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MA
R.O.S.

L.D. 1607

DATE: 5-27-03

(Filing No. H-525)

HEALTH AND HUMAN SERVICES

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STATE OF MAINE HOUSE OF REPRESENTATIVES 121ST LEGISLATURE FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1181, L.D. 1607, Bill, "An Act To Implement Regulatory Reforms and To Address Staffing Issues in Long-term Care Facilities"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Whereas, long-term care facilities and programs operate within a highly regulated system that inflates the cost of care for elderly and disabled persons; and

Whereas, implementation of regulatory reform and staffing changes in long-term care facilities will provide regulatory relief beginning immediately upon implementation; and

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

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

Sec. 1. 22 MRSA §334, as enacted by PL 2001, c. 664, §2, is amended to read:

§334. Nursing facility projects

Nursing facility projects that propose to add new nursing facility beds to the inventory of nursing facility beds within

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the State may be grouped for competitive review purposes consistent with appropriations made available for that purpose by the Legislature. A nursing facility project that proposes renovation, replacement or other actions that will increase Medicaid costs may be approved only if appropriations have been made by the Legislature expressly for the purpose of meeting those costs, except that the department may approve, without a prior appropriation for the express purpose, projects to reopen beds previously reserved by a nursing facility through a voluntary reduction pursuant to section 333, if the annual total of reopened beds approved does not exceed 100.

Beginning with all applications pending on January 1, 2003, in evaluating whether a project will increase MaineCare expenditures for a nursing facility for the purposes of this section, the department shall:

1. Square footage. Allow gross square footage per licensed bed of not less than 500 square feet unless the applicant specifies a smaller allowance for the project; and

2. Replacement of equipment. Exclude the projected incremental cost associated with replacement of equipment.

Sec. 2. 22 MRSA §1812-C, sub-§6-A, as enacted by PL 1995, c. 670, Pt. B, §1 and affected by Pt. D, §5, is amended to read:

6-A. Shared staffing. The department shall permit staff in nursing facilities to be shared with ~~other levels of facilities~~ licensed to provide assisted living on the same premises services as long as there is a clear, documented audit trail and the staffing in the nursing facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the assisted living program. In a facility licensed to provide assisted living services under section 7801 in which 2 or more staff are required to be awake and on duty during a night shift, one of the staff may be shared with a nursing facility located in the same building without prior approval from the department, subject to the following provisions.

A. Prior notice must be given to the department.

B. The assisted living program shall maintain its state minimum staffing ratio, and the nursing facility shall maintain its state minimum staffing ratio and its federal licensed nurse staffing requirement.

2 C. The assisted housing program and the nursing facility
3 shall each post a notice informing the public that, although
4 staffing is shared on the night shift, compliance with the
5 minimum staffing requirements is maintained.

6 D. The department may suspend the facility's ability to
7 share staffing under this subsection if the most recent
8 survey for either level of care indicates deficiencies that
9 are related to resident care and that arise from the sharing
10 of staff.

12 **Sec. 3. Review of long-term care assessment system.** The long-term
13 care ombudsman program shall initiate a review of the long-term
14 care assessment system being used in this State and shall submit
15 a report with recommendations to the Joint Standing Committee on
16 Health and Human Services by January 15, 2004. In conducting the
17 review, the long-term care ombudsman program shall consult with
18 consumers, consumer advocates, providers of home-based and
19 community-based care, providers of facility-based care and the
20 Department of Human Services. The study must consider
21 assessments and reassessments, the living and care arrangements
22 of the consumer at the time of the assessment and whether the
23 consumer intends to pay privately or through an assistance
24 program. The Joint Standing Committee on Health and Human
25 Services may submit legislation to the Second Regular Session of
26 the 121st Legislature regarding the long-term care assessment
27 system.

28 **Sec. 4. Study of educational requirements for certified nursing**
29 **assistants.** The State Board of Nursing shall study educational
30 requirements for training certified nursing assistants and shall
31 submit a report with recommendations by January 15, 2004 to the
32 Joint Standing Committee on Health and Human Services. In
33 performing the study, the State Board of Nursing shall consider
34 appropriate levels of training and the various health care
35 settings in which certified nursing assistants work. The Joint
36 Standing Committee on Health and Human Services may submit
37 legislation on the educational requirements for certified nursing
38 assistants to the Second Regular Session of the 121st
39 Legislature.

40 **Sec. 5. Study of educational requirements for nursing home**
41 **administrators.** The Nursing Home Administrators Licensing Board
42 shall study the educational requirements for nursing home
43 administrators and shall submit a report with recommendations by
44 January 15, 2004 to the Joint Standing Committee on Health and
45 Human Services. In performing the study, the Nursing Home
46 Administrators Licensing Board shall consider appropriate levels
47 of postsecondary education and experience, including the
48 substitution of relevant experience for some portion of the
49 educational requirements. The Joint Standing Committee on Health
50 and Human Services may submit legislation to the Second Regular Session of the 121st Legislature regarding the long-term care assessment system.

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and Human Services may submit legislation on the educational requirements for nursing home administrators to the Second Regular Session of the 121st Legislature.

Sec. 6. Report on improvements to nursing facility inspection activities. The Department of Human Services, in consultation with the Maine Health Care Association, the State Board of Nursing, a statewide organization providing legal services to older persons, a statewide organization providing information and advocacy services for older persons and the long-term care ombudsman program, shall by January 15, 2004 present a report to the Joint Standing Committee on Health and Human Services on initiatives to improve and simplify the State's nursing facility inspection process. The report must include specific recommendations and, as appropriate, propose draft legislation regarding the following:

1. Paperwork reduction;

2. Elimination of duplication in nursing facility resident medication reviews by both registered nurses and registered pharmacists;

3. Guidelines and limitations on the use of mandated incident reports against providers during the survey process;

4. The use of civil monetary penalties to fund education and training programs;

5. Ways to maximize the use of common space in facilities that have both residential care and nursing facility residents;

6. Improvements to the existing informal dispute resolution process to ensure timeliness and impartiality and to increase the proportion of disputes resolved at the state level without litigation;

7. Fostering more positive and productive provider-department communications and relations and promoting department responsiveness to legislative policy directives; and

8. Recommendations on any other issues considered appropriate by the parties preparing the report under this section.

Sec. 7. Study and report on revised mechanism for assessing cognitive needs. The Department of Human Services shall invite the Maine Health Care Association, the long-term care ombudsman program, the Maine Alzheimer's Association and other interested parties to form a working group to undertake a study and prepare

2 a report for the Joint Standing Committee on Health and Human
3 Services evaluating the current criteria and procedures for
4 assessing cognitive abilities and needs of persons potentially
5 requiring long-term health care services for the purposes of
6 determining eligibility for and coverage of such services. As
7 part of its report, the working group shall include its
8 recommendations regarding revision of the mechanism for
9 reassessing persons receiving long-term care services to address
10 cognitive deficits and include its recommendations regarding the
11 mechanism employed to determine initial eligibility for such
12 services. The Department of Human Services shall provide staff
13 and other resources to support the completion of the study within
14 existing resources. The working group shall submit its report
15 and recommendations by January 15, 2004. The Joint Standing
16 Committee on Health and Human Services may report out legislation
17 during the Second Regular Session of the 121st Legislature to
18 implement the recommendations of the working group for revisions
19 in the assessment and reassessment mechanisms for persons with
20 cognitive needs.

21 **Emergency clause.** In view of the emergency cited in the
22 preamble, this Act takes effect when approved.'

23 SUMMARY

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27 This amendment is the majority report of the committee. It
28 amends the shared staffing provision of law, directs the
29 long-term care ombudsman program to study long-term care
30 eligibility assessments and reassessments, directs the State
31 Board of Nursing to study the educational requirements for
32 certified nursing assistants and directs the Nursing Home
33 Administrators Licensing Board to study the requirements for
34 nursing home administrators. The amendment adds members to the
35 group of interested parties who will review improvements to
36 nursing facility inspection activities, deletes the amendment of
37 rules on long-term care assessments pertaining to home health
38 care services proposed in the bill and retains the study of
39 assessments for cognitive needs.
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42 **FISCAL NOTE REQUIRED**
43 **(See attached)**
44



**121st Maine Legislature
Office of Fiscal and Program Review**

LD 1607

**An Act to Implement Regulatory Reform and To Address Staffing Issues
in Long-term Care Facilities**

LR 0505(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Board of Nursing and the Nursing Home Administrators Board within the Department of Professional and Financial Regulation to conduct the required studies can be absorbed utilizing existing budgeted resources. Any additional cost to the Department of Human Services can be absorbed utilizing existing resources.