



Testimony submitted regarding LD 979

Resolve, Regarding Legislative Review of Chapter 113  
Assisted Housing Programs Licensing Rule

April 1, 2025

Senator Ingwersen, Representative Meyer, and distinguished members of the Health and Human Services Committee

I am Denise Vachon. I have the privilege of representing and advocating for provider members of LeadingAge ME NH in Maine. They are not-for-profit providers of senior living, independent living, affordable housing, assisted living and residential care, memory care, adult day service, and home health agencies in both states.

As I speak to LD 979, I specifically represent our not-for-profit assisted living/residential care providers who anticipate that, absent full funding for the new mandates around new staffing ratios, new administrative overhead and capital improvements, changes to Chapter 113 cause significant harm created by financial burden to those providers who serve MaineCare members,

These providers have partnered with the State of Maine and the Department of Health and Human Services since the time when nursing home eligibility requirements came to be, and this level of care has become recognized for what it is: the safety net where everyone "fits" when other options are not safe or available or appropriate.

Assisted Living provides a safety net when someone does not meet the eligibility criteria for admission to a nursing facility, yet their circumstances leave them unsafe to live in their own home and where long wait lists exists for home based supports. Assisted living provides a financial safety net when personal resources are depleted and a supported living environment is needed. Assisted Living provides an emotional safety net for families, and communities and for the person in the center, when worries about living at home presents great risks of injury, or worse; where medications are mixed up or found on the floor; when cooking is no longer safe or manageable. Assisted Living environments bridge those gaps when nursing home care isn't the right fit, and home and community based services don't fill the need.

Many in the provider community agree with DHHS, LTCOP and Legal Services that updating the regulations are warranted. The first draft of regulations, however, was received by the provider community with great concern and angst, following the presentation of onerous and costly change without any preliminary signals or stakeholder input.

Today, we thank the Department for addressing the untenable original draft, making changes that include phased-in implementation of the new staffing ratios.

Yet, there is still grave concern on the part of the providers as to how to pay for the new regulations.

Will the changes be funded? How and when will changes be funded? And for how long?

With respect, we believe that Assisted Living / Residential Care (PNMI) is essential to the entire health care system in Maine. It deserves consideration and preservation as such, and it deserves the State's full partnership in funding and support.

Today, providers view the advancement of these changes as "the cart before the horse", where new regulations and associated costs will be imposed without an express means to fund them.

Today,

- There is still no word on the Rate Reform process for Assisted Living. And as it comes forward, when it does, the very nature of budget neutrality will create risk for some providers - typically those in the most rural communities, where staffing is most difficult. We ask that funding for the transition be included in the Part B budget, as it has for nursing facilities. And if funding for Rate Reform and a provision for regular rate review is not included, we ask for a pause on the implementation of any new regulations that have cost implications.
- Assisted Living programs have already suffered cuts and delayed payments for COLAs, despite the statutory provisions for their payment, and the promises made. Providers cannot survive the current regulatory environment - let alone a new one -- without the State's partnership in understanding that the cost of doing business is rising. Reimbursement must follow. If it does not, we ask for a pause on the implementation of any new regulations that have cost implications.
- Assisted Living programs have experienced the claw-back of the 125% of minimum wage adjustment to help providers compete for the best in the talent pool, and to position them to reduce cost - MaineCare costs - for agency staff. Absent a reimbursement rate that supports a competitive wage for our Direct Care Workers, we ask for a pause in the implementation of any new regulations that have cost implications. Recruitment continues to be a challenge, and meeting higher ratios will be difficult - moreso without adequate funding.
- Assisted Living providers watched as the fate of the Supplemental Budget unfolded, and asked themselves, "now what?". We watched as the Part A Budget was addressed by the AFA, and passed in the two Chambers as a Majority Budget. And now it's being challenged. We ask again, "now what?" We must have a Biennial Budget, and funding beyond to create a long term, sustainable, full reimbursement system - that values this essential level of care, with all the licensure and regulation that it is subject to. Absent those budget provisions, we ask for a pause in the implementation of any new regulations that have cost implications

Assisted Living providers wait for a new budget to include them beyond flat funding for two years, where the future of COLAs and adjustments to minimum wage are prioritized, and where Rate Reform happens with a bridge of transitional funding. Until then, we urge you to direct the Department to pause implementation of any new regulations until such time as sustainable funding for the long term is solidly in place and such that providers can count on and "take to the bank".

Thank you for all that you do as a Committee and Legislators in these difficult days with complex matters before you. None of this sits in a silo. Every outcome has a ripple effect, and is impactful. And the impact is on real people who need our support.



## *Comments and Response to Proposed Rule Changes*

Maine's DHHS Division of Licensing and Certification has issued a Notice of Proposed Major Substantive Rule as it relates to 10-144 CMR CH 113, Assisted Housing Programs Licensing Rule, Part A: Assisted Living Facilities and Part B: Residential Care Facilities.

**Date:** November 13, 2024

**Submitted to:** Jonathan Leach, MBA Compliance Manager, Division of Licensing and Certification

**Copy to:** William Montejo, Director, Division of Licensing and Certification

**From:** Denise M Vachon, Member Services and Government Affairs (ME) for LeadingAge ME NH

Thank you for your consideration of these comments and observations relative to the Proposed Major Substantive Rule as it relates to 10-144 CMR CH 113, Assisted Housing Programs Licensing Rule – Part A Assisted Living Facilities and Part B: Residential Care Facilities.

These are submitted on behalf of the Maine members of LeadingAge ME NH which represents not-for-profit providers of Nursing Care/Skilled Care, Adult Day Services, Assisted Living and PNMI Residential Care, Memory Care, Continuing Care Retirement Community and communities offering continuums of care on one campus, as well as senior living communities and affordable housing.

In my public comment at the 11/13 public hearing, I started with LeadingAge's agreement that its members are serving residents whose needs are increasing more involved, and where more and more residents are seeking memory care supports. LeadingAge does not disagree that this evolving reality requires some adaptation in how we calculate appropriate staffing measures in the context of the changing needs for support and services by those residing in our care. In fact, a recognition of the impact of our providers' commitment to allowing residents to remain in the place they call home – whether it is in independent living, assisted living, residential care or long term care (NF/SNF) – is one of the pillars of the mission and values that are so deeply ingrained in the workplace, careplace, person-centered cultures that they are so passionate about.

These changes to infrastructure, staffing, surveys and direct communications with DHHS and capital investments are sweeping and onerous in the context of silence regarding commensurate partnership with the Department regarding implementation timelines and recognition of fiscal impact on the provider community.

We take no issue with the positions of the LTCOP or of Legal Services in their perspectives regarding the importance of a system of regulations that recognizes the consumer (and family) voice, and one that provides all parties with a common understanding of expectations. Still, while there may be rogue instances where mistakes happen, we can agree that, by and large, this is a field of professionals and direct care workers who come to work every day and do what they do for the people they serve. Let us not paint the entire system of outstanding and committed providers with a brush that colors all with an assumption of Mistakes and Failures. Can we instead elevate and celebrate all those providers and their care teams that deliver with excellence on a consistent basis, and perhaps

engage those high performers as mentors to others who require development in certain areas – to share their expertise, and get support to build cultures of excellence.

With that, LeadingAge ME NH offers the following:

- These regulations must be structured to support sustainability of this vital level of care  
It was the State that created this “middle layer” of support and service, when nursing care facilities and Residential Care were established as separate levels of service, in recognition that nursing care was an enormous State expense, and with the recognition that many people could be well-supported in a more home-like setting, in a social model of housing and services, for a very long time. That separation also allowed for access to nursing care when it was needed and deserved, and when the resident’s needs exceed the ability of the Res Care provider to safely and properly meet them.

Since then, the provider community at this level of care has become very adept at providing a consistently high quality of resident-centered supports and services in ways that allow the environment to truly become “home”, and where staff feel like family to the resident, and the resident feels like family to staff.

What we want for our neighbors, friends and families is to be in a safe, welcoming, warm and caring environment when they can no longer live in their own homes. Assisted Living programs and Residential Care environments deliver on that in spades.

- The regulations can acknowledge and address the increased care needs, and the correlating staffing needs to meet them with the tools that already exist. LeadingAge ME NH has observed many providers who take it upon themselves to adjust staffing patterns in their programs to respond to the changing needs of those they serve. Sometimes, those providers have to opt to reduce the number of living units (beds) that can be offered because the existing staff has to provide for increasing needs of incumbent residents and no new staff is available (workforce challenge). These providers do so intentionally, and with eyes wide open, knowing that they will take a financial hit. Still, they opt to deploy the staff they have for the highest and best purpose, and with the best interest of those they serve in mind.

Can we use the systems of documentation that are already required and in place (MDS and Case Mix) to drive staffing requirements rather than to simply create an edict that has little chance of being complied with on a “one size fits all” basis.

Can we also take into consideration that the cost of hiring temporary staff/travel staff to meet these changes will have its own fiscal impact to the provider operations, and at the same time will boost the competitive field for an already inadequate pool of candidates when agencies raise compensation to attract the talent they need to meet the changing need. It’s a Jacob’s Ladder.

- Rate Reform at the NF level speaks about valuing efficiencies. Rate Reform at the AL level will surely echo that goal. Can we apply the idea of actually seeking out those opportunities from the people who are closest to the people and who actually KNOW where some of those efficiencies can exist?

Let’s build the necessary changes out in a collaborative way. Let’s lead with “we are all this together” and move away from what is surely an unintended message of “we/they”. Let’s recognize each other as constructive and trustworthy partners. If regulatory reforms are necessary, let’s make them together

to achieve the best possible outcomes for our residents and their families, the direct care staff who actually do the work and provide the care, in ways that will assure sustainability for the provider communities and in ways that are responsible to the taxpayer.

DHHS cannot provide for great care for the people they serve without good provider partners. Providers cannot fulfill their mission to serve with the support, trust, confidence and commitment to their success by DHHS. LeadingAge ME NH enthusiastically raises it hand to be part of the discussion as a good partner, wanting to advance improvements in the system in ways that allow the provider community to not only survive, but thrive.

- Let's be transparent in our work together about the fiscal impacts of the changes that may be necessary for the improvements that are being proposed.

We cannot purport that there will be no disastrous financial impacts or conversely no need for increased reimbursement commensurate with new requirements that call for capital investments, staffing increases of 2 to 3 times the staff that is currently required, along with mandates for new positions to add. We cannot create immediate and sweeping requirements that will compromise a provider's ability to meet Debt Service Coverage and financing covenants without being keenly aware and concerned about the financial sustainability of the provider.

Absent some understanding of timelines for implementation, whether implementation is immediate or phased in over time, whether reimbursements will be commensurate with new fiscal mandates, we face certain failure. Proceeding in this fashion will send a strong message that DHHS values the care partners, and the essential services and supports that they provide to the most physically and financially vulnerable among us.

Recognizing that the Department and Division of Licensing are under pressure to deliver on what they view as their own legislative mandates, we urge the Department to pause this process briefly and allow for the opportunity to collaborate with the provider community, as well as partners in our field, and certainly with consumers and their families. We ask for consideration of work groups to be established so that good faith discussions can occur, and solutions sought to creating positive and responsible changes to regulations that address the changing needs of the consumer as well as the operational needs of the providers to create a sustainable pathway to meet the goals, including an achievable timeline for ramping up and implementation, as well as a firm commitment for funding new mandates for capital improvements, new staffing ratios, new mandated positions and new administrative overhead.

LeadingAge ME NH looks forward to being part of the discussions and development of the plan, and certainly bringing our best selves to being part of the solution.

Thank you

Denise M Vachon, Member Services and Government Affairs (ME)  
LeadingAge ME NH