

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1607

H.P. 1181

House of Representatives, May 7, 2003

An Act To Implement Regulatory Reforms and To Address Staffing Issues in Long-term Care Facilities

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Speaker COLWELL of Gardiner.
Cosponsored by Senator MARTIN of Aroostook and
Representative: KANE of Saco, Senators: President DAGGETT of Kennebec, TURNER of
Cumberland.

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

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

6 **§334. Nursing facility projects**

8 Nursing facility projects that propose to add new nursing
10 facility beds to the inventory of nursing facility beds within
12 the State may be grouped for competitive review purposes
14 consistent with appropriations made available for that purpose by
16 the Legislature. A nursing facility project that proposes
18 renovation, replacement or other actions that will increase
20 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.

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

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

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

34 **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:

36 **6-A. Shared staffing.** The department shall permit staff in
38 nursing facilities to be shared with other levels of assisted
40 living on the same premises as long as there is a clear,
42 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 an assisted
44 housing program licensed under section 7801 with 2 or more staff
46 required to be awake and on duty during a night shift, up to 1/2
48 of the staff may be shared on an emergency or episodic basis with
a nursing facility in the same or an adjacent building without
prior approval from the department.

50 **Sec. 3. 22 MRSA §3174-I, sub-§4** is enacted to read:

2 4. Procedures applicable to reassessment. The requirements
of this subsection apply to reassessment required by rule of the
4 department when a person has received long-term care services
after assessment by the department or a designee of the
6 department.

8 A. When a patient is scheduled for discharge from a
hospital, a hospital, registered nurse or licensed practical
10 nurse may perform a reassessment using the reassessment
mechanism adopted by the department for reassessment
12 purposes taking into account prior care plans and
assessments and the patient's current needs.

14 B. When a person resides in that person's own home and:

16 (1) Is financially eligible for services under the
MaineCare program, the department or a designee of the
18 department shall perform the reassessment using the
reassessment mechanism adopted by the department for
20 reassessment purposes; or

22 (2) Is not financially eligible for services under the
MaineCare program, a long-term care facility,
24 registered nurse or licensed practical nurse shall
perform the reassessment using the reassessment
26 mechanism adopted by the department for reassessment
purposes.

28 C. Long-term care facilities that are providing services to
a person determined to be eligible for long-term care
30 services under the MaineCare or a state-funded program after
an assessment or reassessment under this section shall
32 perform ongoing quarterly evaluation of that person's
long-term care needs using the reassessment mechanism
34 adopted by the department for reassessment purposes.
Quarterly evaluations under this paragraph replace the
36 periodic reassessments required by the department by rule
prior to the effective date of this paragraph.

40 D. The department may sample and review records and data on
reassessments under this subsection reported by each
42 long-term care facility to ensure that errors are avoided or
corrected. A facility may be assessed a penalty as provided
44 in the department's rules for errors in completing or
reporting the results of these reassessments.

46 E. By January 1, 2004 the department shall adopt rules to
implement the provisions of this subsection. Rules adopted

2 pursuant to this paragraph are routine technical rules as
3 defined in Title 5, chapter 375, subchapter 2-A.

4 **Sec. 4. Training specification.** By January 1, 2004, the State
5 Board of Nursing, after consultation with the Department of Human
6 Services, shall adopt rules specifying the educational programs
7 for training nursing assistants for certification on the Maine
8 Registry of Certified Nursing Assistants established under the
9 Maine Revised Statutes, Title 22, section 1812-G. With regard to
10 nursing assistants working in long-term care facilities and
11 residential care facilities, the rules must establish 2 levels of
12 certification for certified nursing assistants. The Certified
13 Nursing Assistant Level I must be consistent with the minimum
14 requirements under federal regulations and must require at least
15 75 hours of training. The Certified Nursing Assistant Level II
16 must require at least 150 hours of training and successful
17 completion of a training course in a related personal care field
18 that is approved by the Department of Human Services, Bureau of
19 Elder and Adult Services. Rules adopted pursuant to this section
20 are routine technical rules as defined in the Maine Revised
21 Statutes, Title 5, chapter 375, subchapter 2-A.

22 **Sec. 5. Nursing facility administrator rules.** By January 1, 2004,
23 the Nursing Home Administrators Licensing Board shall amend the
24 rules regarding the postsecondary education required for
25 administrators licensed pursuant to the Maine Revised Statutes,
26 Title 32, chapter 2 to provide for the substitution of 5 years or
27 more of experience as a director of nursing at a licensed nursing
28 facility in place of the postsecondary educational requirement.
29 Rules adopted pursuant to this section are routine technical
30 rules as defined in Title 5, chapter 375, subchapter 2-A.

31 **Sec. 6. Report on improvements to nursing facility inspection**
32 **activities.** The Department of Human Services, in consultation with
33 the Maine Health Care Association, the State Board of Nursing and
34 the long-term care ombudsman program, shall by January 15, 2004
35 present a report to the Joint Standing Committee on Health and
36 Human Services on initiatives to improve and simplify the State's
37 nursing facility inspection process. The report must include
38 specific recommendations and, as appropriate, propose draft
39 legislation regarding the following:

- 40
- 41 1. Paperwork reduction;
 - 42
 - 43 2. Elimination of duplication in nursing facility resident
44 medication reviews by both registered nurses and registered
45 pharmacists;
 - 46
- 47
- 48

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

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

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

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

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

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

24 **Sec. 7. Long-term care assessment rules.** By January 1, 2004,
the Department of Human Services shall amend the rules regarding
26 medical assessment for long-term care services reimbursed under
the MaineCare program as they pertain to assessments for home
28 health care services. The new rules must streamline the
assessment process for home health care services, eliminate
unnecessary regulatory burdens and utilize as much as possible
30 appropriate assessment mechanisms being used for other purposes
or programs. Rules adopted pursuant to this section are routine
32 technical rules as defined in the Maine Revised Statutes, Title
5, chapter 375, subchapter 2-A.

34
36 **Sec. 8. Study and report on revised mechanism for assessing
cognitive needs.** The Department of Human Services shall invite the
38 Maine Health Care Association, the long-term ombudsman program,
the Maine Alzheimer's Association and other interested parties to
40 form a working group to undertake a study and prepare a report
for the Joint Standing Committee on Health and Human Services
42 evaluating the current criteria and procedures for assessing
cognitive abilities and needs of person potentially requiring
44 long-term health care services for purposes of determining
eligibility for and coverage of such services. As part of its
46 report, the working group shall include its recommendations
regarding revision of the mechanism for reassessing persons
receiving long-term care services to address cognitive deficits,
48 and include its recommendations regarding the mechanism employed
to determine initial eligibility for such services. The
50 Department

of Human Services shall provide staff and other resources to support the completion of the study within existing resources. The working group shall submit its report and recommendations by January 15, 2004. The Joint Standing Committee on Health and Human Services may report out legislation during the Second Regular Session of the 121st Legislature to implement the recommendations of the working group for revisions in the assessment and reassessment mechanisms for persons with cognitive needs.

Sec. 9. Certificate of need rules. By January 1, 2004, the Department of Human Services shall adopt rules regarding certificate of need applications for nursing facilities to implement the provisions of the Maine Revised Statutes, Title 22, section 334 as amended by this Act. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 10. Rules. In adopting the rules required by the Maine Revised Statutes, Title 22, section 3174-I, subsection 4, the Department of Human Services shall reduce the number and extent of full reviews of provider records required prior to the effective date of this Act and modify the annual minimum data set review process required prior to the effective date of this Act to eliminate unnecessary paperwork while fulfilling the objectives of this Act.

Sec. 11. Effective date. This Act takes effect October 15, 2003.

SUMMARY

This bill does the following.

It clarifies shared staffing in multilevel facilities.

It directs the State Board of Nursing to adopt rules establishing 2 levels of certified nursing assistants, Certified Nursing Assistant Level I and Certified Nursing Assistant Level II, for employment in long-term care and residential care facilities.

It modifies the needs assessment processes for long-term care services. It allows reassessments to be performed by hospital social workers and discharge planners, the Department of Human Services or its designee and long-term care facilities. It modifies requirements governing periodic reassessments and requires the Department of Human Services to make further adjustments to the minimum data set forms and to its assessment mechanism.

2 It requires the Department of Human Services, in
consultation with the Maine Health Care Association, the State
4 Board of Nursing and the long-term care ombudsman program, to
carry out a study of various reforms to licensing and inspection
6 processes and to make recommendations for improvements.

8 It modifies the rules governing certificates of need for
nursing facilities regarding square footage and replacement costs
10 for equipment.

12 It directs the Nursing Home Administrators Licensing Board
to adopt rules to allow an applicant for licensure as a nursing
14 home administrator to substitute nursing experience for
postsecondary education.

16 It requires amendment of Department of Human Services rules
18 regarding assessments as they pertain to long-term care home
health services.

20 It requires the Department of Human Services to form a
22 working group including the Maine Health Care Association, the
long-term care ombudsman program and Maine Alzheimer's
24 Association to study criteria and procedures for assessing
cognitive abilities and needs of persons potentially requiring
26 long-term health care services.