



**Testimony of Catherine Thibedeau, Executive Director of Independence Advocates of Maine
In Opposition to
LD768 *An Act to Update the Laws Governing the Licensing of Intermediate Care Facilities for Persons
with Intellectual Disabilities*
Joint Standing Committee on Health and Human Services**

March 13, 2025

Senator Ingwerson, Representative Meyer and esteemed members of the Health and Human Services Committee. Thank you for the opportunity to come before you to offer testimony on LD 768.

I am Catherine Thibedeau, Executive Director of Independence Advocates of Maine (IAM). IAM provides essential support and services to individuals with disabilities through MaineCare sections 21, 29, and 50, including an 18 bed Nursing Level Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID-Nursing) in Orono called Treats Falls House. Since 1977, we have established a trusted legacy within the community, helping Maine's most vulnerable adults and youth including those with complex needs who frequently spend long periods in hospitals awaiting our support.

In addition, I serve as the ICF/IID program National Subject Matter Expert for ANCOR, the largest nation-wide disability provider association. In this role, I represent 1000's of ICF/IID providers from around the country connecting with the federal Center for Medicaid and Medicare Services and service providers on program quality and regulatory compliance.

The ICF/IID program here in Maine is intentionally small and focused on assist Mainers with disabilities who have the most complex medical and behavioral needs. The program supports approximately 179 individuals in 16 strategically placed facilities across the state, from Van Buren to Scarborough. There are two types of levels of care: ICF/IID-Group and ICF/IID-Nursing, with 4 being ICF/IID-Group and 14 being ICF/IID-Nursing serving both adults and children. The ICF-Nursing programs cater to individuals with the most complex needs. To qualify for this level of care, individuals must first have an intellectual disability and also have needs that require at least 8 hours of nursing care per day, addressing needs such as enteral feeding, tracheostomies, straight catheterization, uncontrolled seizure disorders, and life-threatening conditions like Juvenile Huntington's disease and Alzheimer's. Without this program, these individuals would likely be supported within a hospital setting. The majority of admissions come from people with prolonged hospital stays (over one year) for psychiatric or medical reasons. This program is unique as it can and does support people regardless of age, from newborns through their entire lives, providing necessary care when needed.

Changes to the ICF/IID program can significantly impact Maine's system of care. And, while I am not opposed to updating the provisions for licensing these federally-certified programs including updating the ICF/IID state regulations, I join my colleagues with concern that the language within would undermine the standing of ICFs as a healthcare entity. Unfortunately, we did not know such a significant plan was

underway. The brief conversations I had with colleagues at the Division of Licensing over the last few days since the bill was brought to my attention have been helpful, but I believe further discussion and collaboration is needed.

We would like the opportunity to meet with the Department to work through and propose amended language together to avoid unintended consequences and ensure the best outcomes for the people we support. We also ask that since state licensing would be new for ICFs, that subsequent rule making for ICF licensing be major substantive.

Sec. 1. 22 MRSA §42, sub-§1-A AND Sec. 2. 22 MRSA §1812-B

It is unclear what the intent of striking out "group home" from these sections but, given that this language is referring to one of the two types of ICFs known as ICF/IID- group, the removal of the words "group home" would inadvertently permit unlicensed personnel to administer medications in all ICFs including ICF/IID-Nursing. This is problematic due to the complex needs of individuals who reside in ICF/IID-Nursing Facilities, where their care is such that it requires 24/7 nursing staff. Suggested language that would maintain the integrity of current practice and clarify the intent of the statute is as follows below:

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~~ intermediate care facilities for persons with intellectual disabilities-group must be in accordance with rules established by the 8 department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than ~~group home~~ intermediate care facilities for persons with intellectual disabilities-group, the department may establish rules for the administration of medication as it considers necessary.

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

The administration of medication in facilities licensed under section 1811, except ~~group home~~ intermediate care facilities for persons with intellectual disabilities-group, 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~~ intermediate care facilities for persons with intellectual disabilities-group 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~~ intermediate care facilities for persons with intellectual disabilities-group.

22 MRSA §1812-M. Intermediate care facility for persons with intellectual disabilities- Section 4.

4.7. Licensing fees; application fees.

Imposing a license fee of up to \$2000 per year for ICF/IIDs is excessive. In Maine, ICFs range from 6 to 18 beds. Reducing the cap to \$500 is more economically reasonable. The department may charge a licensing fee that is no less than \$200 per year and no more than \$2,000 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.

4.12. 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.

Currently, intermediate sanctions (fines for regulatory non-compliance) are not permitted in the ICF/IID program. Allowing the Department to develop a system for applying intermediate sanctions on ICF/IIDs is problematic, as the program is, at best, a break-even service. ICF/IID providers operate on a prospective rate that is cost settled dollar for dollar at the end of each the cost-settled year. Therefore, I oppose the inclusion of intermediate sanctions within the ICF/IID program.

4.16. 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:

The distinctiveness of an ICF/IID nursing program lies, not only in qualifications for care for MaineCare Members, but also in Maine's specific ICF/IID state regulations/rules, particularly in the sections of personnel qualifications, mandatory training requirements, staffing requirements, and supervision and organizational structure. In addition, it appears that a new section called quality measures has been added. The introduction of quality measures rules (like value-based purchasing or managed care) is a completely new approach to care for the ICF programs. Given significant parts of rule-making under this section would be new, it necessitates the major substantive process, especially given ICFs being a federally-certified program.

Sec. 5. 22 MRSA §8752, sub-§2

2. Health care facility. "Health care facility" or "facility" means a state institution as defined under Title 34B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, and an end-stage renal disease facility and an intermediate care facility for persons with intellectual disabilities or other developmental disabilities.

Maine's Sentinel Event Program is designed to improve patient safety by identifying and addressing unexpected occurrences involving death or serious physical or psychological injury. We are opposed to anything that moves the ICF-Nursing program from being a healthcare entity, as this could potentially undermine the safety protocols and reporting mechanisms that are crucial for protecting the well-being of vulnerable populations.

Respectfully Submitted,

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