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## **An Act To Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes**

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

**Whereas,** nursing facilities are required by applicable rules to provide adequate staff to meet residents' needs at all times and are subject to effective sanctions to ensure that such staffing is provided continuously; and

**Whereas,** in addition to the requirement of staffing to meet needs, the current rules of the Department of Health and Human Services require fixed ratios of staff to residents, specific to each of 3 8-hour shifts per day; and

**Whereas,** these fixed-ratio requirements do not ensure quality care but may impose arbitrary staffing costs on facilities at times when such staffing is not required to meet needs, even though, over a 24-hour period, more than these minimum ratios may be maintained in order to meet all residents' needs; and

**Whereas,** the fixed-ratio requirements specific to each shift may therefore impose unnecessary costs on facilities and thus on the MaineCare program, while placing unnecessary stress on the limited supply of qualified nursing staff and thereby inadvertently creating barriers to high-quality service at other times of day when more staff may be desirable; 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**Sec. 1. 22 MRSA §1812-C, sub-§6,** as enacted by PL 1987, c. 195, §2, is repealed and the following enacted in its place:

**6. Rules; maintenance of approved staffing pattern.** The department shall adopt rules governing staffing patterns in accordance with this subsection.

A. The department shall revise its rules or adopt rules to require documentation when any nursing facility receives reimbursement for an approved staffing pattern that exceeds the minimum staffing level and fails to meet that approved staffing level for one year.

B. Rules adopted by the department governing licensing and functioning of nursing facilities may not contain minimum numerical staffing requirements that are specific to each 8-hour shift but may specify numerical ratios on the basis of average direct care hours per resident in a 24-hour period or greater. The department may adopt additional rules other than rules imposing numerical ratios as needed to encourage person-centered care, increase quality and improve efficiency while requiring

that at all times of the day staffing remains adequate to meet residents' needs. In adopting rules to implement this paragraph, the department may consider and modify as appropriate the definitions of direct care hours and other variables relevant to computing practical, meaningful staffing standards. Rules adopted or amended pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Failure to meet the minimum staffing requirements as set forth in department rules governing the licensure of nursing facilities is cause for licensure sanctions permitted under law and rules.

**Sec. 2. PL 1999, c. 731, Pt. BBBB, §11** is repealed.

**Sec. 3. Stakeholder working group.** As soon as practicable following the effective date of this Act, the Department of Health and Human Services shall convene a working group to formulate recommended amendments to its rules to comply with the requirements of the Maine Revised Statutes, Title 22, section 1812-C, subsection 6, paragraph B. The department shall invite the participation of the Maine Long-Term Care Ombudsman Program, the Maine Health Care Association, LeadingAge of Maine and New Hampshire, the Alzheimer's Association, Maine Chapter and other interested stakeholders identified by the department. The department shall provide staffing assistance to the working group using existing resources and shall assist the working group in completing its analysis and recommendations within 90 days of the working group's first convening. The department shall issue proposed rules to comply with Title 22, section 1812-C, subsection 6, paragraph B that are consistent with the recommendations of the working group within 30 days following the issuance of those recommendations.

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

## SUMMARY

Currently, nursing home staffing ratios are calculated based on individual 8-hour shifts. This bill requires the Department of Health and Human Services to develop alternative staffing ratios that encourage person-centered care, increase quality and improve efficiency by developing a standard calculated over a 24-hour period. Nursing homes would still ultimately be required to staff according to residents' needs.

The bill directs the department to convene a working group to develop such a standard and to invite the participation of representatives of the Maine Long-Term Care Ombudsman Program, the Maine Health Care Association, LeadingAge of Maine and New Hampshire, the Alzheimer's Association, Maine Chapter and other interested stakeholders. The bill provides that amendments to the licensing rules are major substantive rules.