



**LEGAL SERVICES
FOR MAINE ELDERS**

LD 979 – Resolve, Regarding Legislative Review of Chapter 113: Assisted Housing Programs Licensing Rule, a Late-filed Major Substantive Rule of the Department of Health and Human Services

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Health and Human Services

April 1, 2025

Executive Summary

1. Current rules have fallen behind recent changes in residential care, especially increased acuity.
2. Current rules have not prevented a growing number of serious occurrences in assisted housing facilities, jeopardizing resident well-being.
3. The department conducted a thorough rulemaking process considering an enormous amount of information while responding to all comments.
4. Staffing ratios in the provisionally adopted rule represent a compromise balancing the interests of assisted housing residents with what can reasonably be asked of providers.
5. Failure to approve the rule would increase risks to this vulnerable population.
6. The provisionally adopted rule easily satisfies APA statutory review criteria.

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services.

My name is John Brautigam, and I provide this testimony on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

Assisted housing residents, their families, and their advocates have been anticipating these rules for a very long time. We urge you to approve LD 979 and allow these rules to take effect as soon as possible.

The department's assisted housing rules have not been updated in over seventeen years. Since then, this sector has changed dramatically. The population of residents is older and their medical needs far surpass the acuity typically seen when the rules were adopted in 2008. The large number of

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residents with Alzheimer’s or related dementia is a major consideration. A 2024 report on residential care services in Maine found that 54 percent of PNMI-C residents were diagnosed with dementia – exceeding the rate in nursing facilities.¹ And it isn’t limited to dementia. One physician described the assortment of serious medical conditions he encountered during a one-week period as “unbelievable,” adding “I am shocked by it.”²

Staffing that may have been adequate in 2008 is no longer able to safeguard the well-being of this medically compromised population. Inadequate direct care staffing contributes to a long list of harms:

- Immobile residents left without being repositioned for hours or even days, leading to pressure ulcers which can become infected causing life-threatening conditions such as sepsis.
- Residents left in soaked clothing or bedding for prolonged periods causing intense discomfort and emotional trauma and possibly leading to ulceration, necrosis, or urinary tract infections.
- Residents with compromised mobility and cognitive issues trying to walk to the bathroom or dining area unassisted risking traumatic falls resulting in hip fractures, head injuries, and other serious harm.
- Overextended or undertrained staff administering the wrong medication, incorrect doses, or neglecting to provide essential medications at all.
- Deteriorating medical conditions attributable to insufficient direct care workers or inadequate attention from medical professionals.
- Lapses in staffing and supervision increasing the risk that cognitively impaired residents may be assaulted by other residents or staff.
- The heightened risk when a facility-wide emergency or multiple simultaneous medical crises occur at a time when sparse staffing is already overextended.
- Risk of elopement and consequent exposure to external dangers such as traffic and weather.

We already see the consequences. Publicly available information and investigative reports reveal unsettling details from facilities in Maine.³ This growing public record reflects what can happen, and what *does* happen, when staff are inadequate for the lives entrusted to them.

¹ Catherine Cutler Institute, *A Comparison of Characteristics Across Settings*, June 2024, University of Southern Maine. <https://www.maine.gov/dhhs/sites/maine.gov/dhhs/files/inline-files/2024%20ResCare%20Report%20Final.pdf>

² At the public hearing on the proposed rules physician Mark Kaplan testified that he observed residents with end stage liver disease, bilateral nephrectomy, uncontrolled diabetes, chronic obstructive pulmonary disorder, heart disease requiring stents, and other severe medical conditions. “It’s an acute level of care.” Public hearing transcript, November 13, 2024.

³ Publicly available documents reveal risks to residents from staff administering injectable medications without appropriate training, failures to properly document medical information, failures to comply with background check rules for staff, unsafe storage of foods and medications, failure to ensure staff training on use of breathing apparatus, failing to administer medication due to staffing shortages, and a resident participating in administering a medication to another resident. Maine journalist Rose Lundy has reported extensively on residential care facilities, their challenges, and the rulemaking. *Following outcry, Maine health department waters down proposed staffing ratios*; Jan. 17, 2025, <https://themainemonitor.org/care-facility-staffing-proposal-amended/>; Dec. 29, 2024, *How we reported on residential care facilities* <https://themainemonitor.org/door-knocking-context/>; Dec. 19, 2024, *Report shows growing need in*

These harms are preventable, and the key is staffing. Research shows that staffing regulations for direct care workers correlate to outcomes.⁴ This is common sense. Where staffing is not adequate, attention suffers and services are neglected or delayed. It simply is not possible for one person working alone to care for a large number of residents simultaneously coping with a variety of significant medical needs.

During rulemaking, commenters differed in their views regarding staffing ratios in residential care facilities. In response to objections from the facilities, the department moderated the staffing requirements set forth in the proposed rule in two significant ways. First, the residential care rule as originally proposed would have required a staffing ration of 1:8 during the day and 1:15 overnight. In response to comments, the department significantly relaxed this requirement. The most stringent ration in the provisionally adopted rule is 1:10 during the day and 1:20 overnight. These are in alignment with requirements in other states.⁵

The second compromise relates to the timing of the new staffing ratios. The provisionally adopted rule grants the facilities a phase-in period in which to meet the new requirements. The new staffing ratios will take effect over a two-year period and the full staff requirement does not apply until mid-2027. This allows timing for planning and adjusting to the cost of hiring staff for those facilities not currently at this level.

These two compromises significantly benefit the facilities and show that the department appropriately considered their comments.⁶

Not everyone was happy with these compromises. LSE argued that since the need for increased direct care staffing has already been shown, the ratios should be strengthened immediately. But the department adopted a phase-in approach. We support the end result because it would be far better to implement the rule now, including the phase-in, than to do nothing.

The provisionally adopted rule is an appropriate use of the rulemaking authority. In our system of divided powers, the legislature frequently empowers the agency with the greatest expertise to make

residential care facilities <https://themainemonitor.org/residential-care-growing-need/>; Nov. 24, 2024, *Maine proposes major staffing changes for assisted living and residential care facilities* <https://themainemonitor.org/maine-proposes-care-facility-staffing-changes/>

⁴ For example, Thomas KS, Cornell PY, Zhang W, Smith L, Hua C, Kaskie B, Carder P. *The Relationship Between States' Staffing Regulations And Hospitalizations Of Assisted Living Residents*. Health Aff (Millwood) 2021 <https://pmc.ncbi.nlm.nih.gov/articles/PMC10227721/> This study suggests that “increased regulatory specificity for direct care workers (for example, a change from requiring “sufficient” direct care worker staffing to requiring a specific staffing ratio or level) is associated with a 4 percent reduction in the monthly risk for hospitalization among residents in our sample and a 6 percent reduction among the subgroup with dementia.” The study was less clear about the benefit of regulations regarding nursing staff.

⁵ Many other states have daytime ratios of at least 1:10 and overnight ratios of 1:15.

<https://www.intelycare.com/facilities/resources/cna-patient-ratio-laws-by-state>

⁶ These ratios represent the number of care staff in relation to the number of occupied beds. Care staff may be as young as 18 years of age. The full detail of the new ratios is found in Section 14(B)(1) of the provisionally adopted rules.

such determinations, so long as the result is within existing law. This is precisely why rulemaking exists.

Second-guessing the department's two years of effort would be a mistake. With all due respect, this legislative committee cannot possibly review the full record and undertake the enormous amount of work that went into the provisionally adopted rules. The new rule is 188 pages long. The department received and reviewed over 500 comments from 110 commenters. The summary of comments and responses is 122 pages long. The resulting rule changes are far too extensive to describe here. They include many substantive and procedural protections for residents and clarify what is expected from the facilities. The rulemaking was fair, thorough, and fully complied with the Administrative Procedures Act.⁷

Finally, it is important to underscore that the assisted housing sector is not monolithic. Many facilities offer outstanding care and boast a spotless record. Others must improve. A uniform standard must be applied across the board. And each facility must have the resources needed to ensure continuity of care, to meet the heightened standards appropriate for the higher acuity of residents, and to hire, train, and retain qualified staff needed to keep residents safe and well cared for.

The proposed rules are overdue, and further delay would only invite tragedy. We ask you to approve LD 979.

Thank you.

⁷ The APA provides a list of items that the committee must review when considering major substantive rules but does not further specify what action should be taken. *See* Attachment 1.

Attachment 1

The Maine Administrative Procedure Act

5 MRS §8072 – Legislative review of major substantive rules

4. Committee review. The committee shall review each provisionally adopted rule and, in its discretion, may hold public hearings on that rule. A public hearing under this subsection must be advertised in the same manner as required by legislative rules then in effect for advertisement of public hearings on proposed legislation. The committee's review must include, but is not limited to, a determination of:

- A. Whether the agency has exceeded the scope of its statutory authority in approving the provisionally adopted rule;
- B. Whether the provisionally adopted rule is in conformity with the legislative intent of the statute the rule is intended to implement, extend, apply, interpret or make specific;
- C. Whether the provisionally adopted rule conflicts with any other provision of law or with any other rule adopted by the same or a different agency;
- D. Whether the provisionally adopted rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed;
- E. Whether the provisionally adopted rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;
- F. Whether the provisionally adopted rule could be made less complex or more readily understandable for the general public;
- G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law; and
- H. For a rule that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule.