

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 7, 2021

LD: 476 An Act To Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons

Summary

This bill requires the Department of Corrections to provide assisted living and nursing facility levels of care in licensed units in DOC correctional facilities and in licensed facilities in the community for persons in DOC custody. The bill requires DOC to adopt routine technical rules to implement the long-term care services requirement.

The bill requires DOC to assess medical and social need using the MaineCare eligibility assessment.

The bill requires DOC to work with the DHHS to develop licensed units in correctional facilities, to provide long-term and assisted living and nursing facility levels of care in licensed facilities in the community and to encourage licensed community facilities to accept prisoners as residents.

The bill requires DOC to train community facilities on the specific needs of prisoners.

Testimony

Proponents:

1. Representative Morales sponsored the bill, testified in support and provided written testimony. Rep Morales cited the increasing age of the state prison population, the infrequent use of supervised community confinement for prisoners who are terminally ill or suffer from severely incapacitating medical conditions, the potential use of MaineCare to fund assisted living and nursing facility levels of care and the Mountain View assisted living unit which does not meet DHHS licensing standards.
2. Matthew Morgan submitted testimony for the Maine Association of Criminal Defense Lawyers (MACDL), supporting the bill and suggesting the addition of language giving a prisoner the right to appeal to a court the decision of the DOC Commissioner not to provide care requested by a prisoner. Richard Erb, representing the Maine Health Care Association, testified in favor and provided written testimony. Mr. Erb cited the need to meet the health care needs of an aging prison population and the importance of planning for future needs, stressing the importance of licensed community providers having the opportunity to participate, the need for specialized training and the need for adequate reimbursement rates. Mr. Erb offered to assist with future study.

3. The following persons testified on behalf prisoners in DOC custody: Alexis Phillips for Jeffrey Taylor; Carissa Young for Leo Hylton; Faith Nkansah-Siriboe for Nathan Goodwin; and Carla Hunt for Ralph Nichols.

4. Testifying in support of the bill or submitting written testimony as members of the Maine Prisoner Advocacy Coalition were Irving Faunce, Robert Payzant, Jan Collins, Peter Lehman and Gaelyn Aguilar. Also testifying in support in person or in writing were Cushman Anthony. A former legislator and House chair of the Select Committee on Corrections, Marissa Weil, a volunteer at the Maine State Prison, Anthony Lombardi, legal fellow at GLBTQ Legal Advocates and Defenders, and Mary Bonauto, civil rights project director at GLBTQ Legal Advocates and Defenders, and home health nurse Holly Reid. Kandyce Powell, representing the Maine Hospice Council, testified in support, provided information about the hospice unit at the Maine State Prison and suggested that a hybrid model that provides choices may be required. Foster Bates, representing the Maine State Prison Branch of the NAACP, submitted written testimony in support, citing the increasing age of the prison population and the residents' unresolved health issues. Michael Kebede, representing the ACLU, testified and provided written testimony in support, citing the 8th Amendment guarantee of health care and the need to establish appropriate standards of care for residents of prisons.

Opponents:

1. Commissioner Liberty of DOC testified and provided written testimony in opposition to the bill. Commissioner Liberty provided information about the Helping Hands peer assistant program, the assisted living unit for women in the Women's Center in Windham, the assisted living unit for men at Mountain View Correctional Facility and the hospice unit in the infirmary at the Maine State Prison, which can serve women and men. Commissioner Liberty testified that DHHS standards for licensing assisted living and nursing facilities do not consider resident and staff safety, security and operational needs for a correctional setting and that Maine Care eligibility criteria are ill-suited to the correctional context. DOC opposes a new DOC role in developing and working with assisted living and nursing facilities in the community as beyond the purview of DOC, impractical and cost-prohibitive and opposes a training duty on the basis of cost. DOC opposes standard rules for eligibility on the basis that they would exclude persons currently served in the women's unit in Windham. Commissioner Liberty suggested an amendment to replace the bill that would read:

Sec. 1. 34-A MRSA §1402, sub-§14 is enacted to read:

14. The commissioner shall establish and maintain or contract for long-term care services, including assisted living and nursing facility levels of care, for prisoners for whom such services are necessary as determined by the facility's treating physician.

INFORMATION REQUESTED:

1. Information was requested from DHHS on Maine Care eligibility for persons in the custody of DOC, including those who may reside in a correctional facility and those who may reside in the community in a licensed assisted living or nursing facility. An email on this topic from Molly Bogart of DHHS is attached, as are a 2016 guidance letter from federal DHHS to state Medicaid directors and an article on the topic of Medicaid coverage for persons serving sentences of imprisonment from the Pew Charitable Trust.
2. Information was requested about long-term care services currently provided by Wellpath.