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January 12, 2022

Senator Ned Claxton, Chair
Representative Michelle Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: Report in response to LD 1657, *An Act To Protect the Health, Safety and Comfort of Elderly Residents and Residents with Disabilities by Ensuring Backup Access to Electrical Power in Certain Facilities during Power Outages*

Senator Claxton, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

In a letter dated June 14, 2021, the Health and Human Services Committee requested that the Department of Health and Human Services report back by January 15, 2022 outlining the role of the Division of Licensing and Certification in ensuring the welfare of residents in Assisted Housing settings, including emergency exit plans, during unplanned and prolonged electrical outages.

Assisted Housing facilities include Assisted Living Programs, Residential Care Facilities, and Private Non-Medical Institutions (PNMIs). All of these settings are licensed under 10-144 CMR Ch 113, Regulations Governing the Licensing and Functioning of Assisted Housing Programs. This rule consists of 10 parts: Assisted Living Programs, Residential Care Facilities Levels I-IV, Private Non-Medical Institutions Levels I-IV, and Assisted Housing Programs: Infection Prevention and Control.

At present, there are approximately 1,128 licensed Assisted Housing Facilities, broken out as below:

Facility Type:	Number:
Assisted Living Programs	73
Level I Residential Care Facilities	351
Level II Residential Care Facilities	25
Level III Residential Care Facilities	354
Level IV Residential Care Facilities	88
Level I Private Non-Medical Institutions	8
Level II Private Non-Medical Institutions	0
Level III Private Non-Medical Institutions	88
Level IV Private Non-Medical Institutions	141

Each facility is licensed based on the number of residents, the type of services provided, and the funding mechanism (PNMIs are those facilities that access MaineCare funding.) The level of each facility is determined by the number of residents, as below:

Level I – a facility with a licensed capacity of one (1) to two (2) residents.

Level II – a facility with a licensed capacity of three (3) to six (6) residents.

Level III – a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

Level IV – a facility with a licensed capacity of more than six (6) residents.

The statutory authority for licensure of these settings can be found at 22 MRS § 7702-B and 7801, and 22 MRS Ch 1664. 22 MRS § 7851 (3) excludes “independent housing with services programs” from the requirement for licensure. 22 MRS § 7801 (3) excludes residential care facilities providing care to no more than 2 residents from the requirement for licensure, unless the license is required for the residential care facilities to receive payment from available state funds.

The licensing requirements with respect to emergency exit plans and electrical outages for all types and levels of Assisted Housing Facilities are found in 10-144 Ch 113. Each part of this rule includes the same provisions, with slightly different terminology based on the type of program. The sample below is drawn from 10-144 CMR Ch 113, Private Non-Medical Institutions, Level IV:

3.31.6 Disaster plan. Each facility/ program shall develop a comprehensive disaster plan. This plan shall include the following:

- 3.31.6.1** Contingencies for loss of power, heat, lights, water and/or sewage disposal;
- 3.31.6.2** Contingencies for short term and long-term emergencies; and
- 3.31.6.3** If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

The Division of Licensing and Certification is actively working on revising and updating these rules at this time.

For multi-level facilities, which are defined as one facility that has both an Assisted Housing program (licensed pursuant to 10-144 CMR Ch 113) and a Nursing Facility (licensed pursuant to 10-144 CMR Ch 110) within the same building, the standard from 10-144 CMR Ch. 110 would apply:

20.B.5. Standards for All Facilities in the Case of Electrical Power Outage

- a. All licensed facilities shall provide continuing sources of emergency power (electrical or otherwise) needed to maintain the following essential services:
 - 1. The fire detection and alarm systems;
 - 2. The telephone system;
 - 3. Boiler room burners, fans, or pumps;
 - 4. Exit and corridor lights;
 - 5. Call systems;
 - 6. Lights at the nurses station;
 - 7. Food preparation;
 - 8. Adequate heat for specified areas of the building for resident comfort, if electrical heat is provided;
 - 9. Pumps for water supply; and
 - 10. Pumps for private septic system.

- b. When life support equipment or life support systems are used, the facility must provide sufficient emergency electrical power to ensure the safe and uninterrupted operation of the life support equipment or system with an emergency generator that is located on the premises.

Relevant Centers for Medicare and Medicaid Services requirements:

If the Assisted Housing program is co-located with a nursing facility, the part that is designated and licensed as a Nursing Facility also must comply with the following provisions of the Centers for Medicare and Medicaid Services (CMS) State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities:

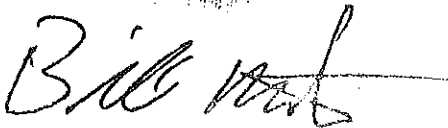
42 CFR§483.90(c) Emergency Power.

§483.90(c)(1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

§483.90(c)(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

Thank you for the opportunity to share this information with you. I will be happy to answer any questions you have.

Sincerely,



Bill Montejo, Director
Division of Licensing and Certification

cc: Rep. Christopher Babbidge, LD 1657 sponsor

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STATE OF MAINE ONE HUNDRED AND THIRTIETH LEGISLATURE COMMITTEE ON HEALTH AND HUMAN SERVICES

June 14, 2021

William Montejo, Director of the Division of Licensing and Certification
Department of Health and Human Services
11 State House Station
Augusta, ME 04333-0011

Dear Mr. Montejo,

The Health and Human Services Committee recently considered [LD 1657](#), An Act To Protect the Health, Safety and Comfort of Elderly Residents and Residents with Disabilities by Ensuring Backup Access to Electrical Power in Certain Facilities during Power Outages. Section 2 of this bill would have required wellness checks of residents in assisted housing programs during unplanned electrical outages. The Committee voted Ought Not To Pass on this bill and it became clear during the work session that both sections of this bill are more complicated than anticipated. With respect to Section 2, residential care facilities vary with respect to resident independence and single facilities may include different types of apartments or units. In addition, not all facilities are licensed by DLC; some facilities contract with a separate company for personal care services.

We are writing to request more information about the licensing requirements, including any relevant Centers for Medicare and Medicaid Services requirements, with respect to emergency exit plans and electrical outages. We respectfully request that you provide us with a report back by January 15, 2022, outlining the role of licensing in ensuring the welfare of residents, including emergency exit plans, during unplanned and prolonged electrical outages. We are particularly interested in any recommendations for improvement that the Legislature can assist with. If you have any questions, please contact us or our analyst, Anna Broome.

Sincerely,

Sen. Ned Claxton
Senate Chair

Rep. Michele Meyer
House Chair

cc: Members, Joint Standing Committee on Health and Human Services
Rep. Christopher Babbidge, LD 1657 sponsor
Commissioner Jeanne M. Lambrew, Department of Health and Human Services
Molly Bogart, Government Relations Director, Department of Health and Human Services