

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 292 - L.D. 475

An Act to Simplify and Clarify the Licensing of Assisted Housing Facilities

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

Sec. 1. 21-A MRSA §753-B, sub-§5, as repealed and replaced by PL 2021, c. 570, §4, is amended to read:

5. Alternate method of absentee voting by residents of certain licensed facilities. Residents of certain nursing homes, residential care facilities and assisted living ~~programs~~ facilities may cast absentee ballots under the provisions of this subsection. This subsection applies to a licensed nursing home subject to the provisions of Title 22, chapter 405; a licensed level IV residential care facility subject to the provisions of Title 22, chapter 1664; and a licensed assisted living ~~program~~ facility with more than 6 beds subject to the provisions of Title 22, chapter 1664. As used in this subsection, "level IV residential care facility" means a residential care facility as defined by Title 22, section 7852, subsection 14 that has a licensed capacity of more than 6 residents.

A. The municipal clerk shall designate one time during the 30-day period prior to an election during which the municipal clerk shall be present in each facility to which this subsection applies in the municipality for the purpose of conducting absentee voting by residents of these facilities. The clerk shall designate which areas in these facilities constitute the voting place, the voting booth and the guardrail enclosure. The clerk shall post a notice in the municipal office that absentee voting will be conducted as prescribed in this subsection. The clerk shall provide a notice to each facility of the date and time when absentee voting will be conducted. The notice must state that the facility is required to notify the contact person or persons, if any, for each resident that absentee voting will be conducted. Each facility shall provide notice, which may be in the form of an e-mail or an electronic newsletter, to the contact person or persons, if any, for each resident of the date and time when absentee voting will be conducted at the facility. Sections 681 and 682 apply to voting in these facilities within the areas designated by the clerk.

B. To protect public health, the Secretary of State may designate procedures for conducting absentee voting for the residents of a facility to which this subsection applies that differ from the procedures described in paragraph A if:

- (1) The Department of Health and Human Services declares a health emergency under Title 22, section 802, subsection 2;
- (2) The Governor declares an extreme public health emergency under Title 22, section 802, subsection 2-A;
- (3) The Department of Health and Human Services determines that a public health threat, as defined in Title 22, section 801, subsection 10, threatens the health, welfare or safety of the municipal clerk or the residents of a facility described in this subsection; or
- (4) A facility described in this subsection prohibits the municipal clerk from entering the facility.

Procedures designated under this paragraph remain in effect for the duration of the health emergency, extreme public health emergency or public health threat or for as long as the municipal clerk remains prohibited from entering the facility, as the case may be.

Sec. 2. 22 MRSA §1812-C, sub-§6-A, as amended by PL 2003, c. 416, §2, is further amended to read:

6-A. Shared staffing. The department shall permit staff in nursing facilities to be shared with facilities licensed to provide assisted ~~living program~~ housing 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~~ housing facility. In a facility licensed to provide assisted ~~living program~~ housing 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~~ housing facility 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~~ facility 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. 22 MRSA §2491, sub-§7-F, as amended by PL 2021, c. 125, §4, is further amended to read:

7-F. Lodging place. "Lodging place" means a fixed structure, or any part of a structure, used, maintained or advertised as a place where sleeping accommodations are furnished that offers stays that are temporary in nature and consist of fewer than 183 days in the aggregate per year. "Lodging place" includes accommodations in the entertainment, hospitality, recreation and tourism industries, including, but not limited to, hotels, motels, bed and breakfasts, inns and properties under common management at the same location

where 4 or more rooms, cottages or condominium units are available. "Lodging place" does not include vacation rentals, youth camps, dormitories of charitable, educational or philanthropic institutions, fraternity or sorority houses affiliated with educational institutions, permanent residences, or rental properties with tenant and landlord relationships as described under Title 14, chapters 709 to 710-D, nursing facilities as defined in section 1812-A, assisted living ~~programs~~ facilities as defined in section 7852, subsection 4 ~~4-A~~ or residential care facilities as defined in section 7852, subsection 14.

Sec. 4. 22 MRSA §7801, sub-§1, ¶A-1, as corrected by RR 2001, c. 2, Pt. A, §36, is amended to read:

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

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

(2) An assisted housing ~~program~~ facility licensee may hold at any one time only one license under this subsection. A qualified assisted housing ~~program~~ facility may obtain a license for a different category under this subsection, upon application and surrender of the previous license;

Sec. 5. 22 MRSA §7802, sub-§2, ¶B, as amended by PL 2021, c. 35, §14, is further amended to read:

B. The terms of full licenses or approvals are as follows.

(1) Except as provided in subparagraphs (2) to ~~(7)~~ (8), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.

(2) The term of a children's residential care facility license is for 2 years.

(3) The term of a drug treatment center license is for 2 years.

(4) The term of a family foster home or specialized foster home license is for 2 years.

(5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.

(6) The term of a family child care provider license issued under section 8301-A, subsection 3 is for 2 years.

(7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department.

(8) The term of an assisted housing facility license issued under section 7853 is for 2 years.

Sec. 6. 22 MRSA c. 1664, headnote is amended to read:

CHAPTER 1664

ASSISTED HOUSING PROGRAMS FACILITIES

Sec. 7. 22 MRSA §7851, as amended by PL 2015, c. 494, Pt. A, §25, is further amended to read:

§7851. Assisted housing ~~programs~~ facilities

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

1. Standards. Assisted housing ~~programs~~ facilities 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~~ facility, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing ~~programs~~ facilities provided to residents must be consumer oriented and meet professional standards of quality.

2. Settings. Assisted housing ~~programs~~ may be provided in facilities consist of the following settings:

- A. Independent housing with services programs, as defined in section 7852, subsection 6;
- B. Assisted living ~~programs~~ facilities, as defined in section 7852, subsection 4 ~~4-A~~;
- 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~~ facilities is governed by subsection 3-A and section 7801, subsection 1. Licensure of residential care facilities is governed by subsection 3-A and section 7801, subsections 1 and 3.

3-A. Multiple licenses; limitations. This subsection governs the department's issuance of multiple licenses to assisted living facilities and residential care facilities.

A. Except as provided in paragraph B, beginning October 1, 2023, the department may not issue more than one license at the same license level to an applicant for an assisted living facility license or a residential care facility license for services offered in the same location.

B. The department may issue more than one license at the same license level to an applicant for an assisted living facility license or a residential care facility license that, on October 1, 2023, held more than one license at the same license level for services offered in the same location.

The department shall adopt rules to define license levels for assisted living facilities and residential care facilities. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Prohibited employment based on disqualifying offenses. A licensed assisted housing ~~program~~ facility shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing

or placing direct access personnel, including a certified nursing assistant or a direct care worker.

The department may adopt rules necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 22 MRSA §7852, sub-§2, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is repealed.

Sec. 9. 22 MRSA §7852, sub-§2-A is enacted to read:

2-A. Assisting housing facility. "Assisted housing facility" means an assisted living facility, a residential care facility or an independent housing with services program.

Sec. 10. 22 MRSA §7852, sub-§3, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

3. Assisted housing services. "Assisted housing services" means the provision ~~by an assisted housing program~~ of housing, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management ~~and~~ diversional or motivational activities, medication administration and nursing services.

Sec. 11. 22 MRSA §7852, sub-§4, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is repealed.

Sec. 12. 22 MRSA §7852, sub-§4-A is enacted to read:

4-A. Assisted living facility. "Assisted living facility" means a house or other place ~~that, for consideration, is maintained wholly or in part for the purpose of providing assisted living services to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.~~

Sec. 13. 22 MRSA §7852, sub-§5, as amended by PL 2003, c. 688, Pt. C, §12, is further amended to read:

5. Assisted living services. "Assisted living services" means the provision of assisted housing services by an assisted housing program, ~~either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services~~ facility.

Sec. 14. 22 MRSA §7852, sub-§6, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

6. Independent housing with services program. "Independent housing with services program" means a program of assisted housing supportive services provided to residents in private apartments ~~in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies~~ who receive funds through a written agreement with the department's office of aging and disability services.

Sec. 15. 22 MRSA §7852, sub-§9, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is repealed.

Sec. 16. 22 MRSA §7852, sub-§10-A is enacted to read:

10-A. Multi-level health care facility. "Multi-level health care facility" means a residential care facility and a nursing facility that are colocated on the same premises.

Sec. 17. 22 MRSA §7852, sub-§11, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

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

Sec. 18. 22 MRSA §7852, sub-§14, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

14. Residential care facility. "Residential care facility" means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. "Residential care facility" does not include a licensed nursing home, a mental health residential program licensed under Title 34-B, section 1203-A, a substance use treatment facility licensed under chapter 1667, a residential program for individuals with intellectual disabilities licensed under Title 34-B, section 1203-A or a supported shared living arrangement certified by the department.

Sec. 19. 22 MRSA §7853, first ¶, as amended by PL 2003, c. 673, Pt. V, §2 and affected by §29, is further amended to read:

The commissioner shall adopt rules for licensed assisted housing ~~programs~~ facilities. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules to establish categories of licensed assisted housing ~~programs~~ facilities, including private nonmedical institutions, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 20. 22 MRSA §7853, sub-§1, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

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

Sec. 21. 22 MRSA §7853, sub-§3, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

3. Administration of medication rules. In adopting the rules for administration of medication, the commissioner shall consider, among other factors, the general health of the persons likely to receive medication and the numbers of persons served 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.

Sec. 22. 22 MRSA §7853, sub-§5, as amended by PL 2003, c. 449, §3, is further amended to read:

5. Assisted living program housing facility rules. The commissioner shall adopt rules for assisted living programs housing facilities. In addition to the subject matter of rules listed in subsection 2, the rules must recognize and promote the efficiencies inherent in providing services in the applicable 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 living programs housing facilities to be shared in accordance with section 1812-C, subsection 6-A and section 7914 7860.

Sec. 23. 22 MRSA §7853, sub-§6, as amended by PL 2003, c. 449, §3, is further amended to read:

6. Applicability of residents' rights rules. Any rules adopted pursuant to this section pertaining to residents' rights are applicable to licensed assisted housing programs facilities.

Sec. 24. 22 MRSA §7853, sub-§7, as enacted by PL 2003, c. 449, §4, is amended to read:

7. Relationship to tax credit financing. In adopting rules under this section, the department shall give due consideration to and shall avoid conflicts with the requirements of the federal Internal Revenue Code of 1986 and regulations promulgated under the federal Internal Revenue Code of 1986 and any other requirements imposed by the federal Internal Revenue Service when financing based on low-income housing tax credits is utilized for the housing component of assisted living programs housing facilities.

Sec. 25. 22 MRSA §7854, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

§7854. Fees for licensure

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

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

2. Fees for assisted living programs facilities. Two hundred dollars for an assisted living program facility.

Sec. 26. 22 MRSA §7856, as amended by PL 2019, c. 338, §1, is further amended to read:

§7856. Fire safety inspection for assisted living programs facilities

In accordance with this section, the department shall adopt rules pursuant to Title 5, chapter 375 for the inspection of assisted living programs facilities as defined in section 7852, subsection 4, 4-A by the Commissioner of Public Safety or the commissioner's designee and the fees for that inspection. Rules regarding fees adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter H-A 2-A.

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

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

3. Requirements. All assisted living ~~programs~~ facilities must be inspected using the chapter pertaining to the applicable building type of the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety, Office of the State Fire Marshal and must be protected throughout by a supervised, automatic sprinkler system approved by the Commissioner of Public Safety.

Sec. 27. 22 MRSA §7857, sub-§1, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

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

- A. The resident if the resident does not have a guardian, trustee or conservator;
- B. The resident's guardian, trustee or conservator if that person exists and can be reached; or
- C. The department if a guardian, trustee or conservator exists but ~~can not~~ cannot be reached.

Sec. 28. 22 MRSA §7857, sub-§2, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

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

Sec. 29. 22 MRSA §7857, sub-§3, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

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

Sec. 30. 22 MRSA §7857, sub-§4, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

4. Use of personal funds by operator prohibited. Under no circumstances may an operator or agent of an assisted housing ~~program~~ facility use the personal funds of a resident for the operating costs of the facility or for services or items that are reimbursed by a 3rd

party. The personal funds of a resident may not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, a member of the owner's family or an employee of the facility.

Sec. 31. 22 MRSA §7860, as enacted by PL 2001, c. 596, Pt. A, §1 and affected by Pt. B, §25, is amended to read:

§7860. Shared staffing

The department shall permit shared staffing ~~between residential care facilities and other levels of assisted housing on the same premises~~ within multi-level health care facilities as long as there is a clear, documented audit trail and the staffing in the residential care 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 housing ~~program facility~~. For the purposes of this section, "shared staffing" means the use of licensed and unlicensed personnel who are employed, directly or under a contract, by a ~~long-term care~~ multi-level health care facility in more than one level of care provided by a single entity ~~on the same premises~~.

Sec. 32. 22 MRSA §7861, as amended by PL 2013, c. 582, §§2 and 3, is further amended to read:

§7861. Administration of assisted housing ~~programs~~ facilities funded by the State; eligible clients

The Department of Health and Human Services, with advice from the Maine State Housing Authority, the United States Department of Agriculture, Rural Housing Services Service or any other housing agency financing assisted housing ~~programs~~ facilities, shall administer state-funded assisted housing ~~programs~~ facilities. Administration must include, but is not limited to:

1. Rules; payment for assisted housing ~~programs~~ facilities. Adopting rules governing the services to be provided under assisted housing ~~programs~~ facilities paid for with state funds. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter H-A 2-A;

2. Compliance with standards and guidelines. Reviewing the compliance of assisted housing ~~programs~~ facilities with standards and guidelines established for the ~~programs~~ facilities;

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

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

4. Residential care facility depreciation. Calculating depreciation recapture for a residential care facility, as defined in section 7852, subsection 14, that is reimbursed by the department under the rules of reimbursement for room and board costs, including depreciation, when the facility is sold on or after July 1, 2013, using a methodology that provides percentage credits for buildings, fixed equipment and moveable equipment based

on the number of years of operation of the residential care facility by the owner that is consistent with the following:

A. For the purposes of determining depreciation recapture for buildings and fixed equipment, the methodology must determine the number of years of operation by reference to the date on which the owner began operating with the original license;

B. For the purposes of determining depreciation recapture for moveable equipment, the methodology must enable percentage credits to reach 100% after the first 6 years of the assigned useful life; and

C. The methodology must treat as equivalent to the owner of the residential care facility any person or entity that owns or controls the entity that owns the residential care facility and any entity that is owned or controlled by the owner of the residential care facility.

Sec. 33. 22 MRSA §7932, sub-§2, as amended by PL 2001, c. 596, Pt. B, §15 and affected by §25, is further amended to read:

2. Facility. "Facility" means any assisted living facility, residential care facility or assisted housing ~~program~~ facility subject to licensure pursuant to chapters 1663 and 1664, any nursing facility or unit subject to licensure pursuant to chapter 405 and any private psychiatric hospital subject to licensure pursuant to chapter 405.

Sec. 34. 22 MRSA §7942, sub-§3, as amended by PL 2003, c. 634, §7, is further amended to read:

3. Long-term care facility. "Long-term care facility" means an assisted living ~~program~~ facility or residential care facility subject to licensure pursuant to chapters 1663 and 1664 and a nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405.

Sec. 35. 22 MRSA §7942, sub-§7, as amended by PL 2011, c. 542, Pt. A, §47, is further amended to read:

7. State licensing rules. "State licensing rules" refers to the department's rules governing the licensing and functioning of nursing facilities, intermediate care facilities for persons with intellectual disabilities and assisted living ~~programs~~ facilities or residential care facilities.

Sec. 36. 22 MRSA §8702, sub-§4, as amended by PL 2011, c. 233, §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, an independent radiological service center, a federally qualified health center certified by the United States Department of Health and Human Services, Health Resources and Services Administration, a rural health clinic or rehabilitation agency certified or otherwise approved by the Division of Licensing and Regulatory Services within the Department of Health and Human Services, a home health care provider licensed under chapter 419, an assisted living ~~program~~ facility or a residential care facility licensed under chapter 1663, a hospice provider licensed under chapter 1681, a state institution as defined

under Title 34-B, chapter 1 and a mental health facility licensed under Title 34-B, chapter 1. For the purposes of this chapter, "health care facility" does not include retail pharmacies.

Sec. 37. 22 MRSA §9053, sub-§2, as enacted by PL 2015, c. 299, §25, is amended to read:

2. Assisted housing ~~program~~ facility. "Assisted housing ~~program~~ facility" means a ~~program or~~ facility licensed pursuant to chapter 1663.

Sec. 38. 22 MRSA §9054, sub-§7, ¶L, as enacted by PL 2015, c. 299, §25, is amended to read:

L. Assisted housing ~~programs~~ facilities;