

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 639 - L.D. 979

Resolve, Regarding Legislative Review of Chapter 113: Assisted Housing Programs Licensing Rule, a Late-filed Major Substantive Rule of the Department of Health and Human Services

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, a major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of Chapter 113: Assisted Housing Programs Licensing Rule, a provisionally adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if:

1. In the rule in Part B: Residential Care Facilities, in Section 7.A, a new Section 7.A.3 is added that requires a facility's administrator to ensure that the following data is submitted to the division of licensing and certification, no less frequently than on a quarterly basis, beginning no later than 60 days after the written notice by the Department of Health and Human Services that a reporting system has been developed and is ready for facility data submission:

A. The facility's daily number of staff for each shift who were present and working each day providing direct care to residents during each shift;

- B. The facility's number of staff who are working as temporary staff and were hired through a temporary nurse agency or other temporary staffing agency or Internet-based system, and the name of the agency;
- C. The facility's staff turnover rate for each quarter; and
- D. The facility's resident census for each day.

The Department of Health and Human Services shall submit an annual report, beginning January 2, 2027, to the joint standing committee of the Legislature having jurisdiction over health and human services matters, with the monthly average of data collected under Section 7.A. The report due January 2, 2027 must include a method to provide the data to the public on the department's publicly accessible website;

2. The requirement in the rule in Part B: Residential Care Facilities for minimum direct residential care staff to occupied bed ratios in Section 14.B.1 that would be required after one year and 2 years of final adoption of the rule is removed and only the current ratios remain; and

3. The requirement in the rule in Part B: Residential Care Facilities for staffing requirements for memory care units in Section 17.I.2 and Section 17.I.3 that would be required after one year and 2 years of final adoption of the rule is removed.

Sec. 2. Stakeholder group to examine residential facility staffing. Resolved:

That the long-term care ombudsman under the Maine Revised Statutes, Title 22, section 5107-A shall convene a stakeholder group to examine residential care facility staffing issues, referred to in this resolve as "the stakeholder group."

1. Membership. The stakeholder group must include, but is not limited to, the following:

- A. A representative from the office of aging and disability services within the Department of Health and Human Services;
- B. A representative from the division of licensing and certification within the Department of Health and Human Services;
- C. A representative of a statewide organization representing residential care facilities;
- D. A representative of a residential care facility with a memory care unit;
- E. A representative of a residential care facility without a memory care unit;
- F. A representative of an assisted living provider;
- G. A representative from Legal Services for Maine Elders;
- H. A representative from a statewide association advocating on behalf of issues related to Alzheimer's disease;
- I. A representative from a statewide association advocating on behalf of the elderly;
- J. A representative who has a family with a member in residential care;
- K. Two employees with direct care experience working in residential care facilities who are not in facility management; and
- L. Additional representatives from the long-term care ombudsman program within the Department of Health and Human Services.

2. Duties. The stakeholder group shall examine issues of staffing in residential care facilities as governed by Department of Health and Human Services rule Chapter 113: Assisted Housing Programs Licensing Rule. The stakeholder group shall:

- A. Examine appropriate staffing levels, including at different times of the day;
- B. Examine staffing ratios required to ensure residential care at different times of the day;
- C. Examine staffing levels and ratios sufficient to meet resident needs, including medical and other needs;
- D. Ensure that there is objective information about the impact of staffing ratios on access to care, including reimbursement and financial information; and
- E. Examine the connections between facility reimbursement and staffing and the transparency of those connections.

3. Outside expertise; data. The stakeholder group may consult with national experts within existing resources. The stakeholder group shall consider the following information:

- A. Survey and certification results from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services and the division of licensing and certification within the Department of Health and Human Services;
- B. The minimum data set tool from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services used by long-term care providers;
- C. Current reported staffing levels, including quarterly reporting on direct care staffing, submitted by providers to the Department of Health and Human Services;
- D. Surveys of direct care staff;
- E. Surveys submitted by residential care providers;
- F. Complaints received by the long-term care ombudsman program within the Department of Health and Human Services and by the Department of Health and Human Services;
- G. Steps taken by facilities to address workforce shortages;
- H. Projected workforce needs and staffing availability; and
- I. Current reimbursement rates for staffing.

4. Meeting and reports. The stakeholder group shall begin meeting no later than September 30, 2025. The stakeholder group shall submit a preliminary report no later than January 30, 2026 and a final report no later than January 2, 2027 to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The committee is authorized to report out legislation related to the final report to the 133rd Legislature in 2027.

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