

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 13, 2021
To: Joint Standing Committee on Health & Human Services
From: Anna Broome, Legislative Analyst

LD 1657. Am Act To Protect the Health, Safety and Comfort of Elderly Residents and Residents with Disabilities by Ensuring Backup Access to Electrical Power in Certain Facilities during Power Outages

SUMMARY: This bill requires that a facility that hosts an assisted housing program and is built after October 1, 2021 have a source of continuous emergency electric power, such as an emergency generator. It requires the property management company or owner of a facility that hosts an assisted housing program to implement an emergency management plan that requires that an in-person well-being check be conducted for each resident within 2 hours of an unplanned, continued loss of electric power. It requires the property management company or owner of a senior housing facility of more than 4 units that is subsidized by state or federal funds that does not have emergency backup electrical generation to have an emergency plan in place for an in-person well-being check for the occupant of each unit within 6 hours of an unplanned, continued loss of electric power.

ISSUES FROM TESTIMONY:

- Sponsor looking for new construction to have generators and existing buildings to have well-being checks. Bill doesn't state whether state whether new construction must have a generator for all or part of the program – concern is the residents and where they live.
- Questions about back up power in buildings/housing with multiple floors when residents live on upper floors.

DRAFTING ISSUES:

- Sec. 1 of the bill is drafted in Title 14, Court Procedure – civil, ch. 710 Rental Property. This chapter governs landlord-tenant law. This doesn't seem to be the correct placement.
- Does “senior housing facility” have a definition? There is no definition in this bill or in Title 14. There is a definition of “senior housing” in Title 36 (tax credit for affordable housing section) §5219-WW:

H. "Senior housing" means multifamily affordable rental housing units serving seniors that receive funding and project-based rental assistance under a United States Department of Agriculture, Office of Rural Development, Rural Housing Service rural development program or United States Department of Housing and Urban Development multifamily elderly housing program or that meet the definition of "housing for older persons" under the federal Fair Housing Act, 42 United States Code, Section 3607(b)(2) and the Maine Human Rights Act.

Could use this definition if the intent is housing for older adults where there is a high degree of independence (not licensed facilities with 24 hour staffing). This type of housing is subsidized in that rent is capped at a % of income. (OADS)

MaineHousing: We believe that this covers it. The "Senior Housing" definition for multifamily affordable housing covers everything that is subsidized, while "housing for older persons" covers all that and more – covering anything that is intended for people 55 or up. We read that to mean it would both include assisted living and age-restricted independent living apartments.

- What exactly is intended by "subsidized by state or federal funds"? This is drafted in the rental section of Title 14 but testimony suggested a more broad intent.

DLC: Several licensed Adult Family Care Homes and Assisted Housing facilities have a mix of private pay and Maine Care funded residents within their facilities.

MaineHousing: You can have facilities where some tenants hold section 8 vouchers while others pay a higher "market rate" rent in the same facility.

- Why is the well-being check for existing properties within 6 hours but the new housing with a generator requirement within 2 hours?
- Is "hosts an assisting housing program" the correct language? Assisted housing programs are governed by Title 22, ch. 1664 (where Sec. 2 of the bill is placed). Definition of "assisted housing programs" in §7852, sub-§2:

2. Assisted housing program. "Assisted housing program" means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

4. Assisted living program. "Assisted living program" means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

6. Independent housing with services program. "Independent housing with services program" means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

14. Residential care facility. "Residential care facility" means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. "Residential care facility" does not include a licensed nursing home or a supported living arrangement certified by the department.

DLC: Assisted housing in the broad term in statute that encompasses Assisted Living (apartment style residences with kitchenettes) and Residential Care/PNMI facilities which tend to be more dormitory style rooms with a congregate dining, activity, and living room set up. Not all Assisted Living facilities are licensed, some elderly housing residences provide the housing, meals, and require the residents to contract with a separate company for Personal Care Services to circumvent the licensure process.

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- Safety standards that currently exist for new construction and existing facilities:

DLC: Licensed Assisted Housing facilities are required to have routine life safety inspections by the Maine State Fire Marshall's Office; the inspection standards vary by the building construction type, use and occupancy. If the intent for the emergency generator is to ensure the health and safety of the residents by having a source of electricity in an emergency to provide heat, cooling, food and power of oxygen concentrators (if applicable); the need for a generator is based on the anticipated needs of the residents and the anticipated challenges for evacuation and safe placement of residents in an emergency in comparison to the benefits of having a generator and being able to shelter in place. Newly constructed Assisted Housing facilities are required to have a State Fire Marshall inspection and

approval to occupy before they can be inhabited. The current rules do not require a back up generator, only a plan for how to handle a loss of electricity situation and to include planning for alternative power needs.

MaineHousing: The 4-story generator requirement is correct, though most senior facilities outside of Portland are not that tall. This is primarily intended to assure that elevators operate all the time.

- Requirements for well-checks:

DLC: The only requirement for general well checks would be found in resident service plans, based on an identified need, and it would be specific for the client.

FISCAL IMPACT:

Not yet received from OFPR.