

STATE OF MAINE

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

—
S.P. 326 - L.D. 768

**An Act to Update the Laws Governing the Licensing of Intermediate Care
Facilities for Persons with Intellectual Disabilities**

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

Sec. 1. 22 MRSA §42, sub-§1-A, as amended by PL 2011, c. 542, Pt. A, §24, is further amended to read:

1-A. Administration of medication. The administration of medication in ~~boarding~~ assisted housing programs, residential care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and ~~group-home~~ nonnursing level intermediate care facilities for persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than ~~group-home~~ nonnursing level intermediate care facilities for persons with intellectual disabilities, the department may establish rules for the administration of medication as it considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who might be involved in the administration of medication. Any rules for the administration of medication must be established in accordance with Title 5, chapter 375.

Sec. 2. 22 MRSA §1812-B, as amended by PL 2011, c. 542, Pt. A, §28, is further amended to read:

§1812-B. ~~Hospitals and nursing homes~~ Delegating the administration of medication

The administration of medication in facilities licensed under section 1811, except ~~group-home~~ nonnursing level intermediate care facilities for persons with intellectual disabilities, may be delegated to unlicensed personnel when such personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the State Board of Nursing. The administration of medication in ~~group-home~~ nonnursing level intermediate care facilities for persons with intellectual disabilities may be performed by unlicensed personnel when these personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the department. Delegation of the administration of medication does not require the

personal presence of the delegating professional nurse at the place where this service is performed, unless that personal presence is necessary to ~~assure~~ ensure that medications are safely administered. The board shall issue such rules concerning delegation as it considers necessary to ~~insure~~ ensure the highest quality of health care to the patient. The department shall issue such rules as it considers necessary to ~~insure~~ ensure the highest quality of health care to residents of ~~group home~~ nonnursing level intermediate care facilities for persons with intellectual disabilities.

Sec. 3. 22 MRSA §1812-K, as amended by PL 2013, c. 588, Pt. A, §24, is repealed.

Sec. 4. 22 MRSA §1812-M is enacted to read:

§1812-M. Intermediate care facility for persons with intellectual disabilities

Notwithstanding any provision of section 1817 to the contrary, the following provisions apply to the licensing of intermediate care facilities for persons with intellectual disabilities.

1. Definitions. For the purposes of this section, the following terms having the following meanings.

A. "ICF/IID group facility" means a facility that provides services for clients with a diagnosis of intellectual disability, or related conditions, who require less than 8 hours of licensed nurse supervision per day.

B. "ICF/IID nursing facility" means a facility that provides services for clients with a diagnosis of intellectual disability whose medical and nursing needs require the presence of a licensed nurse at least 8 hours per day and 7 days per week and provides nursing coverage to its clients 24 hours per day.

C. "Intellectual disability" means significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

D. "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" means a facility that furnishes services to individuals with intellectual disabilities that conform with the conditions described in 42 Code of Federal Regulations, Section 440.150 (2024).

2. License required. The operation of an intermediate care facility for individuals with intellectual disabilities requires a license issued by the department in accordance with this section.

3. Licenses generally. The department is authorized to issue a license to an ICF/IID that, after inspection, is found to comply with this section and any rules adopted by the department. The following general terms apply to all types of licenses issued under this section:

A. A license is not assignable or transferable;

B. A license is immediately void if ownership of the ICF/IID changes; and

C. A license may not be effective earlier than the date on which the department receives a completed application and payment of the required application fee.

4. Provisional license. A provisional license may be issued for a period of at least 3 months and not more than 12 months if, in the department's judgment, the applicant:

- A. Has not previously operated an ICF/IID;
- B. Has complied with all applicable laws and rules, except those that can only be followed once clients are served by the applicant; and
- C. Has demonstrated the ability to comply with all applicable laws and rules once clients are in residence at the ICF/IID.

5. Full license. The department may issue a full license to, or renew a full license for, an ICF/IID that the department determines has complied with all applicable laws and rules. The term of a full license may not exceed 2 years.

6. Conditional license. The department may issue a conditional license to an ICF/IID applying for an initial license, or renewing a full license, if the applicant has failed to comply with applicable laws and rules or, in the judgment of the department, the best interests of the public would be served by issuance of a conditional license. Conditional licenses issued under this subsection are further governed by the following provisions:

- A. The term of a conditional license must be:
 - (1) A specified period of time of not more than one year for applicants applying for a new license; or
 - (2) The remaining period of the applicant's full license if the applicant has a full license and has applied for renewal;
- B. The department shall determine the period of the conditional license based on the severity of the laws or rules violated by the conditional licensee. The department shall specify the conditions imposed by the department and specify when the conditional licensee must comply with those conditions;
- C. Failure of the ICF/IID to meet any of the department's conditions immediately voids the conditional license. Notification to the ICF/IID of the voiding of the conditional license must be made in writing by the department to the conditional licensee or, if the conditional licensee cannot be reached for personal service, by notice left at the licensed premises; and
- D. The department may consider a new application for a full license from the previous holder of a voided conditional license only after the conditions set forth by the department at the time of the issuance of the voided conditional license have been met and satisfactory evidence of this fact has been furnished to the department.

7. Licensing fees; application fees. The department may charge a licensing fee that is no less than \$200 per year and no more than \$1,000 per year. The department may establish an application fee for any license issued under this section. An application fee established by the department must be nonrefundable and must be due upon submission of the application for licensure.

8. Right of entry and inspection of ICF/IID. The department and any duly designated officer or employee of the department has the right to enter the premises of an ICF/IID licensed under this section at any reasonable time in order to determine whether the ICF/IID is complying with this section and any rules adopted pursuant to this section.

An application for an ICF/IID license made pursuant to this section constitutes permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

The right of entry and inspection extends to any premises that the department has reason to believe is being operated or maintained as an ICF/IID without a license, except that the department may not enter or inspect any premises without the permission of the owner or person in charge of that premises unless a warrant is first obtained from the District Court authorizing that entry or inspection.

9. Inspections. ICF/IIDs must be periodically inspected by the department for compliance with this section and the rules adopted by the department pursuant to this section. An inspection for purposes of maintaining state licensure may be done concurrently with a survey to ensure that the ICF/IID meets the requirements for certification as an ICF/IID in federal Medicare and state Medicaid programs. The department must also inspect ICF/IIDs in response to complaints of suspected violations of rules adopted under this section, or suspected violations of the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services' conditions of participation.

10. Shared staffing. The department shall permit staff in an ICF/IID nursing facility to be shared with an ICF/IID group facility as long as there is a clear, documented audit trail and the staffing in the ICF/IID nursing facility remains adequate to meet the needs of clients. Staffing to be shared may be based on the average number of hours of coverage used per week or per month within the ICF/IID group facility. The department may suspend the facilities' ability to share staffing under this subsection if the most recent survey for either classification of ICF/IID indicates deficiencies that are related to client care and that arise from the sharing of staff.

11. Notice of voluntary closure. Any person, including a county or local governmental unit, that is conducting, managing or operating an ICF/IID and that is properly licensed in accordance with this section shall give:

A. At least 60 days' written notice of the voluntary closure date of the ICF/IID to the department; and

B. At least 30 days' written notice of the voluntary closure date of the ICF/IID to any governmental units or institutions that are primarily responsible for the welfare of the ICF/IID's clients and to:

(1) The clients of the ICF/IID; and

(2) As applicable, the clients' guardians, family members and both medical and financial powers of attorney.

The purpose of the notice under this paragraph is to provide for adequate preparation for the orderly transfer of ICF/IID clients to another qualified facility.

12. Intermediate sanctions. In addition to the actions authorized in subsections 13 and 14, the department may impose intermediate sanctions to improve the quality of care in ICF/IIDs.

13. Amend, modify or refuse to renew license. In respect to any license issued under this section, the department may amend, modify or refuse to renew a license by initiating proceedings consistent with the Maine Administrative Procedure Act or filing a complaint with the District Court requesting suspension or revocation of that license for the following conduct:

- A. Violation of this section or any rules adopted pursuant to this section;
- B. Permitting, aiding or abetting the commission of any illegal act in the ICF/IID to which the license applies; or
- C. Engaging in practices that are detrimental to the welfare of a client of the ICF/IID.

14. Suspend or revoke license. Whenever conditions are found in an ICF/IID that violate this section or department rules issued pursuant to this section that, in the opinion of the commissioner, immediately endanger the health or safety of the clients of the ICF/IID or create an emergency, the department by its duly authorized agents may request, under the emergency proceeding provisions of Title 4, section 184, subsection 6, that the District Court suspend or revoke the ICF/IID's license.

15. Appeals. Any person that is aggrieved by the decision of the department to refuse to issue a license or renew a license may request a hearing as provided by the Maine Administrative Procedure Act.

16. Rules. The department shall adopt rules to administer this section. Rules adopted pursuant to this section are routine technical rules within the meaning of Title 5, chapter 375, subchapter 2-A. Rules must include, but are not limited to:

- A. General licensing requirements;
- B. Application requirements;
- C. Quality measures;
- D. Personnel qualifications;
- E. Mandatory and minimum training requirements;
- F. Compliance with federal certification requirements;
- G. Staffing requirements;
- H. Services provided and coordination of services;
- I. Supervision and organizational structure, including lines of authority;
- J. Physical plant and environmental requirements;
- K. Record-keeping and confidentiality practices;
- L. Business records requirements;
- M. Clients' rights;
- N. Medical services requirements;
- O. Infection control and biomedical waste requirements;
- P. Management of personal funds of clients;

Q. Requirements of the ICF/IID before, during and after both voluntary and involuntary termination of services; and

R. Other aspects of services provided by an ICF/IID that may be necessary to protect clients.

Sec. 5. 22 MRSA §8752, sub-§2, as amended by PL 2011, c. 542, Pt. A, §48, is repealed and the following enacted in its place:

2. Health care facility. "Health care facility" or "facility" means a general or specialty hospital including all facilities under the hospital's license, an ambulatory surgical facility, an end-stage renal disease facility and a state institution as defined under Title 34-B, chapter 1, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664.