

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1827

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S.P. 743

In Senate, April 27, 2023

**An Act to Prevent Closures and Ensure Sustainability of Nursing  
Facilities, Private Nonmedical Institutions and Residential Care  
Facilities by Removing So-called Budget Neutrality**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by President JACKSON of Aroostook.  
Cosponsored by Representative BABIN of Fort Fairfield and  
Senator: BALDACCI of Penobscot, Representatives: GUERRETTE of Caribou, THERIAULT  
of Fort Kent.

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

2 **Sec. 1. 22 MRSA §265** is enacted to read:

3 **§265. Budget neutrality prohibited**

4 Notwithstanding any provision of law to the contrary, the department may not  
5 implement policies or practices or adopt or enforce rules that provide that costs must be  
6 fully offset by reductions in MaineCare costs relating to nursing facilities, residential care  
7 facilities or private nonmedical institutions.

8 **Sec. 2. 22 MRSA §329, sub-§6, ¶A**, as amended by PL 2011, c. 424, Pt. B, §1 and  
9 affected by Pt. E, §1, is further amended to read:

10 A. A nursing facility converting beds used for the provision of nursing services to beds  
11 to be used for the provision of residential care services. If such a conversion occurs,  
12 MaineCare and other public funds may not be obligated for payment of services  
13 provided in the converted beds unless approved by the department pursuant to the  
14 provisions of sections 333-A and 334-A. ~~In order to approve a conversion under this~~  
15 ~~paragraph, the department must determine that any increased MaineCare residential~~  
16 ~~care costs associated with the converted beds are fully offset by reductions in the~~  
17 ~~MaineCare costs from the reduction in MaineCare nursing facility costs associated with~~  
18 ~~the converted beds;~~

19 **Sec. 3. 22 MRSA §333-A, sub-§3-A**, as amended by PL 2011, c. 648, §4, is further  
20 amended to read:

21 **3-A. Transfers between nursing facility and residential care facility.** A nursing  
22 facility may delicense and sell or transfer beds to a residential care facility for the purpose  
23 of permitting the residential care facility to add MaineCare-funded beds to meet identified  
24 needs for such beds. Such a transfer does not require a certificate of need but is subject to  
25 prior approval of the department on an expedited basis. The divisions within the  
26 department that are responsible for licensing and MaineCare reimbursement for nursing  
27 facilities and residential care facilities shall work cooperatively to review and consider  
28 whether to approve such transfers on an expedited basis. When the average then current  
29 occupancy rate for existing state-funded residential care beds within 30 miles of the  
30 applicant facility is 80% or less, the department in its review under section 335 shall  
31 evaluate the impact that the proposed additional state-funded residential care beds would  
32 have on these existing state-funded residential care beds and facilities. Beds and  
33 MaineCare resources transferred pursuant to this subsection are not subject to the nursing  
34 facility MaineCare funding pool. ~~In order for the department to approve delicensing,~~  
35 ~~selling or transferring under this subsection, the department must determine that any~~  
36 ~~increased MaineCare residential care costs associated with the converted beds are fully~~  
37 ~~offset by reductions in the MaineCare costs from the reduction in MaineCare nursing~~  
38 ~~facility costs associated with the converted beds.~~

39 **Sec. 4. 22 MRSA §334-A, sub-§1-A, ¶B**, as amended by PL 2011, c. 648, §5, is  
40 further amended by repealing subparagraph (1).

41 **Sec. 5. Department of Health and Human Services to amend rules to**  
42 **remove so-called budget neutrality for nursing facilities, private nonmedical**  
43 **institutions and residential care facilities.** No later than January 1, 2024, the

1 Department of Health and Human Services shall amend its rules to remove all requirements  
2 of and references to provisions that costs must be fully offset by reductions in MaineCare  
3 costs, or so-called budget neutrality, in all rules affecting the nursing facilities, residential  
4 care facilities or private nonmedical institutions or in the certificate of need process related  
5 to nursing facilities, including but not limited to:

6 1. 10-149 C.M.R. Chapter 5: Office of Aging and Disability Services Policy Manual,  
7 Section 71, Certificate of Need for Nursing Facility Level of Care Projects;

8 2. 10-144 C.M.R. Chapter 110: Regulations Governing the Licensing and Functioning  
9 of Skilled Nursing Facilities and Nursing Facilities;

10 3. 10-144 C.M.R. Chapter 115: Principles of Reimbursement for Residential Care  
11 Facilities - Room and Board Costs;

12 4. Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of  
13 Reimbursement for Nursing Facilities; and

14 5. Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Private Non-  
15 Medical Institution Services, including Appendices B, C, D, E and F.

## 16 SUMMARY

17 This bill eliminates the so-called budget neutrality provisions relating to transferring  
18 and selling beds between nursing facilities and residential care facilities, converting beds  
19 from nursing services to residential care services and delicensing nursing facility beds. It  
20 directs the Department of Health and Human Services to amend its rules regarding nursing  
21 facilities, residential care facilities and private nonmedical institutions to remove all  
22 requirements of and references to provisions that costs must be fully offset by reductions  
23 in MaineCare costs, or so-called budget neutrality, in all rules affecting nursing facilities,  
24 residential care facilities or private nonmedical institutions or the certificate of need process  
25 for nursing facilities. It prohibits the Department of Health and Human Services from  
26 implementing so-called budget neutrality in its policies or practices or by adopting or  
27 enforcing rules relating to nursing facilities, residential care facilities and private  
28 nonmedical institutions.