means an independent housing with services program, an assisted
6 living program or a program of housing and services provided by a
7 residential care facility.

8 **3. Assisted housing services.** "Assisted housing services"
9 means the provision by an assisted housing program of housing,
10 assistance with activities of daily living and instrumental
11 activities of daily living, personal supervision, protection from
12 environmental hazards, meals, diet care, care management and
13 diversional or motivational activities.

14 **4. Assisted living program.** "Assisted living program"
15 means a program of assisted living services provided to residents
16 in private apartments in buildings that include a common dining
17 area, either directly by the provider or indirectly through
18 contracts with persons, entities or agencies.

19 **5. Assisted living services.** "Assisted living services"
20 means the provision by an assisted housing program, either
21 directly by the provider or indirectly through contracts with
22 persons, entities or agencies, of assisted housing services with
23 the addition of medication administration or medication
24 administration and nursing services.

25 **6. Independent housing with services program.** "Independent
26 housing with services program" means a program of assisted
27 housing services provided to residents in private apartments in
28 buildings that include a common dining area, either directly by
29 the provider or indirectly through contracts with persons,
30 entities or agencies.

31 **7. Instrumental activities of daily living.** "Instrumental
32 activities of daily living" includes, but is not limited to,
33 preparing or receiving of a main meal, taking medication, using
34 the telephone, handling finances, banking, shopping, routine
35 housework, laundry and getting to appointments.

36 **8. Life Safety Code.** "Life Safety Code" means the current
37 edition of the National Fire Protection Association Life Safety
38 Code 101.

39 **9. Long-term care facility.** "Long-term care facility"
40 means any assisted housing program licensed pursuant to chapter
41 1663 or this chapter and any nursing facility or unit licensed
42 pursuant to chapter 405.

2 10. Mobile nonambulatory. "Mobile nonambulatory," as
4 applied to a resident of a residential care facility with 6 or
6 fewer beds, means being able to transfer independently and able
8 to evacuate a facility in less than 2 1/2 minutes with the
10 assistance of another person throughout the evacuation procedure.

12 11. Nursing services. "Nursing services" means services
14 provided by professional nurses defined in Title 32, section
16 2102, subsection 2. "Nursing services" includes coordination and
18 oversight of resident care services provided by unlicensed health
20 care assistive personnel in assisted living programs.

22 12. Private apartment. "Private apartment" means a private
24 dwelling unit with an individual bedroom, an individual bathroom
26 and an individual food preparation area.

28 13. Resident. "Resident" means any person 18 years of age
30 or older who is not related by blood or marriage to the owner or
32 person in charge of the facility or building in which the
34 resident lives and who receives assisted housing services.

36 14. Residential care facility. "Residential care facility"
38 means a house or other place that, for consideration, is
40 maintained wholly or partly for the purpose of providing
42 residents with assisted living services. Residential care
44 facilities provide housing and services to residents in private
46 or semi-private bedrooms in buildings with common living areas
48 and dining areas. "Residential care facility" does not include a
50 licensed nursing home or a supported living arrangement certified
by the Department of Behavioral and Developmental Services.

32 §7853. Rules

34 The commissioner shall adopt rules for assisted housing
36 programs. Rules adopted pursuant to this section are major
38 substantive rules as defined in Title 5, chapter 375, subchapter
40 II-A.

42 1. Consultation. The rules must be developed in
44 consultation with the long-term care ombudsman program
46 established pursuant to section 5106, subsection 11-C, consumer
48 representatives and providers of the type of assisted housing
50 program to which the rules will apply.

2. Subject matter. The rules must include, but are not
limited to, administration, quality of care and treatment, if
applicable, level and qualifications of staff, rights of
residents, contracts, administration of medication, available
public and private sources of payment, health and safety of
residents and staff, community relations and licensing procedures.

2 3. Administration of medication rules. In adopting the
4 rules for administration of medication, the commissioner shall
6 consider, among other factors, the general health of the persons
8 likely to receive medication and the numbers of persons served
10 and employed by the assisted housing program facility. The
 department may require unlicensed personnel to have successfully
 completed a program of training and instruction, approved by the
 department for the administration of medication, that is not
 limited to in-service training.

12 4. Residential care rules. The commissioner shall adopt
14 rules for the various levels of residential care facilities. In
16 addition to the subject matter of the rules listed in subsection
18 2, the rules must include criteria for placement of residents who
 qualify for services as minors, as adults and as persons with
 disabilities.

20 5. Independent housing with services program and assisted
22 living program rules. The commissioner shall adopt rules for
24 independent housing with services programs and assisted living
26 programs. In addition to the subject matter of rules listed in
28 subsection 2, the rules must recognize and promote the
30 efficiencies inherent in providing services in the applicable
32 setting with respect to staffing and other responsibilities,
 while ensuring quality of care and safety. The rules must set
 requirements and standards for services rendered in the
 applicable settings that recognize the differences between those
 settings and private homes served pursuant to chapter 419. The
 rules must permit staff in assisted housing programs to be shared
 in accordance with section 1812-C, subsection 6-A and section
 7914.

34 6. Applicability of residents' rights rules. Any rules
36 adopted pursuant to this section pertaining to residents' rights
38 are applicable to independent housing with services programs and
 assisted living programs.

40 §7854. Fees for licensure

42 The department shall charge annual fees for licensure of
44 residential care facilities and assisted living programs as
 follows:

46 1. Fees for residential care facility. Ten dollars per
 licensed bed for a residential care facility; and

48 2. Fees for assisted living programs. Two hundred dollars
50 for an assisted living program.

2 **§7855. Fire safety inspection for residential care facilities**

4 **1. Inspection required.** A license may not be issued by the
6 department to a residential care facility until the department
8 has received from the Commissioner of Public Safety a written
10 statement signed by one of the officials designated under Title
25, section 2360, 2391 or 2392 to make fire safety inspections.
This statement, which must indicate that the residential care
facility has complied with applicable fire safety provisions
referred to in Title 25, section 2452.

12 **2. Fees.** The department shall establish and pay reasonable
14 fees to the Commissioner of Public Safety or a municipal official
for each inspection under subsection 1.

16 **3. Local regulations.** A local regulation that affects the
18 life-safety requirements of a residential care facility and that
is more stringent than those referred to in this section takes
precedence.

20 **4. Requirements for residential care facilities.**
22 Residential care facilities must comply with the following
24 provisions of the National Fire Protection Association Life
Safety Code adopted by the Department of Public Safety, Office of
the State Fire Marshal.

26 A. A residential care facility that has one to 3 beds must
28 comply with the one-family and 2-family dwelling chapter of
the Life Safety Code.

30 B. A residential care facility with 4 to 16 beds must
32 comply with the sections of the Life Safety Code that apply
to small facilities and with the new residential board and
34 care occupancy chapter if that facility is a new facility or
with the existing residential board and care occupancy
36 chapter if that facility is an existing facility.

38 C. A residential care facility with more than 16 beds must
40 comply with the sections of the Life Safety Code that apply
to large facilities and with the new residential board and
42 care occupancy chapter if that facility is a new facility or
with the existing residential board and care occupancy
44 chapter if that facility is an existing facility.

46 **5. Fire safety inspection and certificate of compliance**
48 **required for licensure.** A fire safety inspection must be
performed and a certificate of compliance must be provided to the
department before a license to a residential care facility is
48 issued. Inspections must be scheduled to coincide with the term
50 of the license.

2 6. Timed drills. Timed drills, as described in the
3 applicable chapters of the National Fire Protection Association
4 Life Safety Code, must be used to determine a residential care
5 facility's capability to evacuate its residents, unless the
6 facility has elected to complete evacuation scores in lieu of
7 timed drills in accordance with the standards described in the
8 National Fire Protection Association Life Safety Code 101A or
9 when timed drills are not required pursuant to the Life Safety
10 Code. When a new resident has participated in a timed drill in
11 another residential care facility within the previous 2 months,
12 the results of that drill may be used to determine evacuation
13 capability in the resident's new facility for a period of up to 4
14 months. A person who violates or fails to comply with this
15 subsection commits a civil violation for which a forfeiture of
16 not more than \$25 per bed for each occurrence of failure to
17 comply may be adjudged.

18 7. Requirement for manual fire alarm activation may be
19 waived. For a residential care facility with 4 to 8 beds, the
20 requirement for manual fire alarm activation may be waived at the
21 discretion of the Commissioner of Public Safety.

22 §7856. Fire safety inspection for assisted living programs

23 In accordance with this section, the department shall adopt
24 rules pursuant to Title 5, chapter 375 for the inspection of
25 assisted living programs as defined in section 7852, subsection
26 4, by the Commissioner of Public Safety or the commissioner's
27 designee and the fees for that inspection. Rules regarding fees
28 adopted pursuant to this section are major substantive rules as
29 defined in Title 5, chapter 375, subchapter II-A.

30 1. Permits; inspection. Construction and renovation of
31 assisted living programs require a construction permit from the
32 Commissioner of Public Safety. Prior to licensure all assisted
33 living programs must be inspected by the Commissioner of Public
34 Safety or the commissioner's designee at the request of the
35 department. All assisted living programs must be inspected upon
36 performing renovations and must be reinspected every 2 years.

37 2. Certificate of compliance. The Commissioner of Public
38 Safety shall issue a certificate of compliance with the
39 provisions of this section to the department.

40 3. Requirements. All assisted living programs must be
41 inspected using the chapter pertaining to new apartment buildings
42 of the National Fire Protection Association Life Safety Code
43 adopted by the Department of Public Safety, Office of the State
44 Fire Marshal and must be protected throughout by a supervised,
45

2 automatic sprinkler system approved by the Commissioner of Public
3 Safety.

4 **§7857. Personal funds of residents**

6 1. Permission to manage personal funds. An operator or
7 agent of an assisted housing program may not manage, hold or
8 deposit in a financial institution the personal funds of a
9 resident of the facility unless the operator or agent has
10 received written permission from:

12 A. The resident if the resident does not have a guardian,
13 trustee or conservator;

14 B. The resident's guardian, trustee or conservator if that
15 person exists and can be reached; or

16 C. The department if a guardian, trustee or conservator
17 exists but can not be reached.

18 2. Itemized accounting. An operator or agent of an
19 assisted housing program who, after receiving written permission
20 pursuant to subsection 1, manages or holds the personal funds of
21 a resident shall maintain an account for these funds, which must
22 include for each resident a separate, itemized accounting for the
23 use of that resident's personal funds with supporting
24 documentation for every expenditure in excess of \$2.

25 3. Depositing personal funds. The department may require
26 an operator or agent of an assisted housing program to deposit in
27 a financial institution the personal funds of a resident if the
28 resident has a guardian, trustee or conservator who can not be
29 reached.

30 4. Use of personal funds by operator prohibited. Under no
31 circumstances may an operator or agent of an assisted housing
32 program use the personal funds of a resident for the operating
33 costs of the facility or for services or items that are
34 reimbursed by a 3rd party. The personal funds of a resident may
35 not be commingled with the business funds of the facility or with
36 the personal funds or accounts of the owner, a member of the
37 owner's family or an employee of the facility.

38 **§7858. Certain residential care payments**

39 The department shall:

40 1. Facilities with 4 or fewer beds. Reimburse all
41 residential care facilities of up to 4 beds at a rate of at least
42 \$433 per month; and

2 2. Facilities with 5 or 6 beds. Reimburse all residential
3 care facilities of 5 or 6 beds whose residents do not have severe
4 mental or physical dysfunction or disability on a flat rate basis
5 of at least \$601 per month.

6 **§7859. Residents' records**

7 Whenever there are pertinent and available health and other
8 records about a person who seeks admission as a resident to a
9 residential care facility, those records must be provided to the
10 administrator of the facility at least 7 days prior to the date
11 of admission, unless there are compelling reasons that make this
12 impossible or impractical. If there are compelling reasons,
13 including, but not limited to, emergency situations, the
14 administrator must receive, by not later than the date of
15 admission, a written note that:

16 1. Reasons explained. Explains the compelling reasons why
17 the records could not be provided 7 days prior to the date of
18 admission; and

19 2. When records will be provided. If the records have not
20 yet been received, states by when the records will be provided.

21 This section may not be construed to mean that a resident
22 who is not a client of the department or the Department of
23 Behavioral and Developmental Services is required, as a condition
24 of admission, to provide records to the administrator of the
25 residential care facility.

26 **§7860. Shared staffing**

27 The department shall permit shared staffing between
28 residential care facilities and other levels of assisted housing
29 on the same premises as long as there is a clear, documented
30 audit trail and the staffing in the residential care facilities
31 remains adequate to meet the needs of residents. Staffing to be
32 shared may be based on the average number of hours used per week
33 or month within the assisted housing program. For the purposes
34 of this section, "shared staffing" means the use of licensed and
35 unlicensed personnel who are employed, directly or under a
36 contract, by a long-term care facility in more than one level of
37 care provided by a single entity on the same premises.

38 **§7861. Administration of assisted housing programs funded by the**
39 **State; eligible clients**

40 The Department of Human Services, Bureau of Elder and Adult
41 Services, with advice from the Maine State Housing Authority, the

2 Rural Housing Services or any other housing agency financing
3 assisted housing programs, shall administer state-funded assisted
4 housing programs. Administration must include, but is not
5 limited to:

6 1. Rules; payment for assisted housing programs. Adopting
7 rules governing the services to be provided under assisted
8 housing programs paid for with state funds. Rules adopted
9 pursuant to this subsection are routine technical rules as
10 defined in Title 5, chapter 375, subchapter II-A;

11 2. Compliance with standards and guidelines. Reviewing the
12 compliance of assisted housing programs with standards and
13 guidelines established for the programs; and

14 3. Awarding of grants. Awarding of grants, when available
15 and necessary, to subsidize the cost of assisted housing programs
16 for eligible clients.

17 For the purposes of this subsection, "eligible clients" means
18 adults who have been determined through an approved assessment by
19 the department to be functionally or cognitively impaired and in
20 need of financial assistance to access assisted housing programs.

21 **Sec. A-2. 22 MRSA c. 1665, as amended, is repealed.**

22 **PART B**

23 **Sec. B-1. 12 MRSA §7076, sub-§8, ¶D, as repealed and replaced**
24 **by PL 1989, c. 502, Pt. D, §7, is repealed.**

25 **Sec. B-2. 18-A MRSA §5-311, sub-§(c), as amended by PL 1995, c.**
26 **51, §1, is further amended to read:**

27 (c) No owner, proprietor, administrator, employee or other
28 person with a substantial financial interest in a facility or
29 institution licensed under Title 22, sections 1817 and 7801, may
30 act as guardian of an incapacitated person who is a resident, as
31 defined in Title 22, section 7901-A 7852, subsection 13, unless
32 the person requesting to be appointed guardian is one of the
33 following:

34 (1) The spouse of the incapacitated person;

35 (2) An adult child of the incapacitated person;

36 (3) A parent of the incapacitated person or a person
37 nominated by the will of a deceased parent; or

2 (4) A relative of the incapacitated person with whom the
incapacitated person has resided for more than 6 months
4 prior to the filing of the petition for appointment.

6 **Sec. B-3. 22 MRSA §1714-A, sub-§1, ¶A**, as enacted by PL 1991,
c. 9, Pt. G, §4, is amended to read:

8 A. "Boarding home" means any facility that meets the
10 definition of former section 7901-A, subsection 4 or the
definition of residential care facility in section 7852,
12 subsection 14.

14 **Sec. B-4. 22 MRSA §1714-A, sub-§2**, as amended by PL 1991, c.
568, §1, is further amended to read:

16 **2. Establishment of debt.** A debt is established by the
department when it notifies a provider of debt, ~~or when the Maine~~
18 ~~Health-Care-Finance-Commission-notifies-a-hospital-that-the~~
~~hospital~~ that the provider owes the department pursuant to a
20 final reconciliation decision and order. A debt is collectible
22 by the department 31 days after exhaustion of all administrative
appeals and any judicial review available under Title 5, chapter
375.

24 **Sec. B-5. 22 MRSA §1812-G, sub-§3**, as amended by PL 1995, c.
26 670, Pt. B, §2 and affected by Pt. D, §5, is further amended to
read:

28 **3. Eligibility requirements for listing.** The State Board
30 of Nursing shall adopt rules pursuant to the Maine Administrative
Procedure Act defining eligibility requirements for listing on
32 the Maine Registry of Certified Nursing Assistants, including
rules regarding temporary listing of nursing assistants who have
34 received training in another jurisdiction. The rules must permit
nursing assistants to work under the supervision of a registered
36 professional nurse in a facility providing assisted living
services as defined in chapter ~~1665~~ 1664 and must recognize work
38 in those facilities for the purpose of qualifying for and
continuing listing on the registry. Rules adopted regarding the
40 work of nursing assistants in facilities providing assisted
living services are routine technical rules as defined by Title
42 5, chapter 375, subchapter II-A.

44 **Sec. B-6. 22 MRSA §1824**, as enacted by PL 1975, c. 719, §4,
is amended to read:

46 **§1824. Personal funds of residents**

48 The operator or agent of any skilled nursing or intermediate
50 care facility, licensed pursuant to this chapter, who manages,

holds or deposits the personal funds of any resident of the facility shall-be is subject to all the procedures and provisions included in section 7905 7857.

Sec. B-7. 22 MRSA §2053, sub-§3-A, as amended by PL 1995, c. 670, Pt. C, §2 and affected by Pt. D, §5, 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~~ 1664; a hospital; a community mental health facility; or a community health center.

Sec. B-8. 22 MRSA §2147, sub-§11, as amended by PL 1989, c. 119, §2, is further amended to read:

11. Licensed residential care facilities. Boarding Residential care facilities licensed pursuant to chapters 1663 and ~~1665~~ 1664 when the services are provided to clients residing in those facilities;

Sec. B-9. 22 MRSA §5107-A, first ¶, as amended by PL 1995, c. 670, Pt. B, §3 and affected by Pt. D, §5, is further amended to read:

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman may enter onto the premises of any residential care facility, as defined in section ~~7901-C~~ 7852, subsection 14, licensed according to section 7801, any assisted living facility licensed pursuant to chapter 1663 or ~~1665~~ 1664 and any nursing 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 residential care facility, assisted living facility or nursing facility during the course of an investigation, speak privately with any individual in the facility who consents to the conversation and inspect and copy all records pertaining to a resident as long as the resident or

2 the legal representative of the resident consents in writing to
that inspection. The consent, when required and not obtainable
4 in writing, may be conveyed orally or otherwise to the staff of
the facility. When a resident is not competent to grant consent
6 and has no legal representative, the ombudsman may inspect the
resident's records and may make copies without the written
8 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
10 may not make copies of confidential client information.
Appropriate identification must be issued to all such persons.
12 In accordance with the federal 1987 Older Americans Act, 42
United States Code, as amended, a person may not serve as an
14 ombudsman without training as to the rights and responsibilities
of an ombudsman or without a specific plan of action under
16 direction of the ombudsman. The ombudsman shall renew the
authorization and issue identification annually. The findings of
18 the ombudsman must be available to the public upon request.

20 **Sec. B-10. 22 MRSA §7302, sub-§6**, as enacted by PL 1981, c.
511, §1, is amended to read:

22 **6. Institutional settings.** "Institutional settings" means
24 ~~boarding~~ residential care facilities, licensed pursuant to
chapter ~~1665~~ 1664; intermediate care and skilled nursing
26 facilities and units and hospitals, licensed pursuant to chapter
405; and state institutions for individuals who are mentally ill
28 or mentally retarded or who have related conditions.

30 **Sec. B-11. 22 MRSA §7703, sub-§2, ¶F**, as amended by PL 1989, c.
502, Pt. A, §81, is further amended to read:

32 F. Any information about the private life of any person who
34 has applied for a license or approval or is or has been
licensed or approved as an adult foster home, ~~as defined in~~
36 ~~section 7901-A, subsection 3~~ licensed pursuant to chapter
1663, and family foster home as defined in section 8101,
38 subsection 3, in which there is no legitimate public
interest and which would be offensive to a reasonable
40 person, if disclosed.

42 **Sec. B-12. 22 MRSA §7801, sub-§1, ¶A-1**, as enacted by PL 1995,
c. 670, Pt. B, §5 and affected by Pt. D, §5, is amended to read:

44 A-1. In accordance with subparagraphs (1) and (2), a
46 ~~congregate~~ an assisted housing ~~services~~ program either
directly or by contract providing to its residents any of
48 the following services: personal care assistance, the
administration of medication or nursing services.

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

8 (2) ~~A congregate housing services~~ An assisted housing
10 program licensee may hold at any one time only one
license under ~~section 7901-B, subsection 2~~ this
12 subsection. A qualified ~~congregate housing services~~
14 assisted housing program may obtain a license for a
different category under ~~section 7901-B, subsection 2~~
16 this subsection, upon application and surrender of the
previous license;

18 **Sec. B-13. 22 MRSA §7922, sub-§1**, as amended by PL 1995, c.
670, Pt. B, §7 and affected by Pt. D, §5, is further amended to
20 read:

22 **1. Long-term care facility.** "Long-term care facility"
means any facility program of assisted living licensed pursuant
24 to chapters 1663 and ~~1665~~ 1664, and any nursing facility or unit
licensed pursuant to chapter 405.

26 **Sec. B-14. 22 MRSA §7924, sub-§1**, as amended by PL 1997, c.
260, §2 and PL 2001, c. 354, §3, is further amended to read:

28 **1. Alleged violations reported and investigated.** Any
30 person who believes that any of those rules governing the
licensure of long-term care facilities or the operation of
32 assisted living programs and services authorized pursuant to
section ~~7901-B~~ 7853 adopted by the Department of Human Services
34 pertaining to residents' rights and conduct of resident care has
been violated may report the alleged violation to the protection
36 and advocacy agency designated pursuant to Title 5, section
19501; the long-term care ombudsman pursuant to section 5106,
38 subsection 11-C and section 5107-A; the Office of Advocacy
pursuant to Title 34-A, section 1203; and any other agency or
40 person whom the Commissioner of Human Services and the
Commissioner of Behavioral and Developmental Services may
42 designate.

44 **Sec. B-15. 22 MRSA §7932, sub-§2**, as amended by PL 1999, c.
384, §8, is further amended to read:

46 **2. Facility.** "Facility" means any assisted living facility,
48 residential care facility or ~~congregate~~ assisted housing services
program subject to licensure pursuant to chapters 1663 and ~~1665~~
50 1664, any nursing facility or unit subject to licensure pursuant

2 to chapter 405 and any private psychiatric hospital subject to
licensure pursuant to chapter 405.

4 **Sec. B-16. 22 MRSA §7942, sub-§3**, as amended by PL 1999, c.
384, §17, is further amended to read:

6
8 **3. Long-term care facility.** "Long-term care facility"
means an assisted living facility or ~~congregate-housing-services~~
10 assisted living program subject to licensure pursuant to chapters
1663 and ~~1665~~ 1664 and a nursing or intermediate care facility or
12 unit subject to licensure pursuant to chapter 405.

14 **Sec. B-17. 22 MRSA §7948, sub-§1**, as amended by PL 1997, c.
260, §3, is further amended to read:

16 **1. Generally.** Any resident whose rights have been violated
18 as described in this section may commence a civil action in the
Superior Court on that resident's own behalf for injunctive and
20 declaratory relief against any long-term care facility or
provider of assisted living programs and services that is alleged
22 to be in violation of any rule described in section 7853 or 7924
~~ex-7902-A~~ or in violation of the rights enumerated in 42 United
24 States Code, Section 1396r, Subsection (c). In order to grant a
preliminary or permanent injunction under this section, the
Superior Court must find that:

26
28 A. The plaintiff will suffer irreparable injury if the
injunction is not granted;

30 B. The irreparable injury outweighs any harm that granting
the injunctive relief would inflict on the defendant;

32
34 C. The plaintiff has exhibited a likelihood of success on
the merits of the case; and

36 D. The public interest will not be adversely affected by
granting the injunction.

38
40 **Sec. B-18. 22 MRSA §8004**, as amended by PL 1989, c. 502, Pt.
A, §84, is further amended to read:

42 **§8004. Fire safety**

44 All procedures and other provisions included in section
7904-A 7855, subsections 1 and 2, for boarding residential care
46 facilities shall also apply to drug treatment centers.

48 **Sec. B-19. 22 MRSA §8103, sub-§1**, as amended by PL 1997, c.
728, §12, is further amended to read:

50

1. **Procedures.** All procedures and other provisions included in section 7904-A 7855, subsections 1 and 2, for boarding residential care facilities also apply to children's homes, except that the written statement referred to in section 7904-A 7855, subsection 1 need not be furnished annually by the Commissioner of Public Safety to the department when a children's home serves only one or 2 children.

Sec. B-20. 22 MRSA §8551, sub-§1, ¶A, as enacted by PL 1995, c. 205, §1, is amended to read:

A. A residential care facility subject to licensure pursuant to chapter 1663 or ~~1665~~ 1664;

Sec. B-21. 22 MRSA §8702, sub-§4, as amended by PL 1999, c. 353, §1, is further amended to read:

4. Health care facility. "Health care facility" means a public or private, proprietary or not-for-profit entity or institution providing health services, including, but not limited to, a radiological facility licensed under chapter 160, a health care facility licensed under chapter 405 or certified under chapter 405-D, a federally qualified health center or rural health clinic certified by the Division of Licensing and Certification within the Department of Human Services, a home health care provider licensed under chapter 419, a residential care facility licensed under chapter ~~1665~~ 1664, a hospice provider licensed under chapter 1681, a community rehabilitation program licensed under Title 20-A, chapter 701, a state institution as defined under Title 34-B, chapter 1 and a mental health facility licensed under Title 34-B, chapter 1.

Sec. B-22. 25 MRSA §2452, last ¶, as amended by PL 1997, c. 728, §25, is further amended to read:

Existing boarding care facilities licensed pursuant to Title 22, subtitle 6, must comply with the applicable fire safety requirements of the Life Safety Code adopted by the Commissioner of Public Safety pursuant to Title 22, section 7904-A 7856.

Sec. B-23. 36 MRSA §652, sub-§1, ¶A, as amended by PL 1997, c. 668, §20 and PL 2001, c. 354, §3, is further amended to read:

A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State. Such an institution may not be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.

2 For the purposes of this paragraph, "benevolent and
3 charitable institutions" include, but are not limited to,
4 nonprofit nursing homes and nonprofit boarding homes and
5 boarding care facilities licensed by the Department of Human
6 Services pursuant to Title 22, chapter ~~1665~~ 1664 or its
7 successor, nonprofit community mental health service
8 facilities licensed by the Commissioner of Behavioral and
9 Developmental Services pursuant to Title 34-B, chapter 3 and
10 nonprofit child care centers incorporated by this State as
11 benevolent and charitable institutions. For the purposes of
12 this paragraph, "nonprofit" means a facility exempt from
13 taxation under Section 501(c)(3) of the Code;

14 **Sec. B-24. 36 MRSA §652, sub-§1, ¶C**, as amended by PL 1997, c.
15 442, §3 and PL 2001, c. 354, §3, is further amended by amending
16 subparagraph (6), division (b) subdivision (i), to read:

17 (i) Property used as a nonprofit nursing
18 home, ~~boarding-home-or-boarding~~ residential
19 care facility licensed by the Department of
20 Human Services pursuant to Title 22, chapter
21 ~~1665~~ 1663 or a community living arrangement
22 as defined in Title 30-A, section 4357-A or
23 any property owned by a nonprofit
24 organization licensed or funded by the
25 Department of Behavioral and Development
26 Services to provide services to or for the
27 benefit of persons with mental illness or
28 mental retardation;

29 **Sec. B-25. Effective date; transition provisions.** This Act takes
30 effect October 1, 2002. Rules adopted by the Department of Human
31 Services regarding assisted living programs and services that are
32 in effect on October 1, 2002 remain in effect as to the assisted
33 living programs and services until replaced by rules adopted
34 pursuant to the provisions of this Act.

40 FISCAL NOTE

41 The additional workload and administrative costs associated
42 with the minimal number of new cases filed in the court system
43 can be absorbed within the budgeted resources of the Judicial
44 Department. The collection of additional fines may increase
45 General Fund revenue by minor amounts.

46 The Maine State Housing Authority will incur some minor
47 additional costs to advise the Bureau of Elder and Adult Services
48 within the Department of Human Services on administering

2 state-funded assisted housing programs. These costs can be
absorbed within the authority's existing budgeted resources.

4 The Bureau of Elder and Adult Services in the Department of
Human Services will incur some minor additional costs to modify
6 its assisted living programs and services. These costs can be
absorbed within the department's existing budgeted resources.
8

10 SUMMARY

12 This bill repeals the Maine Revised Statutes, Title 22,
chapter 1665 on assisted living programs and reenacts it as
14 chapter 1664. It changes the name of the chapter to Assisted
Housing Programs, dividing the programs into independent housing
16 with services, assisted living and residential care facilities.
It updates the definitions of "activities of daily living" and
18 "instrumental activities of daily living." It changes the law on
fire safety for residential care and assisted living. It updates
20 the chapter to reflect the 3 categories of assisted housing
programs. This bill provides for an effective date of October 1,
22 2002 and provides for the continuation of rules applicable to
assisted living programs and services until new rules are adopted
24 by the Department of Human Services.