

**STATE OF MAINE
120TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the
COMMISSION TO STUDY ASSISTED
LIVING**

December 2001

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EXECUTIVE SUMMARY

The Commission to Study Assisted Living was established by Private and Special Law 2001, Chapter 36 in order to develop a comprehensive plan for high-quality, cost-effective assisted living housing and service programs.¹ Members include legislators and representatives of developers, financiers and providers of services, elderly persons and the Maine State Planning Office, the Maine State Housing Authority and the Department of Human Services Bureau of Elder and Adult Services.²

The duties of the Commission consist of the following:

- Study existing housing and program options for elderly and disabled persons;
- Study projected population and projected service requirements;
- Propose legislation to facilitate and properly compensate providers while allowing residents to reside in assisted living as their service needs increase;
- Develop a comprehensive plan that establishes criteria for admission and staffing and provides for expanded options on the basis of community needs. The plan (1) must address affordability for low and moderate-income residents; (2) must be cost-effective and maximize the use of private resources; and (3) must include residential and service needs, options for service development and delivery, methods of financing and models for state oversight and regulation; and
- Report to the Health and Human Services Committee by December 5, 2001

The Commission to Study Assisted Living met four times, on October 11 and 25, November 8 and December 3, 2001. At the October 11th and 25th meetings information was provided to the Commission on the 5 publicly subsidized demonstration assisted living sites operating in Millinocket, Bangor, Camden, Sanford and Saco and the project due to open soon in Augusta.³ To broaden their knowledge of assisted living options in the state, several members of the Commission visited assisted living projects and spoke at some length with the housing and service providers and residents. Detailed information on publicly subsidized assisted living options across the State and on the Freese Assisted Living Project gave the Commission a solid understanding of the options and challenges of affordable assisted living projects.⁴ Financing, Internal Revenue Code compliance and tax credit information provided a basis for understanding the financial structure of the assisted living demonstration sites and the fiscal constraints under which they operate.⁵

At the meetings on November 8 and December 3, the members of the Commission debated the role of assisted living, the role of the State in paying for assisted living, whether the law should

¹ See Appendix A, Private and Special Law 2001, Chapter 36.

² See Appendix B for a list of Commission members.

³ See assisted living demonstration project information in section III below.

⁴ See Appendix C on the Freese Assisted Living project.

⁵ See Appendix D on the Low Income Housing Tax Credit Program.

recognize a right to “age in place,” the fiscal health of assisted living programs and eligibility for assisted living. After thorough consideration of the issues and recognizing the limits of state funding for assisted living, the Commission makes the following findings and recommendations to the Joint Standing Committee on Health and Human Services and notes the following unresolved issues.

Findings and discussion

- A. The Commission finds that Maine’s assisted living communities are very popular with residents and their families and provide housing and services for which there is great demand.
- B. The Commission finds that Maine’s assisted living laws and accompanying rules can be confusing and cumbersome and should be streamlined, providing better definition, reducing administrative burdens and decreasing costs.
- C. The Commission finds that the financial stability of existing publicly subsidized assisted living programs and residential care facilities is precarious. Public funding for services is critical, indeed Maine is the only state using both General Fund and Medicaid dollars to provide assisted living services.⁶ But public funding brings uncertainties and sometimes significant under funding. Costs that skyrocket leave programs at risk, for example recent increases in liability insurance premiums in excess of 700%. Flat state service subsidies, combined with restricted rents and inflating operating expenses, result in razor thin profit margins. Operating deficits at individual residential care programs approach \$100,000 per year. Maine has begun funding residential care level assisted living based on the severity of need of the resident. The Commission endorses expanding acuity-based reimbursement to all levels of publicly funded assisted living and periodic review of state funding formulas and funding levels.
- D. The Commission finds that increased non-state financing is needed to support Maine’s assisted living programs. A healthy community reflects the diversity of its residents. The Commission notes the need for Maine residents to take financial responsibility for their own long-term care. The Commission also notes the need for increased federal funding for those in need and the benefit of consistent requirements for financial assistance among long-term care programs at the residential care and assisted living levels.

Recommendations

⁶ Testimony of Robert Mollica, National Academy for State Health Policy, November 8, 2001.

- A. The Commission urges the Joint Standing Committee on Health and Human Services to take the following actions during the Second Regular Session of the 120th Legislature⁷:
1. Amend Title 22, chapter 1665, Assisted Living Programs, to:
 - a. Retitle the chapter “Assisted Housing Programs;”
 - b. Create from congregate housing levels I and II a new category of independent housing programs with services that will not require licensing;
 - c. Create from congregate housing levels III and IV a new category of assisted living that will require licensing;
 - d. Revise the language on aging in place to clarify that a resident’s ability to remain in an assisted housing program depends on the continued match between the resident’s service needs and the nature of the program; and
 - e. Correct any necessary cross-references.
 2. Direct the Long-term Care Implementation Committee, established in Public Law 1999, Chapter 731, Section BBBB-15, to oversee the progress of the Department of Human Services and other state agencies in implementing the recommendations of this report, as they may be amended and adopted by the Legislature.
- B. The Commission endorses the periodic review and adjustment of state-funded or state and federal-funded rates in long-term care for providers of housing and services. The Commission requests that the Joint Standing Committee on Health and Human Services give serious consideration to ensuring that reimbursement by the State for long-term care services not fall so far behind the actual allowable costs for those services that underpayment jeopardizes the quality or continuation of services.
- C. The Commission requests that the Joint Standing Committee on Health and Human Services discuss with the Department of Human Services, the Department of Behavioral and Developmental Services, the State Fire Marshal’s Office and other state agencies options for coordinating housing and service programs and for developing consistent labels for those programs. This will increase the public’s understanding of housing and program options and decrease administrative burden and cost. Rules adopted by the departments and the State Fire Marshal’s Office should respect the residents’ rights to assume some level of risk in their everyday lives, as they would at the homes they lived in prior to moving to assisted housing, and should be mindful of the need to keep overhead costs down so that assisted housing can be affordable.
- D. The Commission requests that the Legislature direct the Department of Human Services to develop a model for acuity-based reimbursement in all state and federally

⁷ Proposed legislation is included as Appendix E. A chart of the current regulatory system for assisted living is included as Appendix F. A chart of current assisted living options is included as Appendix G. A chart of the proposed regulatory system for assisted housing programs is included as Appendix H.

- assisted housing programs. This would be done after consultation with interested parties, with the consideration of cost, resident care and other factors and would involve the completion of a time study, funded through the Robert Wood Johnson Foundation grant. Once the acuity-based reimbursement model is developed, the Department would report to the Joint Standing Committee on Health and Human Services on its proposed model.
- E. The Commission recommends that the Legislature direct the Department of Human Services to develop a proposed rule for restricting eligibility for all publicly funded residential care and assisted living services for persons who have transferred assets in violation of the rule. In drafting this rule, the Department should also provide a mechanism to protect from impoverishment the spouse of a recipient of housing or services whose care is paid for wholly or in part with state or federal funds.
- F. The Commission requests that the Legislature direct the Department of Human Services to take the following actions regarding assisted living:
1. Set aside proposed assisted living rule section 74;
 2. Amend the contracts of the publicly subsidized demonstration assisted living sites to protect residents and to provide for performance standards for the sites; and
 3. After the Second Regular Session, when the Legislature has acted on the repeal and re-enactment of Title 22, Chapter 1665, consult with the interested parties and by April 1, 2003 adopt new rules for performance standards for assisted housing programs and for reimbursing publicly-funded assisted housing programs.
- G. The Commission asks the Department of Human Services, the Bureau of Insurance, the area agencies on aging, the Governor's Retirement Industry Advisory Council, the Long-term Care Ombudsman Program and other interested parties to undertake efforts to encourage Maine citizens to take responsibility for their own long-term care costs to the extent that they are able to do so, emphasizing the benefits for the person of purchasing long-term care insurance.
- H. For Maine to maintain a mix of assisted housing programs that are of high quality and that are affordable, the State must work together with residents who can provide for their own housing and services costs. The Commission requests that developers, providers of assisted housing programs and facilities work together with the Bureau of Elder and Adult Services and recipients of assisted living services to take full advantage of all funding sources for the housing and services components, including private pay and other third-party funding and to maximize assistance from state and federal programs. The Bureau of Elder and Adult Services should be vigilant in pursuing methods of accessing federal funds and in applying for Medicaid waivers whenever waivers could benefit assisted housing residents, assisted housing programs and providers or state finances.

Unresolved issues

The Commission identified the following issues as unresolved issues, requiring further work and public discussion.

- A. The availability of Medicaid funding, through the State plan or a waiver, for assisted living housing, meals and services.
- B. Whether assisted living should be based on a social model of long-term care services or on the medical needs of the residents. The social or medical model question impacts the consumer's perception of the quality and value of the program and affects the availability of funding sources.
- C. Whether the mental and behavioral health needs of assisted living residents are being met by assisted living programs, and whose responsibility should it be to bear the cost. These same questions of adequacy of service and responsibility to pay apply to transportation and activity services provided by the assisted living programs for their residents.

I. INTRODUCTION

The Commission to Study Assisted Living was established in Private and Special Law 2001, Chapter 36 in order to develop a comprehensive plan for high-quality, cost-effective assisted living housing and service programs.⁸ The Commission is composed of 21 members. Members include legislators and representatives of developers, financiers and providers of services, elderly persons and the Maine State Planning Office, the Maine State Housing Authority and the Department of Human Services Bureau of Elder and Adult Services.⁹

The duties of the Commission consist of the following:

- Study existing housing and program options for elderly and disabled persons;
- Study projected population and projected service requirements;
- Propose legislation to facilitate and properly compensate providers while allowing residents to reside in assisted living as their service needs increase;
- Develop a comprehensive plan that establishes criteria for admission and staffing and provides for expanded options on the basis of community needs. The plan (1) must address affordability for low and moderate-income residents; (2) must be cost-effective and maximize the use of private resources; and (3) must include residential and service needs, options for service development and delivery, methods of financing and models for state oversight and regulation; and
- Report to the Health and Human Services Committee by December 5, 2001

II. PROCEEDINGS

The Commission to Study Assisted Living met four times, on October 11 and 25, November 8 and December 3, 2001. At the October 11th and 25th meetings information was provided to the Commission on the 5 publicly subsidized demonstration assisted living sites operating in Millinocket, Bangor, Camden, Sanford and Saco and the project due to open soon in Augusta.¹⁰ To broaden their knowledge of assisted living options in the state, several members of the Commission visited assisted living projects and spoke at some length with the housing and service providers and residents. Detailed information on publicly subsidized assisted living options across the State combined with fiscal information and resident services program information specific to the Freese's project to give the Commission a solid understanding of the options and challenges of affordable assisted living projects.¹¹ Financing, Internal Revenue Code compliance and tax credit information provided a basis for understanding the financial structure of the sites and the fiscal constraints under which they operate.¹²

Robert Mollica, a health policy analyst at the National Academy for State Health Policy and an expert in the field of assisted living, assisted the Commission and provided information at the November 8th meeting. Guided by his extensive knowledge of state practices in assisted living,

⁸ See *supra*, n. 1.

⁹ See *supra*, n. 2.

¹⁰ See assisted living demonstration project information in section III below.

¹¹ See Appendix C on the Freese Assisted Living project.

¹² See Appendix D on the Low Income Housing Tax Credit Program.

the Commission discussed the role of assisted living in the continuum of long-term care, the role of the state government in paying for assisted living, the viability and limitations of “aging in place,” the use of Medicaid programs to reimburse providers of assisted living and distinctions between licensing requirements and reimbursement systems that provide state and/or federal funding.

III. HOUSING AND SERVICES FOR ELDERLY AND DISABLED PERSONS IN MAINE

A variety of housing and services are available to Maine residents who are elderly or disabled. These include nursing facility care, residential care, assisted living housing and services, home and community-based care, day services, nursing services and adult family care homes. This section of the report will focus on assisted living in Maine, which includes all levels of housing and services below nursing facility care. Payment sources range from private pay to third-party payer to assistance from state or state and federal programs.

Types of assisted living

Assisted living housing and services programs are governed by Title 22, Maine Revised Statutes, Chapter 1665. This chapter places under the umbrella of assisted living 2 types of facilities - congregate housing, which is based in apartments, and residential care, which is based in private or semi-private rooms.¹³

Congregate housing, levels I and II

Congregate housing at its lowest service levels does not require licensing. It provides one meal per day, housekeeping, chore service, service coordination, transportation, personal assistance and recreation. Congregate housing at levels I and II does not provide 24-hour staffing. Congregate housing levels I and II are provided primarily in senior subsidized housing sites.

Services are provided to residents in congregate housing levels I and II, depending on the level of resident need and so are tailored to the individual resident. Services are priced according to the level of services delivered. Reimbursement may be provided under state funded programs for the service package that an individual resident needs. There is no state funding and no federal Medicaid funding for the housing portion of congregate housing I and II.

Congregate housing, levels III and IV

At its highest service levels congregate housing provides a minimum of 2 meals per day, housekeeping and chore service, service coordination, transportation and recreation, personal assistance, laundry, health monitoring, unscheduled assistance, 24-hour staffing, intermittent nursing services and administration of medication. Congregate housing levels III and IV do require licensing.

¹³ See charts on the current assisted living regulatory system, the regulatory system proposed by the Commission and current assisted living options, Appendices F, G and H.

Services are provided to residents in congregate housing levels III and IV, depending on the level of resident need and so are tailored to the individual resident and priced according to the level of services delivered. Those who qualify for assistance with the cost of their service package pay a co-payment and the State pays the remainder. Residents pay the full cost of their housing.

In 2001, twenty-five level III and IV congregate housing programs operated in 24 towns and cities. Eighteen of these assisted living sites are market rate facilities and 7 are the affordable assisted living demonstration sites.¹⁴

Residential care

Residential care is a type of licensed assisted living, providing a private or semi-private room, 3 meals per day, housekeeping, social service, transportation, activities, personal assistance, laundry, health monitoring, unscheduled assistance, 24-hour staffing, nursing service and administration of medication. Residents of residential care may have service needs identical to residents of congregate housing levels III and IV. Whether a person chooses congregate housing levels III or IV or residential care is largely a matter of personal choice, preference for a room or an apartment and availability of a type of assisted living in the community.

Depending on the setting and financial eligibility of the resident, reimbursement for the direct care costs for the resident may be provided through the Medicaid program. Maine has recently switched to a tiered pricing system of residential care Medicaid reimbursement that will reimburse higher amounts for residents needing higher levels of care and lower amounts for those requiring less care. Known as an acuity-based reimbursement system, this innovation is being watched carefully for its effect on the quality of care for residents and its impact on the finances of the facilities.

Dana Totman, of the York-Cumberland Housing Development Corporation, provided information to the Commission on the experience of the Inn at Village Square, in Gorham, since it opened in September 1999. The facility, with a blend of Medicaid and private pay residents, is a residential care facility licensed at level II. With a capacity of 39 beds in 36 rooms, the resident mix has varied from 31% private pay to 48% private pay. The mix of residents impacts the finances of the facility as privately paying residents pay \$110 per day and the Medicaid reimbursement rate is \$67.80 per day. The Inn at Village Square incurred a deficit of \$100,000 in 2000 and anticipates a deficit of \$75,000 in 2001. Deficits such as these jeopardize assisted living projects and their developers, whether they are private developers, groups of investors or sponsoring nonprofit organizations. Lessons learned from their 2 years of operation include budgeting adequately for initial start-up and the time needed to achieve occupancy by the facility's first residents, managing the increasing acuity and resulting service needs of residents and the problems of underpayment by Medicaid. These pressures result in either diminished project income or cost shifting to private paying residents.¹⁵

¹⁴ Ibid.

¹⁵ Information provided by Dana Totman, York-Cumberland Housing Development Corporation, on The Inn at Village Square October 30, 2001.

Publicly subsidized demonstration assisted living sites

The 6 publicly subsidized demonstration assisted living sites in Millinocket, Bangor, Camden, Sanford, Saco and Augusta are all licensed congregate housing levels III or IV. The Augusta site opened in late 2001. Information on the assisted living demonstration sites in this report is, therefore, limited to information from the 5 sites in full operation in 2001.

The residents of the publicly subsidized demonstration assisted living sites must have household incomes of no more than 60% of the area median income (\$16,500 to \$19,000/yr) in accordance with federal low income housing tax credit requirements in order to live in a tax credit project. Projects have income targeting requirements established through assisted living service funding contracts and Maine State Housing Authority financing agreements that require a mix of income levels, including incomes at 30%, 40% and 50% of area median income. Some residents qualify for rental assistance through the United State Department of Housing and Urban Development Section 8 subsidy program. Under Section 8, rent paid by the resident may not exceed 30% of monthly income. The remainder of the monthly rental amount is paid by HUD. Use of Section 8 vouchers is limited by policy as well as supply.

Residents also pay a co-payment toward their service package that is calculated on household income and a percentage of assets for those residents with over \$10,000 in assets for single residents and \$15,000 in assets for married residents. State General Fund appropriations assist with the cost of the service package. Total spending for the 5 demonstration sites and Larrabee Village, an assisted living program in Westbrook, in state fiscal year 2000-2001 was \$1,812,206.

Roberta Downey, of the Eastern Area Agency on Aging, provided information regarding several publicly subsidized demonstration assisted living sites and their residents. Three quarters of the residents moved into an assisted living site in their home communities. Fifteen percent are Medicaid eligible. Average tenant income is \$11,508 per year, while maximum income is \$16,500 to \$19,000. Residents of the demonstration sites are required to need assistance with activity of daily living and instrumental activities of daily living. Since 1997, the demonstration sites have provided housing and services for 243 people. There have been 86 discharges, because of transfers to nursing facilities and residential care facilities, because of death, and a few for other reasons such as to live with family, on their own or in an Alzheimer's residence.¹⁶

The 6 demonstration sites used a number of mechanisms for financing the capital and operational costs of the projects. The Low Income Housing Tax Credit Program (LIHTC), established by the Tax Reform Act of 1986, supports the construction of new affordable housing, including assisted living apartments. Tax credits for owners and investors in the property increase equity capital and reduce debt, allowing for affordable rents by HUD standards. Capital from private investors leverages scarce public resources to build new low-income apartments. The six publicly subsidized demonstration assisted

¹⁶ Information provided by Roberta Downey, Eastern Area Agency on Aging on October 11, 2001.

living sites and the affordable assisted living site at Larrabee Village used these financing mechanisms. They combine to provide 330 apartments, utilizing \$23,000,000 in equity financing.

In 2000 the Maine State Housing Authority allocated over \$1,460,000 in tax credits to 5 properties, consisting of 155 new affordable apartments. Twenty-five percent of these apartments were reserved for elderly residents and the rest were designated to serve families.¹⁷ A change in the federal tax credit program in 2001 increased Maine's tax credit allotment from approximately \$1,500,000 in 2000 to \$2,000,000 in 2001. The impact on development of new low-income apartments in Maine is significant as this allotment is expected to trigger nearly \$16,000,000 in new investor capital.

IV. THE FREESE ASSISTED LIVING PROJECT, BANGOR

The Freese Assisted Living project opened in January 2000 at 10 Water Street in Bangor, at the site of the old Freese's Department Store. Occupying the 4th, 5th and 6th floors of the building, the project is one of the State's publicly funded assisted living demonstration sites, providing 39 one bedroom apartments in a courtyard setting that includes a common dining room, library and atrium courtyard area and a service kitchen, office space for staff and laundry, medication and storage rooms. The project is licensed as congregate housing level IV. The developer owns the building, acts as landlord, conducts admission interviews and does income eligibility determinations for tax credit compliance purposes. The Eastern Area Agency on Aging contracts with the Department of Human Services, Bureau of Elder and Adult Services to provide the assisted living services, to perform resident need assessments and to do service management.

Information provided to the Commission indicates that the residents are of low and moderate incomes. Average resident annual income is \$9,784, with almost half of the residents at or below 30% of area median income, \$8,950 per year. Eleven of the residents receive other Medicaid benefits. The average age is 82, with 24 women and 13 men. Seventy-eight percent use a wheelchair or walker, 57% have short-term memory loss, 27% have a behavioral or mental health need, 22% are incontinent and 16% need assistance with medication.

Rent for the apartments is \$419 per unit, with 11 residents now qualified for rent subsidies under a housing choice voucher program through the Bangor and Brewer housing authorities. The vouchers limit their rent to 30% of their monthly income, with the housing authorities paying the difference, utilizing funding from the United States Department of Housing and Urban Development.

The project provides services for residents that include assessment and service coordination, 3 meals per day, housekeeping and laundry, personal care assistance as needed, activities and recreation, transportation, unscheduled assistance and medication assistance. Service packages are tailored to the needs of the residents. The basic service package provides direct personal assistance up to 7 hours per week and costs \$1,150 per month. The enhanced service package adds medication administration to the basic package and costs \$1,646 per month. The maintenance package, for people who no longer have an activity of daily living need, mirrors the

¹⁷ Ibid.

basic package but without the direct personal assistance service and costs approximately \$600 per month. Residents pay a portion of the service package cost, based on income and assets, and the Department of Human Services pays the remainder. The average resident co-payment is \$254 per month. Counting rent and service co-payments, the total charge to the resident is \$673 per month. The total service package budget is \$531,000, of which resident co-payments total 24% and the contract with the Bureau of Elder and Adult Services provides 76%.

The annual housing operations budget for the Freese Assisted Living project and the projections out to 2004 are sobering. Net cash flow for 2001 is estimated at negative \$60,610 and for 2004 at negative \$30,700. Factors contributing to the financial problems include steeply rising insurance costs, utility expenses much higher than estimated and delays in filling vacant units. Rent limitations imposed by the Low Income Housing Tax Credit Program and state low income housing program requirements preclude a solution that relies on rent increases. The developer indicated to the Commission that efforts are being made to cut expenditures, to increase occupancy and to investigate refinancing options.¹⁸

V. SELECTED ISSUES

Activities of daily living and instrumental activities of daily living

The need for help with an activity that is fundamental to daily routine is a basic tenet of assisted living. Needed services are usually grouped into 2 categories, activities of daily living and instrumental activities of daily living. Title 22, Maine Revised Statutes, section 7901-C, sets forth the following definitions:

Activities of daily living. "Activities of daily living" means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, dressing, eating, toileting, bathing and personal hygiene.

Instrumental activities of daily living. "Instrumental activities of daily living" include but are not limited to meal preparation, taking medication, using the telephone, handling finances, banking, shopping, light housekeeping, heavy housekeeping and getting to appointments.

Elderly persons choosing assisted living tend to have difficulty with activities of daily living or instrumental activities of daily living but they still have good cognitive ability. In addition they need a driver to help them do errands.¹⁹ Commission members learned of the need for services of residents of assisted living and agreed to update the definition of activities of daily living to add locomotion and the definition of instrumental activities of daily living by specifying that meal preparation means preparation or receipt of the main meal and by amending the housekeeping description. The recommended revisions to the 2 definitions sections are as follows:

Activities of daily living. "Activities of daily living" means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.

¹⁸ Materials on the Freese Assisted Living project provided to the Commission, October 25, 2001.

¹⁹ "Housing for America's Seniors," by the Joint Center for Housing Studies of Harvard University, executive summary, 2000, page 12.

Instrumental activities of daily living. "Instrumental activities of daily living" include but are not limited to preparation or receipt of a main meal preparation, taking medication, using the telephone, handling finances, banking, and shopping, ~~light housekeeping, heavy housekeeping~~ routine housework, laundry and getting to appointments.

Aging in place

Aging in place deserves special mention as a challenge for the demonstration sites and for other elderly housing and assisted living. "A National Study of Assisted Living for the Frail Elderly" confirms the experience of the demonstration sites that most assisted living residents can progress within the same assisted living facility from relative independence to more complex needs that require additional care and staffing, including needing help with bathing, dressing, taking medication and using mobility aids to get around. The study asserts that assisted living residents cannot reasonably expect to live in assisted living until the end of life regardless of changes in health, physical or cognitive functioning. The study further concludes that there is a limit to the degree to which an assisted living resident can age in place and still be appropriate as a resident in the facility.²⁰ In fact, the National Center for Assisted Living discourages the use of the phrase "aging in place" in materials regarding assisted living unless it is accompanied by a statement regarding health-related occupancy requirements imposed by state law or rule or by the facility.²¹

The Commission reviewed the issue of aging in place and discussed with consumers and providers of assisted living the problems presented by the advance of years and the deteriorating health of residents. Title 22, Maine Revised Statutes section 7901-B, subsection 1 on assisted living standards in the Maine law requires that assisted living programs ... "further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home as the resident ages, except when that choice would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others."

Providers of assisted living services in the 5 Maine assisted living demonstration sites report that all residents need assistance with at least one activity of daily living. Forty-eight percent have problems with impairment of memory, 52% require assistance with medication, 69% use walkers or wheelchairs, 36% have problems with incontinence, 26% have behavioral or mental health issues and 95% do not drive.²²

Providers of assisted living services and the owners of the buildings testified before the Commission that over time the needs of their residents increase to the point at which they need to hire additional staff and eventually to the point at which the assisted living site is no longer an appropriate location for the resident to live. Commission members considered this problem and determined that "aging in place" is not an unqualified right and that appropriate placement is critical to the success of assisted living and quality care for residents. The Commission concluded that the standards for assisted living programs should be re-written as follows:

²⁰ "A National Study of Assisted Living for the Frail Elderly," by Catherine Hawes, Miriam Rose and Charles D. Phillips of the Myers Research Institute, April 1999.

²¹ "Guiding Principles for Assisted Living," by the National Center for Assisted Living, September 2000.

²² Information provided by Roberta Downey, Eastern Area Agency on Aging, October 25, 2001.

“Assisted housing living programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home as the resident ages, except when that choice would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident.”

VI. DATA

The following chart provides data on assisted living programs and adult family care homes operating in Maine during state fiscal year 2000-2001.

Facility Type	# of Licensed Facilities	# of Beds/ Units	Persons Subsidized in SFY 2001	Services Financed in SFYI 2001	Per Capita	Inc. Room and Board	Inc. Services	Medicaid Match
Congregate I and II	none	none	260	\$ 592,156	2,277.52	no	yes	no
Congregate III and IV	24	1148	199	\$ 1,812,206	9,106.56	no	yes	no
Level I RCF	473	1697						
Level II RCF	199	5257	4403	\$61,783,716	14,032.19	yes	yes	yes
AFCH	20	114	93	\$ 1,154,130	12,410.00	no	yes	yes
Totals	716	8216	4955	\$65,342,208	13,187.13			

In October 2001, Peter Piccirillo, of Planning Insights, Inc., conducted an overview demand analysis for assisted living units in Maine. The demand analysis set \$17,800 as 60% of median income and calculated need above and below that level of income. The demand analysis concluded that the total demand for assisted living units for elderly households with incomes \$7,615 to \$17,800 is 1,150 to 1,250 units. For elderly households with incomes \$17,801 to \$25,000 the total demand is 900 to 950 units. Available assisted living units are well below these demand figures, adding up to 285 units at the lower income figures and 792 units at the higher income figures.²³

The Bureau of Elder and Adult Services and the Maine State Housing Authority developed a statewide listing of area need rankings for assisted living. These areas are defined by the Department of Human Services' hospital service areas and take into consideration the availability of publicly subsidized assisted living of all types, giving less weight to residential care facilities in determining need for assisted living. The hospital service areas of very high need are Bar Harbor, Bath-Boothbay, Belfast, Pittsfield and Rumford. High need is attributed to Blue Hill, Bridgton, Damariscotta, Dover-Foxcroft, Ellsworth, Lincoln, Presque Isle and Skowhegan. The communities rated medium need are Augusta, Bangor, Biddeford, Brunswick, Caribou, Farmington, Houlton, Machias, Millinocket, Norway, Portland, Waterville and York. Areas of low need include Calais, Fort Kent, Lewiston, Rockland and Sanford.²⁴

²³ Memorandum from Peter Piccirillo, Planning Insights, Inc. to Don Sharland, October 23, 2001.

²⁴ Information provided by Don Sharland, Maine State Housing Authority, October 25, 2001.

VII. OBSERVATIONS ON THE SIX PUBLICLY SUBSIDIZED DEMONSTRATION ASSISTED LIVING PROJECTS

The Commission studied the 6 assisted living demonstration projects at length, reviewing demographic, occupancy and financial information provided by the project sites. With regard to the 6 publicly funded assisted living demonstration sites, the Commission makes the following observations.

- A. The assisted living demonstration sites offer high quality housing and services at prices within the range of persons who are elderly or disabled and who have low and moderate incomes.
- B. The service side of the assisted living demonstration sites is creative as well, with services funded in part by the resident and in part by the Department of Human Services and provided by the facility owner or another entity under contract with the department.
- C. The demonstration sites are very popular with residents and their families, proving that there is a market for affordable assisted living across the State.
- D. The demonstration sites face significant challenges now and in the future. These challenges include the following:
 1. Affordable assisted living sites run on a very tight margin and must carefully manage both revenue and expenses in order to survive financially. It is important to maintain a healthy mix of residents, some who are fully private pay and are of moderate income and some who are of lower income and whose housing and services are paid partly by the residents and partly from other sources, including state and federal government programs.
 2. Attention must be paid to the levels of the public funding so that the assisted living demonstration sites are able to meet the costs of housing and services as they increase over time. Commission members encourage the Department of Human Services to work together with current facility owners, service providers, consumers, investors and other interested parties to achieve efficient use of state funds in assisted living and preserve access to other private and public funding sources.
 - a. Increasing costs in the areas of insurance and utilities have had a significant negative impact of the budgets of the sites recently. Other challenges on the expense side include achieving and maintaining nearly full occupancy, providing transportation and activity services. Meeting the demands of increasing service need as residents “age in place” is a challenge for assisted living programs, particularly so since increased staffing is the inevitable result of increasing service need.

- b. Residents who are able to avoid higher co-pays through transfers of assets may do so at present, resulting in increases in the amount paid from state funds for the service package. The Commission is recommending that legislation be enacted to establish penalties with regard to eligibility for financial assistance for residential care and assisted living for certain asset transfers, similar to the penalties applicable to reimbursement through the Medicaid program for nursing facility care, and to provide some income set aside for spouses of residents.
- E. Standing at the beginning of a recession of unknown length, Commission members agreed that it is unlikely that State budget resources will ever be sufficient to meet the need for low and moderate-income assisted living. Commission members suggested several approaches to help bridge the gap, including exploring federal funding possibilities, renovating existing residential care facilities or elderly subsidized housing as the physical sites for future assisted living development and exploring ways to increase privacy and autonomy in residential care facilities.

VIII. FINDINGS, RECOMMENDATIONS AND UNRESOLVED ISSUES

At the meetings on November 8 and December 3, the members of the Commission debated the role of assisted living, the role of the State in paying for assisted living, whether the law should recognize a right to “age in place,” the fiscal health of assisted living programs and eligibility for assisted living. After thorough consideration of the issues and recognizing the limits of state funding for assisted living, the Commission makes the following findings and recommendations to the Joint Standing Committee on Health and Human Services and notes the following unresolved issues.

Findings and discussion

- A. The Commission finds that Maine’s assisted living communities are very popular with residents and their families and provide housing and services for which there is great demand.
- B. The Commission finds that Maine’s assisted living laws and accompanying rules can be confusing and cumbersome and should be streamlined, providing better definition, reducing administrative burdens and decreasing costs.
- C. The Commission finds that the financial stability of existing publicly subsidized assisted living and residential care programs and facilities is precarious. Public funding for services is critical, indeed Maine is the only state using both General Fund and Medicaid dollars to provide assisted living services.²⁵ But state funding brings uncertainties and sometimes significant under funding. Costs that skyrocket leave programs at risk, for example recent increases in liability insurance premiums in excess

²⁵ See *supra*, n.6.

of 700%. Flat state service subsidies, combined with restricted rents and inflating operating expenses, result in razor thin profit margins. Operating deficits at individual residential care programs approach \$100,000 per year. Maine has begun funding residential care level assisted living based on the severity of need of the resident. The Commission endorses expanding acuity-based reimbursement to all levels of publicly funded assisted living and periodic review of state funding formulas and funding levels.

- D. The Commission finds that increased non-state financing is needed to support Maine's assisted living programs. A healthy community reflects the diversity of its residents. The Commission notes the need for Maine residents to take financial responsibility for their own long-term care. The Commission also notes the need for increased federal funding for those in need and the benefit of consistent requirements for financial assistance among long-term care programs at the residential care and assisted living levels.

Recommendations

- A. The Commission urges the Joint Standing Committee on Health and Human Services to take the following actions during the Second Regular Session of the 120th Legislature²⁶:
1. Amend Title 22, chapter 1665, Assisted Living Programs, to:
 - a. Retitle the chapter "Assisted Housing Programs;"
 - b. Create from congregate housing levels I and II a new category of independent housing programs with services that will not require licensing;
 - c. Create from congregate housing levels III and IV a new category of assisted living that will require licensing;
 - d. Revise the language on aging in place to clarify that a resident's ability to remain in an assisted housing program depends on the continued match between the resident's service needs and the nature of the program; and
 - e. Correct any necessary cross-references.
 2. Direct the Long-term Care Implementation Committee, established in Public Law 1999, Chapter 731, Section BBBB-15, to oversee the progress of the Department of Human Services and other state agencies in implementing the recommendations of this report, as they may be amended and adopted by the Legislature.
- B. The Commission endorses the periodic review and adjustment of state-funded or state and federal-funded rates in long-term care for providers of housing and services. The Commission requests that the Joint Standing Committee on Health and Human Services give serious consideration to ensuring that reimbursement by the State for long-term care services not fall so far behind the actual allowable costs for those services that underpayment jeopardizes the quality of services or the continuation of services.

²⁶ See *supra*, n. 7.

- C. The Commission requests that the Joint Standing Committee on Health and Human Services discuss with the Department of Human Services, the Department of Behavioral and Developmental Services, the State Fire Marshal's Office and other state agencies options for coordinating housing and service programs and for developing consistent labels for those programs. This will increase the public's understanding of housing and program options and decrease administrative burden and cost. Rules adopted by the departments and the State Fire Marshal's Office should respect the residents' rights to assume some level of risk in their everyday lives, as they would at the homes they lived in prior to moving to assisted housing, and should be mindful of the need to keep overhead costs down so that assisted housing can be affordable.
- D. The Commission requests that the Legislature direct the Department of Human Services to develop a model for acuity-based reimbursement in all state and federally assisted housing programs. This would be done after consultation with interested parties, with the consideration of cost, resident care and other factors and would involve the completion of a time study, funded through the Robert Wood Johnson Foundation grant. Once the acuity-based reimbursement model is developed, the Department would report to the Joint Standing Committee on Health and Human Services on its proposed model.
- E. The Commission recommends that the Legislature direct the Department of Human Services to develop a proposed rule for restricting eligibility for all publicly funded residential care and assisted living services for persons who have transferred assets in violation of the rule. In drafting this rule, the Department should also provide a mechanism to protect from impoverishment the spouse of a recipient of housing or services whose care is paid for wholly or in part with state or federal funds.
- F. The Commission requests that the Legislature direct the Department of Human Services to take the following actions regarding assisted living:
1. Set aside proposed assisted living rule section 74;
 2. Amend the contracts of the publicly subsidized demonstration assisted living sites to protect residents and to provide for performance standards for the sites; and
 3. After the Second Regular Session, when the Legislature has acted on the repeal and re-enactment of Title 22, Chapter 1665, consult with the interested parties and by April 1, 2003 adopt new rules for performance standards for assisted housing programs and for reimbursing publicly-funded assisted housing programs.
- G. The Commission asks the Department of Human Services, the Bureau of Insurance, the area agencies on aging, the Governor's Retirement Industry Advisory Council, the Long-term Care Ombudsman Program and other interested parties to undertake efforts to encourage Maine citizens to take responsibility for their own long-term care costs to the extent that they are able to do so, emphasizing the benefits for the person of purchasing long-term care insurance.

- H. For Maine to maintain a mix of assisted housing programs that are of high quality and that are affordable, the State must work together with residents who can provide for their own housing and services costs. The Commission requests that developers, providers of assisted housing programs and facilities work together with the Bureau of Elder and Adult Services and recipients of assisted living services to take full advantage of all funding sources for the housing and services components, including private pay and other third-party funding and to maximize assistance from state and federal programs. The Bureau of Elder and Adult Services should be vigilant in pursuing methods of accessing federal funds and in applying for Medicaid waivers whenever waivers could benefit assisted housing residents, assisted housing programs and providers or state finances.

Unresolved issues

The Commission identified the following issues as unresolved issues, requiring further work and public discussion.

- A. The availability of Medicaid funding, through the State plan or a waiver, for assisted living housing, meals and services.
- B. Whether assisted living should be based on a social model of long-term care services or on the medical needs of the residents. The social or medical model question impacts the consumer's perception of quality and value of the program and affects the availability of funding sources.
- C. Whether the mental and behavioral health needs of assisted living residents are being met by assisted living programs, and whose responsibility should it be to bear the cost. These same questions of adequacy of service and responsibility to pay apply to transportation and activity services provided by the assisted living programs for their residents.

APPENDIX A

**Authorizing Legislation
Private and Special Law 2001, Chapter 36**

CHAPTER 36
H.P. 653 - L.D. 853

An Act to Ensure Access to Assisted Living Services Programs

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, unless this legislation is enacted as an emergency measure, the Commission to Study Assisted Living will be unable to complete its work in a timely manner; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Commission to Study Assisted Living. There is established the Commission to Study Assisted Living, referred to in this section as the "commission," to study assisted living options for the State in order to develop high-quality, cost-effective assisted living housing and service programs to serve the growing population of elderly and disabled persons in appropriate community center locations across the State.

1. Membership. The commission consists of 21 members appointed as follows:

- A. Four members of the Senate, appointed by the President of the Senate. In making these appointments, preference must be given to members of the Joint Standing Committee on Health and Human Services. The first named Senator serves as Senate chair;
- B. Four members of the House of Representatives, appointed by the Speaker of the House. In making these appointments, preference must be given to members of the Joint Standing Committee on Health and Human Services. The first named member of the House of Representatives serves as House chair;
- C. Five members appointed by the President of the Senate as follows:
 - (1) One person representing older persons; one person representing providers of long-term care, including assisted living services; one person representing developers of assisted living services; one person representing a statewide organization that invests in tax credit financed assisted living programs; and one person representing assisted living services providers;
- D. Five members appointed by the Speaker of the House of Representatives as follows:
 - (1) One person representing providers of affordable assisted living services; one person representing private market providers of assisted living services; one person representing area agencies on aging; one person representing a community-based nonprofit organization that lends money for the development of affordable assisted living programs; and one person representing assisted living services providers;

- E. The Director of the Maine State Housing Authority or the director's designee;
- F. The Director of the State Planning Office within the Executive Department or the director's designee; and
- G. The Director of the Department of Human Services, Bureau of Elder and Adult Services or the director's designee.

State agencies shall provide information and assistance to the commission as required for the performance of its work. These agencies include but are not limited to the Department of Human Services, Bureau of Medical Services; the Department of Economic and Community Development; the Office of the State Fire Marshal; and the Maine Health and Higher Education Facilities Authority.

2. Appointments. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council upon making the appointments. When the appointment of all members is complete, the chairs shall call and convene the first meeting of the commission no later than August 15, 2001.

3. Assisted living philosophy. The commission must be guided by the following philosophy of assisted living.

- A. Assisted living provides congregate residences and services for the elderly and persons with disabilities in homelike settings.
- B. Based on a social model, assisted living emphasizes independence, autonomy and respect for individual residents.
- C. Assisted living provides assistance to residents that is appropriate for their changing needs and that maintains the connections between the residents and their families and communities.

4. Duties. The commission is charged with the following duties.

- A. The commission shall study existing housing and program options for elderly and disabled persons and current and projected population and service requirement data. The commission shall also study and propose changes to existing law to facilitate and properly compensate providers for the delivery of services that allow consumers to choose to remain and reside in an assisted living facility while aging without compromising the quality of care, the safety of consumers or the financial, administrative or residential care capabilities of the providers of assisted living services.
- B. The commission shall develop a comprehensive plan for assisted living in the State that establishes criteria for admissions and staffing and provides for expanded options on the basis of community needs. The plan must address affordability for the State's low-income and moderate-income residents. The plan must include information on the residential and service needs of the aging population, options for service development and delivery, methods of financing and models for state oversight and regulation. The plan must be cost-effective and must maximize the use of private resources.

5. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the commission.

6. Reimbursement. Members of the commission who are Legislators are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for necessary expenses incurred for the attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings.

7. Meetings; report. The commission shall hold 4 meetings. The commission shall submit a report of its work to the Joint Standing Committee on Health and Human Services by December 5, 2001. The Joint Standing Committee on Health and Human Services may report out legislation to the Second Regular Session of the 120th Legislature. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension.

8. Budget. Upon request of the commission, the Executive Director of the Legislative Council or the Executive Director's designee shall promptly provide the commission chairs and staff with a status report on the commission's budget, expenditures incurred and paid and available funds. The commission may not incur expenses that would result in the commission's exceeding its approved budget.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 27, 2001.

APPENDIX B

Membership list, Commission to Study Assisted Living

**COMMISSION TO STUDY ASSISTED LIVING
P & S 2001, 36**

As Of Thursday, October 11, 2001

Appointment(s) by the President

Sen. Jill M. Goldthwait 22 Albert Meadow Bar Harbor, ME 04609 (207)-288-5461 jillgold@acadia.net	Chair	Senate Member
Sen. Marge L. Kilkelly P.O. Box 180 Wiscasset, ME 04578 (207)-882-5410		Senate Member
Sen. Richard Kneeland 153 West Ridge Road Easton, ME 04740-4212 (207)-488-5311		Senate Member
Sen. Peggy A. Pendleton 110 Holmes Road Scarborough, ME 04074 (207)-883-5414		Senate Member
Bob Armstrong, Director Long-Term Care, Bolster Heights 26 Bolster Street Auburn, Maine 04210 barmstrong@cmhc.org		Representing Assisted Living Service Providers
Tim Churchill, CEO Western Maine Health 181 Main Street Norway, Maine 04268 churchillT@wmhcc.org		Representing Providers of Long-Term Care/Assisted Living Services
Joseph M. Cloutier P.O. Box 515 Rockport, Maine 04856 jcloutier@realtyresourcesgroup.com		Representing Developers of Assisted Living Services
David W. Hall P.O. Box 243 Bath, Maine 04530 DAMCOVE@BLAZENETME.NET		Representing Older Persons
Jan McCormick Maine Housing Investment Fund/ Asset 183 Middle Street, 3rd Floor Portland, ME 04101 janmc@maine.rr.com		Representing Statewide Organization Investing in Tax Credit Programs

Appointment(s) by the Speaker

Rep. Thomas J. Kane 39 Oceanside Drive Saco, ME 04072 (207)-934-2066	Chair	House Member
Rep. Joseph E. Brooks 2 Goshen Road Winterport, ME 04496 (207)-223-5041 jbrooks@seniorspectrum.com		House Member

Rep. Glenys P. Lovett
16 Cedarbrook Drive
Scarborough, ME 04074
(207)-883-3030

House Member

Rep. Robert W. Nutting
P.O. Box 100
Oakland, ME 04963
(207)-465-7139

House Member

Ms. Roberta Downey, Executive
Eastern Agency on Aging
450 Essex Street
Bangor, ME 04401
redowney@eaaa.org

Representing an Area Agency on Aging

Mr. Howard Dupee, Senior Program
Coastal Enterprises, Inc.
PO Box 268
Wiscasset, ME 04578
hed@ccimaine.org

Representing a Community Based Non-profit Organization
Lending Money for Development

Mr. Anthony Forgione
Seventy-Five State Street
75 State Street
Portland, ME 04101
n75state@nlis.com

Representing a Private Market Provider of Assisted Living
Services

Ms. Veronica Sheehan, Executive
The Wardwell
43 Middle Street
Saco, ME 04072
Wardwell@qwi.net

Representing an Assisted Living Services Provider

Dana Totman
9 Sumac Drive
Brunswick, Maine 04011
dana@ych.org

Representing a Provider of Affordable Assisted Living
Services

Department Members Pursuant to Law

Christine Gianopoulos, Director
Bureau of Elder & Adult Services
#11 SHS
Augusta, Maine 04333-0011
(207)-624-5335
Christine.gianopoulos@state.me.us

Director, Bureau of Elder and Adult Services, DHS

Designee: Peter Mauro Jr.: Mauro@state.me.us

Michael Montagna
State Planning Office
184 State Street
Augusta, Maine 04333
Michael.montagna@state.me.us

Director, State Planning Office Designee

Don Sharland
Maine State Housing Authority
89 State House Station
Augusta, Maine 04333-0089
(207)-626-4600
dsharland@mainehousing.org

Executive Director, Maine State Housing Authority

Staff: Jane Orbeton, OPLA 287-1670 – jane.orbeton@state.me.us

APPENDIX C
Information on Freese Assisted Living Project

Freese Assisted Living Project

Outline Description

Congregate Type IV Assisted Living

10/25/01

Location:

Ten Water Street (near Merchant's Plaza) Bangor, Maine. Urban central business district, center city location.

Building:

Six-story brick. Formerly Freese Department Store. Thirty-nine one bedroom assisted living apartments located on fourth, fifth and sixth floors.

Entrance from Water Street. Children's museum occupies one half of first three floors. Remaining half to be occupied by commercial tenant. Assisted living lobby located on fourth floor with elevator access from street level entrance.

Building features a three-story atrium with balconies overlooking interior courtyard. Skylights from ceiling provide natural light to open courtyard.

In addition to 39 one-bedroom apartments, the building has resident common areas including dining room, library, service kitchen, office space for staff, medication storage rooms and laundry area.

Rental Information

Project rent up began January 26, 2000.

Rent-up of all 39 apartments completed in 9 months.

Freese Assisted Living Project Description continued

Monthly rental rate is \$419.00 for all 39 apartments with no rent subsidies.

// ~~Two~~ residents do currently have rent subsidies under the housing choice voucher program administered by Bangor Housing Authority and Brewer Housing Authorities. Both residents individually applied for voucher subsidies that enable them to pay only 30% of their monthly income for rent and the Housing Authorities pay the balance of fair market rent with funding from US Department of Housing & Urban Development

First year apartment vacancy rate was 9%.

Number of applications screened per resident during the rent up process – 2:1 actual assisted living need assessments; 3:1 total applications.

Freese Assisted Living Program Services

Assessment and Service coordination

Meals -- Three meals per day served in dining room

Housekeeping & Laundry – weekly and as needed service

Personal Care Assistance – daily as needed

Activities & Recreation – scheduled weekly

Transportation – scheduled as needed

Twenty-four hour unscheduled assistance – by request telephone or electronic call device

Medication Administration – nurse supervision, training and oversight

Freese Assisted Living Project Description continued

Service Package Utilization

Basic Service Package – 22

Basic Service Package:

3 meals per day, housekeeping, laundry, personal care, emergency response, social programs, unscheduled staff assistance available 24 hours per day 7 days per week. Direct personal assistance up to 7 hours per week.

Enhanced Service Package – 11

Same services as above with addition of more than 7 hours per week of direct personal assistance and medication administration.

Maintenance Package – 4

Same services offered in basic package but no personal care or medication administration.

Service Package Costs

Basic - \$1,150 per month
Enhanced - \$1,646 per month
Maintenance - \$620 per month

Average resident service co-payment cost – \$254 per month.

Resident Profile

Resident Incomes	Income Caps
14 residents have incomes at or below 30% of Area Median Income	\$8,950
16 residents have incomes at or below 40% of Area Median Income	\$11,920
4 residents have incomes at or below 50% of Area Median Income	\$14,900
3 residents have incomes at or below 60% of Area Median Income	\$17,880

Medicaid Beneficiaries

Eleven of 37 current residents receive Medicaid benefits.

Resident Average Annual Income - \$9,784

Freese Assisted Living Project Description continued

Town -- area of prior residency

Bangor -- Brewer -- 72%
Surrounding towns -- 21%
Out of State -- 9%

Age

Elders age 60 and above -- 33
Average age -- 82
Persons under age 60 -- 4 (disabled)

Gender

Women -- 24
Men -- 13

Own/operate motor vehicle - 2

Resident Functional Need Profile

Short term memory loss -- 57%
Incontinent -- 22%
Uses walker or wheelchair -- 78%
Needs mental health services or displays behaviors needing staff support -- 27%
Takes medication for anxiety disorders or depression -- 46%
Needs medication administration assistance -- 16%
Utilizes services -- 95 -- 100%

Project operating experience for first 12 months.

Average number of residents hospitalized per month -- 3.75
Average length of hospital stay -- 13.50 days per month

Number of resident discharges -- 9

Reason for discharge:

Deceased -- 4
Nursing Care -- 2
Residential Care -- 1
Family/Individual -- 2
 Family to receive full time hospice care
 Individual apartment with extensive mental health services

Freese Assisted Living Project Description continued

Freese Project Staffing Plan – annual staff turnover – 19%

Certified Residential Medication Aide (CRMA) Staff positions cover 7 day – 24 hour per day weekly schedules.

Position	Hours per week
Resident Services Director	40
Activities Director	30
Nurse Consultant	16
CRMA 1 st Shift	40
CRMA 1 st Shift	30
CRMA 1 st Shift	32
CRMA 1 st Shift	20
CRMA 1 st Shift	40
CRMA 1 st Shift	24
CRMA 2 nd Shift	19
CRMA 2 nd Shift	19
CRMA 2 nd Shift	40
CRMA 2 nd Shift	38
CRMA 3 rd Shift	30
CRMA 2 nd Shift	40
Dietary Coordinator	30
Dietary Coordinator	12

*Freese Assisted Living
Proforma Income and Expense Statement*

Original Proforma vs Actual 2001 vs Projected 2004

	Annual Inflation factor	Original Proforma 2001	Original Proforma 2015	Actual 2001 Estimated	Annual per Unit	Monthly per Unit	Percentage of Gross Income	Projected 2004	
Rental Income									
Potential Gross Rental Income	2.00%	204,000	269,190	195,470	5,012	418	107%	214,280	
Vacancy Loss	2.00%	(10,200)	(13,460)	(18,000)	(462)	(38)	-10%	(10,710)	
Laundry & Interest Income	5.00%	1,770	2,330	4,400	113	9		4,000	
EFFECTIVE GROSS INCOME		195,570	258,060	181,870	4,663	389	100%	207,570	
Operating Expenses									
Management & Admin	2.00%	21,420	28,260	25,700	659	55	14%	26,480	
Utilities	3.25%	44,110	69,020	95,200	2,441	203	52%	82,880	
Maintenance & Repairs	3.25%	34,120	53,400	34,100	874	73	19%	37,530	
Taxes, Insurance Other	3.25%	40,660	63,630	38,700	992	83	21%	42,600	
SUBTOTAL OPERATING EXPENSE	3.07%	140,310	214,310	193,700	4,967	414	107%	189,490	
Replacement Reserve Deposits	0.00%	11,700	11,700	11,700	300	25	6%	11,700	
Net Operating Income		43,560	32,050	(23,530)	(603)	(50)		6,380	
Debt Service		37,080	37,080	37,080	951	79	20%	37,080	
Total Operating Costs		189,090	263,090	242,480	6,217	518	133%	238,270	
NET CASH FLOW		6,480	(5,030)	(60,610)			-33%	(30,700)	
CASH FLOW DEFICITS PROJECTED TO BE COVERED BY OPERATING DEFICIT RESERVE, but actual 2001 in debate									
Reserves accrue interest at projected inflation factor									
Replacement Reserve	3.00%								
Beginning Balance at start of year		11,700	1,100	9,779				46,850	
Ending balance		23,750	12,830	16,720				(50)	
Operating Deficit Reserve	3.00%								
Beginning Balance at start of year		90,570	142,190	93,769				27,560	
Ending Balance		93,740	141,430	99,271				(2,300)	

NOTE 2001 Actual based on 3Q 01 data annualized

NOTE: The above information is based on a 3% annual inflation rate and based on projections in utility expense

APPENDIX D

Letter from Jan McCormick, New Hampshire and Maine Housing Investment Fund



NEW HAMPSHIRE + MAINE
HOUSING INVESTMENT FUND

RECEIVED
SEP 18 2001

September 17, 2001

Jane Orbeton
Office of Policy and Legal Analysis
Maine State Legislature
Statehouse Station 13
Augusta, ME 04333

Re: Commission to Study Assisted Living

Dear Jane:

In response to your memo dated September 10th, I would like to take advantage of your offer to share background material prior to our first meeting. Because I represent investors in tax credits, I think it's useful to give the Commission members some basic information about that form of housing capital.

Enclosed please find an "introduction to tax credits" for inclusion in your initial mailing.

I look forward to meeting and working with you.

Cordially,

Jan McCormick
Director of Asset Management

INTRODUCTION TO TAX CREDIT FINANCING
For the Commission to Study Assisted Living September 2001

The Low Income Housing Tax Credit (or "LIHTC") is a federal program established by the Tax Reform Act of 1986. It is the only federal program which currently supports construction of new affordable housing. The program provides tax credits to owners and investors of low income rental housing, primarily apartments. Ultimately the investors' payment for such credits increases equity capital to such developments, reducing the need for debt and thus enabling owners to reduce monthly rents needed to repay debt. The program is administered by the Internal Revenue Service, which delegates authority to state housing finance agencies such as Maine State Housing Authority (or "MSHA") to allocate annual credits in a competitive process among developers. MSHA also is responsible for monitoring compliance by property owners with the LIHTC regulations during a 15-year period for which project rents are restricted. Typically MSHA and other state agencies require much longer restricted rent periods to maximize affordability to low income residents, currently at least 30 years in Maine.

The federal affordability restrictions limit maximum tenant incomes to 50% or 60% of area median incomes (or "AMI", published annually by HUD). Low income apartment rents may not exceed 30% of the applicable AMI, adjusted for specified household size. The estimated cost of tenant-paid utilities counts toward calculation of maximum rents. While the federal LIHTC rules require a minimum percentage of apartments in a project to be rent-restricted (up to 40% of the total units), the state's affordability covenants are typically more severe. MSHA has required tenant incomes as low as 30% of AMI and many tax credit financed projects are 100% low income.

The rental stream is thus limited, based on regional economic factors, and its growth over 15 or 30 years is restricted to annual inflation of area incomes, which may be quite modest. The LIHTC program offers no rent subsidy to tenants, nor does it provide any operating subsidy to owners to defray the costs of running such properties. A significant concern to owners and investors is the potential erosion of operating margins over time (hence long term viability of the properties), as project revenues stay fairly flat while expenses rise. A spike in heating fuel and snow removal costs during the 2000-2001 winter exemplified this issue. Therefore, much care is given to the underwriting and structuring of new tax credit investments, and developers are always required to reserve funds toward future operating and capital expenses.

However, developers and their capital sources, including MSHA, can be creative in cobbling together myriad sources of private and public capital, both debt and equity. Tax credits alone do not provide funds sufficient to pay all development costs or to reduce operating costs to the point where they can be covered by the program's restricted rents. Therefore, developers often seek additional subsidized funding to make low-income housing projects financially feasible. In some cases, project based Section 8 vouchers may be granted to stabilize a prospective property's operating foundation. Of course, all proactive owners seek to maximize the use of tenants' "portable" Section 8 vouchers, in order to house the neediest of tenants. Such rent subsidies are not automatic and represent a limited resource, so Section 8 is not a panacea to the operating gap problem.

Typically, the largest single source of capital in developing affordable housing is equity capital provided by the sale of tax credits. The tax credit is a dollar-for-dollar reduction in the federal

income tax liability of property owners. Developers of LIHTC projects may be for-profit or non-profit, and in either case would not likely be able to use tax credits themselves. Therefore, they sell their credits to investors, who enter limited partnerships with the developers in order to participate in the ownership. Investors traditionally have been banks and other financial service institutions, as well as large corporations. As the tax credit market has matured, investor yields have declined, and corporate investors have, to a large extent, dropped out of new activity. Other than FannieMae and Freddie Mac, banks remain the biggest consumers of low income housing tax credits, since they achieve additional benefits from Community Reinvestment Act regulations and they support local community development.

Often the investors purchase tax credits awarded to developers through the intermediation of syndicators, who pool investor capital to buy into the ownership structure of individual properties. Such syndicators may be for-profit and operate nationally, active in major cities and very large projects. Other syndicators are non-profit and focus on smaller real estate markets, smaller properties, and often partnering with non-profit developers. In either case, syndicators fulfill two key roles: delivering private capital to sustain new housing development opportunities and managing the resulting asset portfolios over a long term on behalf of investors.

Developers may qualify for an award of tax credits to construct new apartments, rehabilitate properties in poor condition, acquire existing buildings, or to supplement other federally subsidized financing such as tax exempt mortgage loans. MSHA defines annually the criteria by which prospective developments may compete for credits, through a *Qualified Allocation Plan* (or "QAP"). Applicants for annual awards of tax credits are thus scored on the basis of many factors, such as the number of low-income units to be produced, the depth of low income tenants to be served, amenities and services to be provided to tenants, geographic location versus local demand for affordable apartments, and reasonableness of total development costs.

The amount of tax credit allocated for an individual project is based on certain eligible costs of developing the property. Having won a tax credit allocation in a given year, the developer/owner will claim that dollar amount annually over ten years. Thus the tax credit benefit is a 10x multiple of the annual allocation from MSHA. Since the investor's equity contribution correlates to the total tax credit benefit, private capital leverages scarce public resources.

The size of Maine's tax credit industry is growing, due to a 2001 change in the federal program which increased the state's annual allotment from \$1.25 per capita (or approximately \$1.5 million in 2000) to a maximum \$2 million. Only the first year amount of the ten years' tax credits awarded to specific property owners counts toward this annual volume cap. In 2000, MSHA allocated over \$1.46 million in tax credits to five properties providing 155 new affordable apartments across the state, of which 25% were targeted for elderly occupancy and the remainder for families.

Jan McCormick
Maine Housing Investment Fund

Sources: Joseph Guggenheim, *Tax Credits for Low Income Housing 11th edition*
MSHA
Dennis Lagueux, Banknorth

APPENDIX E
Legislation proposed by the Commission to Study Assisted Living

Legislation Proposed by the Commission to Study Assisted Living

Sec. 1. 22 MRS chapter 1665 is repealed.

Sec. 2. 22 MRS chapter 1664 is enacted to read:

CHAPTER 1664 ASSISTED HOUSING PROGRAMS

§ 7851. Assisted housing living programs ~~and services authorized~~
(Former 7901-B)

Assisted housing living programs ~~and services~~ are authorized under this chapter in the following settings and subject to the following standards and ~~in the following settings~~ licensure requirements.

1. Standards. Assisted housing living programs further the independence of the resident and respect the privacy and personal choices of the resident, including the choice to continue to reside at home ~~as the resident ages, except when that choice would pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others~~ so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs living services provided to residents must be consumer oriented and meet professional standards of quality.

2. Settings. Assisted housing living services programs may be provided in the following settings:

~~A. Congregate housing operating under this chapter. A congregate housing program providing assisted living services may operate under the following licensing requirements for models of assisted living.~~

~~(1) A license is not required for providers operating congregate housing.~~

~~(2) A license is optional for providers operating congregate housing with personal care assistance.~~

~~(3) A license is required for providers operating congregate housing with personal care assistance and administration of medication.~~

~~(4) A license is required for providers operating congregate housing with nursing services including personal care assistance and administration of medication; and~~

~~B. Residential care facilities licensed under chapter 1663.~~

A. Independent housing with services programs, as defined in section 7852, subsection 3;

B. Assisted living programs, as defined in section 7852, subsection 5; or

C. Residential care facilities, as defined in section 7852, subsection 13.

3. Licensure requirements. Independent housing with services programs are not subject to licensure. Licensure of assisted living programs is governed by section 7801, subsection 1. Licensure of residential care facilities is governed by section 7801, subsections 1 and 3.

§ 7852. Definitions
(Former 7901-C)

As used in this ~~sub~~ chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Activities of daily living. "Activities of daily living" means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.

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.

3. Independent housing with services program. "Independent housing with services program" means a program of assisted housing services, as defined in subsection 4, 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.

4. Assisted housing services. "Assisted housing services" means the provision by an assisted housing program, of housing, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities.

5. Assisted living program. "Assisted living program" means a program of assisted living services, as defined in subsection 6, 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. Assisted living services. "Assisted living services" means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services with the addition of medication administration or medication administration and nursing services.

~~**3. Congregate housing.** "Congregate housing" means residential housing that consists of private-dwelling units with an individual bathroom and an individual food preparation area, in addition to central dining facilities, and within which a congregate housing supportive services program serves occupants.~~

~~———— **4. Congregate housing services program.** "Congregate housing services program" means a comprehensive program of supportive services, including meals, housekeeping and chore assistance, case-management and other services that are delivered on the site of congregate housing and assist occupants to manage the activities of daily living and the instrumental activities of daily living. Congregate housing services may also include personal care assistance, with or without supervision, assistance in the administration of medication and nursing services subject to the licensing requirements of chapter 1663.~~

5. 7. Instrumental activities of daily living. "Instrumental activities of daily living" include but are not limited to preparation or receipt of a main meal preparation, taking medication, using the telephone, handling finances, banking, and shopping, light housekeeping, heavy housekeeping routine housework, laundry and getting to appointments.

6. 8. Long-term care facility. "Long-term care facility" means any ~~program of~~ assisted living housing program licensed pursuant to chapters 1663 and ~~1665~~ 1664 and any nursing facility or unit licensed pursuant to chapter 405.

~~7. 9. Mobile nonambulatory.~~ "Mobile nonambulatory," as applied to a resident of a residential care facility with 6 or fewer beds, means being able to transfer independently and able to evacuate a facility in less than 2 1/2 minutes with the assistance of another person throughout the evacuation procedure.

~~8. 10. Nursing services.~~ "Nursing services" means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2, ~~including personal care assistance and administration of medication.~~ For the purposes of this subtitle chapter, "nursing services" includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel in ~~group residential settings consisting of private apartments~~ assisted living programs.

~~9. Personal care assistance.~~ "Personal care assistance" means services provided in ~~group residential settings consisting of private apartments including assistance with the activities of daily living and the instrumental activities of daily living and supervision of residents self-administering medication.~~ "Personal care assistance" does not include the administration of medication.

~~10. Personal care assistance with administration of medication.~~ "Personal care assistance with administration of medication" means personal care assistance that includes the administration of medication to the resident by ~~provider staff~~.

~~11. 11. Private apartment.~~ "Private apartment" means a private dwelling unit with an individual bedroom, an individual bathroom and an individual food preparation area.

~~12. Resident of residential care facility.~~ "Resident of residential care facility" means ~~any person 18 years of age or older who is not related by blood or marriage to the owner or person in charge of the facility in which the resident lives and receives assisted living services.~~

12. Resident. "Resident" means any person 18 years of age or older who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services.

~~13. Residential care.~~ "Residential care" means care that is ~~greater than that necessarily attendant upon mere eating and lodging services but is less than that attendant upon nursing home care or hospital care.~~ "Residential care" may include personal supervision, protection from environmental hazards, diet care, care concerning grooming, hand and foot care, skin care, mouth and teeth care, shampooing, bathing, assistance in ambulation, supervision and assistance in the administration of medications, diversional or motivational activities, stimulation of or assistance in activities of daily living or physical exercise and limited nursing services.

~~14. 13. 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 as defined in subsection ~~2 4.~~ Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. A "residential care facility" includes, but is not limited to, facilities formerly defined and regulated as adult foster care homes and boarding homes under former section 7901 A and adult family care homes regulated under this chapter. "Residential care facility" does not include a licensed nursing home, a supported living arrangement certified by the Department of Behavioral and Developmental Services ~~Mental Health, Mental Retardation and Substance Abuse Services or congregate housing.~~

~~15. 14. Shared staffing.~~ "Shared staffing" means the use of licensed and unlicensed personnel who are employed, directly or under a contract, by a long-term care facility in more than one level of care provided by a single entity on the same premises.

§ 7853. Rules

(Formerly 7902-A)

The commissioner shall adopt rules for assisted living housing programs pursuant to Title 5, chapter 375, subchapter II-A. Rules adopted pursuant to this section are major substantive rules.

1. Consultation. The rules must be developed in consultation with the long-term care ombudsman program, consumer representatives and providers of the type of assisted living housing services program to which the rules will apply.

2. Subject matter. The rules must include but are not limited to administration, quality of care and treatment, if applicable, level and qualifications of staff, rights of residents, contracts, administration of medication, available public and private sources of payment, health and safety of residents and staff, community relations and licensing procedures.

3. Administration of medication rules. In adopting the rules for administration of medication, the commissioner shall consider, among other factors, the general health of the persons likely to receive medication, and the numbers of persons served and employed by the facility. The department may require unlicensed personnel to have successfully completed a program of training and instruction, approved by the department for the administration of medication, that is not limited to in-service training.

4. Residential care rules. The commissioner shall adopt rules for the various levels of residential care facilities. In addition to the subject matter of the rules listed in subsection 2, the rules must include criteria for placement of residents who are 17 years of age or older and under 18 years of age qualify for services as a minor and those who qualify for services as adults and as persons with disabilities.

5. ~~Congregate housing~~ Independent housing with services program and assisted living program rules. The commissioner shall adopt rules for ~~the various types of congregate housing services~~ independent housing with services programs and assisted living programs. In addition to the subject matter of rules listed in subsection 2, the rules must recognize and promote the efficiencies inherent in providing services in ~~a congregate~~ the applicable setting with respect to staffing and other responsibilities, while ensuring quality of care and safety. The rules must set requirements and standards for services rendered in ~~congregate~~ the applicable settings that recognize the differences between those settings and private homes served pursuant to chapter 419. The rules must permit staff in ~~congregate housing services~~ assisted housing programs to be shared in accordance with section 1812-C, subsection 6-A and section 7914.

6. Applicability of residents' rights rules. Any rules adopted pursuant to this section pertaining to residents' rights are applicable to ~~both licensed and unlicensed assisted living service~~ independent housing with services programs and assisted living programs.

§ 7854. Fees for licensure

(Former 7903)

The department shall charge annual fees for licensure of residential care facilities and ~~congregate housing services~~ assisted living programs as follows:

1. Fees for residential care. Ten dollars per licensed bed for residential care facilities; and

2. Fees for ~~congregate housing services~~ assisted living programs. Fees The fee to be licensed as an ~~congregate housing services~~ assisted living programs are is \$200. as follows:

~~A. To provide personal care assistance, \$50;—~~

~~B. To provide personal care assistance with administration of medication, \$100; and~~

~~C. To provide nursing services, \$200.~~

§7855. Fire safety inspection for residential care facilities

(Former 7904-A)

1. Inspection required. A license may not be issued by the department to a residential care facility until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392, to make fire safety inspections. This statement, which must indicate that the residential care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452, must be furnished annually to the department.

2. Fees. The department shall establish and pay reasonable fees to the Commissioner of Public Safety or municipal official for each such inspection.

3. Requirements for facilities with 17 or more beds. A residential care facility that has a capacity of 17 or more beds must comply with the Life Safety Code, chapter or 23, the residential board and care occupancies sections for large facilities, adopted by the Commissioner of Public Safety. In addition, the following requirement must be met.

A. A building of 2 or more stories must be equipped with an approved automatic sprinkler system unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

4. Requirements for facilities with more than 6 but fewer than 17 beds. A residential care facility that has a capacity of more than 6 but fewer than 17 beds must comply with the Life Safety Code, chapter or 23, the residential board and care occupancies sections for small facilities, adopted by the Commissioner of Public Safety. In addition, the following requirements must be met.

A. A building of 2 or more stories must be equipped with an approved automatic sprinkler system unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

B. Automatic emergency lights must be provided in the number and location required by the Commissioner of Public Safety.

5. Requirements for residential care facilities with 6 or fewer beds. The department may permit any residential care facility having 6 or fewer ambulatory residents who can evacuate the facility without the assistance of another person in 2 minutes or less to comply with the one-family and 2-family dwelling requirements of the Life Safety Code.

~~6. Adult foster homes with one to 4 ambulatory residents.~~

7. 6. Local regulations. A local regulation that affects the life-safety requirements of a residential care facility and that is more stringent than those referred to in this section takes precedence.

§ 7856. Fire safety inspection for ~~congregate housing services facilities~~ assisted living programs

(Former 7904-B)

In accordance with this section, the department shall adopt rules pursuant to Title 5, chapter 375 for the inspection of ~~licensed congregate housing facilities~~ assisted living programs as defined in section 7852.

subsection 5, by the Commissioner of Public Safety or the commissioner's designee and the fees for that inspection. Rules regarding fees adopted pursuant to this section are major substantive rules as defined by Title 5, chapter 375, subchapter II-A.

1. Permits; inspection. Construction and renovation of ~~congregate housing facilities~~ assisted living programs require a construction permit from the Commissioner of Public Safety. Prior to licensure all ~~congregate housing facilities~~ assisted living programs must be inspected by the Commissioner of Public Safety or the commissioner's designee at the request of the department. All ~~licensed congregate housing facilities~~ assisted living programs must be inspected upon performing renovations and must be reinspected every 2 years.

2. Certificate of compliance. The Commissioner of Public Safety shall issue a certificate of compliance to the department.

3. Requirements. All ~~licensed congregate housing facilities~~ assisted living programs must be inspected using Chapter 18, New Apartment Buildings, of the National Fire Protection Association Life Safety Code 101, 1994 edition and must be protected throughout by an approved, supervised, automatic sprinkler system.

§ 7857. Personal funds of residents (Former 7905)

1. Permission to manage personal funds. An operator or agent of a ~~residential care facility~~ an assisted housing program may not manage, hold or deposit in a financial institution the personal funds of a resident of the facility unless the operator or agent has received written permission from:

- A. The resident, if the resident has no guardian, trustee or conservator;
- B. The resident's guardian, trustee or conservator, if that person exists and can be reached; or
- C. The department, if a guardian, trustee or conservator exists but can not be reached.

2. Itemized accounting. An operator or agent who, after receiving written permission pursuant to subsection 1, manages or holds the personal funds of a resident shall maintain an account for these funds, which must include for each resident a separate, itemized accounting for the use of that resident's personal funds with supporting documentation for every expenditure in excess of \$2.

3. Depositing personal funds. The department may require an operator or agent of a ~~residential care facility~~ an assisted housing program to deposit in a financial institution the personal funds of a resident if the resident has a guardian, trustee or conservator who can not be reached.

4. Use of personal funds by operator prohibited. Under no circumstances may an operator or agent of a ~~residential care facility~~ an assisted housing program use the personal funds of a resident for the operating costs of the facility or for services or items that are ~~reimbursable on a reasonable cost basis~~ reimbursed by a third party. The personal funds of a resident may not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, a member of the owner's family or an employee of the facility.

§ 7858. ~~Boarding~~ Certain residential care payments (Former 7909)

The department shall:

1. ~~Former adult foster homes. Facilities with 4 or fewer beds.~~ Reimburse all facilities of up to 4 beds ~~formerly called adult foster homes~~, at a rate of at least \$433 per month; and

2. Residential care payments. Facilities with 5 or 6 beds. Reimburse all residential care facilities of 5 or 6 beds whose residents do not have severe mental or physical dysfunction or disability on a flat rate basis of at least \$601 per month.

§ 7859. Residents' records
(Former 7909)

Whenever there are pertinent and available health and other records about a person who seeks admission as a resident to a residential care facility, those records must be provided to the administrator of the facility at least 7 days prior to the date of admission, unless there are compelling reasons that make this impossible or impractical. If there are compelling reasons, including, but not limited to, emergency situations, the administrator must receive, by not later than the date of admission, a written note that:

1. Reasons explained. Explains the compelling reasons why the records could not be provided 7 days prior to the date of admission; and

2. When records will be provided. If the records have not yet been received, shall state by when the records will be provided.

Nothing in this section may be construed to mean that a resident who is not a client of the Department of Human Services or the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral and Developmental Services shall be required, as a condition of admission, to provide records to the administrator of the facility.

§ 7860. Nonambulatory and mobile nonambulatory residents; permanently disabled residents
(Former 7912-A)

A residential care facility that has 8 or fewer beds may not have residents who are nonambulatory or mobile nonambulatory unless the reason for the condition is temporary except as follows.

1. General requirements. The Department of Human Services may permit up to 2 beds in the facility for nonambulatory or mobile nonambulatory residents if the following conditions are met.

A. The facility conforms to the residential board and care occupancy section for small facilities of the National Fire Protection Association Life Safety Code as adopted by the Commissioner of Public Safety. Facilities with 5 or more beds must be provided with an interconnected smoke detection system and must be protected throughout by an approved automatic sprinkler system.

B. There are no more than 2 mobile nonambulatory or one nonambulatory and one mobile nonambulatory residents. Any facility housing more than one nonambulatory resident must meet the requirements of subsection 2.

C. All nonambulatory and mobile nonambulatory residents must be housed on the first floor of the facility.

D. Facilities must be ramped to grade at one exit.

E. There must be at least one staff person available on the premises of the facility when any resident is present. Additional staff may be required at night at the direction of the Commissioner of Public Safety.

F. For facilities with 6 or fewer beds, the requirement for manual alarm activation may be waived at the discretion of the Commissioner of Public Safety.

2. Requirements when number of nonambulatory or mobile nonambulatory residents exceeds limits. Residential care facilities may provide services to more residents who are nonambulatory or mobile nonambulatory than allowed under subsection 1 if, in addition to those requirements:

A. The structure meets all the requirements of the residential board and care occupancy section for small facilities of the National Fire Protection Association Life Safety Code, Residential Board and Care chapters. The structure must be protected throughout with an approved sprinkler system. Additional staff may be required at the direction of the Commissioner of Public Safety.

§ 7861. Shared staffing
(Former 7914)

The department shall permit staff in residential care facilities to be shared with other levels of ~~assisted-living~~ assisted housing on the same premises as long as there is a clear, documented audit trail and the staffing in the residential care facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the ~~assisted living~~ assisted housing program.

§ 7862. Administration of ~~congregate housing services~~ assisted housing programs funded by the State; eligible clients
(Former 7915)

The Department of Human Services, Bureau of Elder and Adult Services, with advice from the Maine State Housing Authority, the Rural Housing Services or any other housing agency financing the ~~congregate housing facility~~ assisted housing program, shall administer state-funded ~~congregate housing services~~ assisted housing programs. Administration must include, but is not limited to:

- 1. Rules; ~~operation of congregate housing services~~ payment for assisted housing programs.** Adopting rules governing the services to be provided under ~~congregate housing services~~ assisted housing programs paid for with state funds. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A;
- 2. Compliance with standards and guidelines.** Reviewing the compliance of ~~congregate housing services~~ assisted housing programs with standards and guidelines established for the program; and
- 3. Awarding of grants.** Awarding of grants, when available and necessary, to subsidize the cost of ~~congregate housing services~~ assisted housing programs for eligible clients.

For the purposes of this subsection, "eligible clients" means adults who have been determined through an approved assessment by the department to be functionally or cognitively impaired and in need of financial assistance to access ~~congregate housing services~~ assisted housing programs.

SUMMARY

This bill repeals Title 22, chapter 1665, on assisted living programs and re-enacts it as chapter 1664. It changes the name of the title to assisted housing programs, dividing the programs into independent housing with services, assisted living and residential care. It updates the definitions of activities of daily living and instrumental activities of daily living. It updates the chapter to reflect the 3 categories of assisted housing programs.

APPENDIX F
Chart, Current Categories of Assisted Living, December 2001

Current Categories of Assisted Living

	Congregate				Residential Care	Adult Family Care Home
	Type I	Type II	Type III	Type IV		
Housing	Private Apartment	Private Apartment	Private Apartment	Private Apartment	Private or Shared Room and Bath	Private or Shared Room and Bath
Services	One Meal/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation	One Meal/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation Personal Emergency Response Personal Assistance	Two-Three Meals/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation Personal Assistance Health Monitoring Medication Admin. Unscheduled Assist 24 Hour Staffing	Two-Three Meals/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation Personal Assistance Health monitoring Medication Admin. Unscheduled Assist 24 Hour Staffing Intermittent Nursing Service	Three Meals/day Housekeeping Laundry Social Service Transportation Activities Personal Assistance Health Monitoring Medication Admin. Unscheduled Assist. 24 Hour Staffing Intermittent Nursing Service	Three Meals/day Housekeeping Laundry Social Service Transportation Activities Personal Assistance Health Monitoring Medication Admin. Unscheduled Assist. 24 Hour Staffing Intermittent Nursing Service
License Type	Not Licensed	Congregate Type II (Optional)	Congregate Type III	Congregate Type IV	RC Level I RC Level I Plus RC Level II	AFCH
# of Subsidized Sites	N/A	60	1	6	130	21

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APPENDIX G
Chart, Independent Housing, Assisted Living and Care Options for Maine Elders

Independent Housing, Assisted Living and Care Options for Maine Elders

County	Independent Apartments		Congregate Types I & II		Congregate Types III & IV		Adult Family Care Homes		Residential Care	
	Facilities	Apartments	Facilities	Apartments	Facilities	Apartments	Facilities	Rooms	Facilities	
Androscoggin	23	1,260	5		2	99	2	11	17	
Aroostock	64	1,532	11				1	5	14	
Cumberland	56	3,161	15		6	327	1	6	32	
Franklin	15	352	3		1	12	2	10	4	
Hancock	23	661	11		0	0	1	5	7	
Kennebec	25	889	1		2	71	2	10	18	
Knox	18	405	6		1	30	1	6	7	
Lincoln	9	205	2		1	24	2	12	5	
Oxford	29	728							7	
Penobscot	63	1,646	12		2	59	1	5	17	
Piscataquis	14	344	1						1	
Sagadahoc	12	345			1	84			3	
Somerset	16	316					1	5	5	
Waldo	9	206					1	5	1	
Washington	30	699	1				4	21	7	
York	50	1,512	3		4	163	1	5	25	
Totals	456	14,261	71		20	869	20	106	170	

APPENDIX H
Chart, Proposed Categories of Assisted Housing Programs, December 2001

Proposed Categories of Assisted Housing Programs

	Independent Housing With Services	Assisted Living	Residential Care
Housing	Private Apartment	Private Apartment	Private or Shared Room and Bath
Services	One Meal/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation Personal Emergency Response Personal Assistance	Two-Three Meals/day Housekeeping Laundry Chore Service Service Coord. Transportation Recreation Personal Assistance Health monitoring Medication Admin. Unscheduled Assist 24 Hour Staffing Intermittent Nursing Service	Three Meals/day Housekeeping Laundry Social Service Transportation Activities Personal Assistance Health Monitoring Medication Admin. Unscheduled Assist. 24 Hour Staffing Intermittent Nursing Service
License Type	Not Licensed	Assisted Living	Adult Family Care Homes RC Level I RC Level I Plus RC Level II
# of Subsidized Sites	60	7	151

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