

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

(4) The percentage of the total child care costs and extraordinary medical expenses included in the parental support obligation, if applicable; and

(5) The amount for health insurance premiums;

Sec. 13. 19-A MRSA §2007, sub-§3, ¶A, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed and the following enacted in its place:

A. The application of section 2006, subsection 5, paragraph D or D-1 would be unjust, inequitable or not in the child's best interest;

See title page for effective date.

CHAPTER 416

H.P. 1181 - L.D. 1607

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

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 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.

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

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

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

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

Sec. 5. Study of educational requirements for nursing home administrators. The Nursing Home Administrators Licensing Board shall study the educational requirements for nursing home administrators and shall submit a report with recommendations by January 15, 2004 to the Joint Standing Committee on Health and Human Services. In performing the study, the Nursing Home Administrators Licensing Board shall consider appropriate levels of postsecondary education and experience, including the substitution of relevant experience for some portion of the educational requirements. The Joint Standing Committee on Health 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 a report for the Joint Standing Committee on Health and Human Services evaluating the current criteria and procedures for assessing cognitive abilities and needs of persons potentially requiring long-term health care services for the purposes of determining eligibility for and coverage of such services. As part of its 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 and include its recommendations

regarding the mechanism employed to determine initial eligibility for such services. The 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.

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

Effective June 4, 2003.

CHAPTER 417

S.P. 371 - L.D. 1099

**An Act To Amend the Laws
Governing the Maine Developmental
Disabilities Council**

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

Sec. 1. 5 MRSA §12004-I, sub-§66, as amended by PL 1993, c. 600, Pt. A, §5, is further amended to read:

66.	Maine Mental Health and Mental Retardation	Expenses Developmental Disabilities Council	34-B MRSA §1211 §17001
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Sec. 2. 34-B MRSA §1211, as amended by PL 2001, c. 25, §1, is repealed.

Sec. 3. 34-B MRSA c. 17 is enacted to read:

CHAPTER 17

DEVELOPMENTAL DISABILITIES

§17001. Maine Developmental Disabilities Council

1. Establishment. The Maine Developmental Disabilities Council, referred to in this section as "the council," is established as authorized by Title 5, section 12004-I, subsection 66 and in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402.

2. Status. The council is a public instrumental-
ity of the State, and the exercise of the power con-

ferred by this section is the performance of essential governmental functions. The council may not be considered a state agency for any purposes, including, but not limited to, budgeting, accounts and control, auditing and purchasing.

3. Appointments. The Governor shall appoint appropriate representatives to the council, as required under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, upon consideration of recommendations made by current members of the council.

4. Duties. The council shall perform its duties in compliance with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

5. Designated state agency. In accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, the State shall identify an agency to act as the designated state agency to provide support for the council. The designated state agency must meet all requirements specified in 42 United States Code, Section 15025.

6. Council personnel and members. As of the effective date of this section:

A. All employees assigned to the council who state that they wish to continue as employees of the council must be transferred from state employment to employment of the council in its capacity as an independent advisory agency;

B. Accrued fringe benefits from state employment of transferred personnel, including, but not limited to, vacation and sick leave, health and life insurance and retirement credits, remain available to the transferred personnel;

C. Members and employees of the council are not considered state employees for the purpose of the state civil service provisions of Title 5, Part 2 and chapter 372 or for any other purpose except as follows.

(1) Employees of the council, including employees hired after the effective date of this section, are deemed state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter 2.

(2) For purposes of the Maine Tort Claims Act, the council is deemed a governmental entity and its employees and members are deemed employees as those terms are defined in Title 14, section 8102; and