Maine Chapter
ACEP

**Testimony of the**
**Maine Chapter – American College of Emergency Physicians**

**in Opposition to**
**LD 1639 An Act to Address Unsafe Staffing of Nurses and Improve Patient Care**

Senator Tipping, Representative Roeder and members of the Labor and Housing Committee, my name is Dr. Andrew Ehrhard. I am the President of the Maine Chapter of the American College of Emergency Physicians (MEACEP) , and I am here today providing written testimony speaking in opposition to this bill. Maine Chapter - ACEP has a network of over 200 emergency-trained physician members practicing in each major hospital in Maine who are dedicated to providing the very best patient care.

There are a number of issues and challenges impacting patient experiences and patient care in Maine's emergency departments that hospitals, physician leaders and clinical providers are working in collaboration to resolve. While staffing ratios are important and can be advantageous, the focus strictly on nursing ratios and mandates is too narrow.

- **Do the formulas and ratios take into account other clinicians on duty?** This bill's staffing limits would effectively limit the number of patients who can be treated in a hospital's Emergency Department based purely on the number of RNs on duty. In order to maintain compliance with the proposed Registered Nurse (RN) ratio mandates, hospitals would need to assess and reassign RNs based on these mandates, regardless of whether there are other members of the ED team (including but not limited to: physicians, licensed practical nurses, licensed vocational nurses, certified nursing assistants, healthcare techs, patient observers, nurse educators, registration clerks, security, and others) who are capable and available to help.

  **Instead of looking at the experience and expertise of the entire clinical team, this bill proposes that care would be determined by ratios and numbers of a single part of the team.**

- **Is this model effective in other states?** In California, the only state with a nurse staffing mandate, studies show that ED wait times increased following the implementation of mandated ratios, despite fewer people seeking care.[1] **They state, "... enforcement of this fixed ratio has been harmful rather than helpful to ED patients.** In the past, during periods of extreme crowding, ED patients might have been 'doubled up' in some treatment areas to provide the safest environment for monitoring. Now, with a rigid 3:1 patient: RN ratio, patients are placed in hallways with no direct nursing observation during periods of crowding. Indeed, some patients who are very ill must remain in the waiting room."[2]

- **Does decreasing the nursing ratio improve patient care?** There is some data that suggests decreased nursing ratios may improve patient outcomes. However, it is important to recognize that this result may not be attainable in Maine. These studies addressed this issue from a different perspective than this bill proposes. Instead of limiting or reducing patients, they improved nurse ratios by increasing nurses, something that may not be possible or feasible given the critical nursing shortage.

**We cannot control the number of patients being treated in the emergency department so we expect the effect of this bill would be to limit care, not improve it.**

- **Are there nurses to hire to fulfill these new requirements?** The answer is no. On November 7, 2022 the American College of Emergency Physicians (ACEP), co-signed by 34 other national groups, including the American Medical Association and American Nurses Association, sent a 9 page letter to President Biden, Xavier Becerra (Secretary of DHHS), and Alejandro Mayorkas (Secretary of Homeland Security). This letter's purpose was to bring attention to the dire situations that Emergency Departments across the country are facing. The reasons for the critical situation is multifactorial, and the national nursing shortage is included. The following is a direct quote from this letter:

  *"Prior to the pandemic, the American Association of Colleges of Nursing already projected a nursing shortage. That trend has accelerated due to COVID-19, confirmed by a recent American Nurses Foundation survey[9] which found that 21 percent of nurses surveyed intended to leave their position, with another 29 percent considering leaving. Almost half of all respondents cited insufficient staffing as a factor in their resignation, and their departures will only increase the insufficiency, forcing their fellow nurses to an even more severe condition and impeding the ability to provide high-quality patient care."*

- **If passed, how would these nursing ratios impact patients seeking emergency care in Maine?** We expect that patients in the emergency department would likely experience one or more of these issues -
  - **Increased wait times** before a patient can be seen by a clinician. This delay in accessing emergency care could potentially worsen patients' critical illnesses;
  - **Prolonged wait times for inpatient beds** when patients require admission from the ED since floor staffing ratios will dictate the number of beds available for new admissions. This will further delay care for admitted patients and delay care for new ED patients who require evaluation; and
  - **Exacerbated Emergency Department boarding of admitted patients,** already a crisis issue for patients waiting on inpatient beds.
  - **Extended EMS holding while they wait for nurse ratios to decrease enough for emergency departments to accept new patients.** Not only would this delay patient care, but it would also limit EMS availability to respond to emergencies in the field.

- **Would the proposed rules conflict with any Federal laws and mandates?** Under these proposed rules, ED's would be forced to violate federal laws to provide the care they feel is best for the patient, resulting in possible loss of license or ability to care for patients with Medicare coverage. The federal Emergency Medical Treatment and Active Labor Act (referred to as "EMTALA") requires Medicare-participating hospitals with dedicated EDs to screen, treat, and stabilize patients with emergency medical conditions coming to a hospital in a non-discriminatory manner regardless of their ability to pay, insurance status, national origin, race, creed or color. The federal government implemented EMTALA to ensure that emergency care is provided to any patient who believes that they have an emergency medical condition, so they are not prevented from accessing care. Non-compliance with EMTALA can result in steep penalties, including hospital fines up to $50,000 per violation and/or physician fines up to $50,000 per violation, including on-call physicians.[3]

We support our nurse colleagues at American Nurses' Association-Maine (ANA-Maine) and Maine Emergency Nurses Association (Maine ENA)ENA Maine who are also speaking against LD 1639 and ask that you do not support this bill.

Thank you for your time and consideration of this testimony.

**Maine Chapter- ACEP**
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Footnotes:

1. Chapman, S. A., Spetz, J., Seago, J. A., Kaiser, J., Dower, C., & Herrera, C. (2009). How have mandated nurse staffing ratios affected hospitals? Perspectives from California hospital leaders. Journal of Healthcare Management, 54(5), 321-335.; Weichenthal, L., & Hendey, G. W. (2011). The effect of mandatory nurse ratios on patient care in an emergency department. The Journal of emergency medicine, 40(1), 76-81.
2. Derlet, R. W., & Richards, J. R. (2008). Ten solutions for emergency department crowding. Western Journal of Emergency Medicine, 9(1), 24.
3. Centers for Medicare and Medicaid Services (2012). Emergency Medical Treatment & Labor Act (EMTALA). Accessed from https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/.