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H.P. 1252

House of Representatives, December 23, 2011

An Act To Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2011. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative STRANG BURGESS of Cumberland.
Cosponsored by Senator McCORMICK of Kennebec and
Representatives: EVES of North Berwick, FOSSEL of Alna, O'CONNOR of Berwick,
SANBORN of Gorham, SANDERSON of Chelsea, SIROCKI of Scarborough, Senators:
CRAVEN of Androscoggin, FARNHAM of Penobscot.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** nursing facilities are required by applicable rules to provide adequate staff
4 to meet residents' needs at all times and are subject to effective sanctions to ensure that
5 such staffing is provided continuously; and

6 **Whereas,** in addition to the requirement of staffing to meet needs, the current rules
7 of the Department of Health and Human Services require fixed ratios of staff to residents,
8 specific to each of 3 8-hour shifts per day; and

9 **Whereas,** these fixed-ratio requirements do not ensure quality care but may impose
10 arbitrary staffing costs on facilities at times when such staffing is not required to meet
11 needs, even though, over a 24-hour period, more than these minimum ratios may be
12 maintained in order to meet all residents' needs; and

13 **Whereas,** the fixed-ratio requirements specific to each shift may therefore impose
14 unnecessary costs on facilities and thus on the MaineCare program, while placing
15 unnecessary stress on the limited supply of qualified nursing staff and thereby
16 inadvertently creating barriers to high-quality service at other times of day when more
17 staff may be desirable; and

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

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

23 **Sec. 1. 22 MRSA §1812-C, sub-§6,** as enacted by PL 1987, c. 195, §2, is
24 repealed and the following enacted in its place:

25 **6. Rules; maintenance of approved staffing pattern.** The department shall adopt
26 rules governing staffing patterns in accordance with this subsection.

27 A. The department shall revise its rules or adopt rules to require documentation when
28 any nursing facility receives reimbursement for an approved staffing pattern that
29 exceeds the minimum staffing level and fails to meet that approved staffing level for
30 one year.

31 B. Rules adopted by the department governing licensing and functioning of nursing
32 facilities may not contain minimum numerical staffing requirements that are specific
33 to each 8-hour shift but may specify numerical ratios on the basis of average direct
34 care hours per resident in a 24-hour period or greater. The department may adopt
35 additional rules other than rules imposing numerical ratios as needed to encourage
36 person-centered care, increase quality and improve efficiency while requiring that at
37 all times of the day staffing remains adequate to meet residents' needs. In adopting
38 rules to implement this paragraph, the department may consider and modify as
39 appropriate the definitions of direct care hours and other variables relevant to

1 computing practical, meaningful staffing standards. Rules adopted or amended
2 pursuant to this paragraph are major substantive rules as defined in Title 5, chapter
3 375, subchapter 2-A.

4 Failure to meet the minimum staffing requirements as set forth in department rules
5 governing the licensure of nursing facilities is cause for licensure sanctions permitted
6 under law and rules.

7 **Sec. 2. PL 1999, c. 731, Pt. BBBB, §11** is repealed.

8 **Sec. 3. Stakeholder working group.** As soon as practicable following the
9 effective date of this Act, the Department of Health and Human Services shall convene a
10 working group to formulate recommended amendments to its rules to comply with the
11 requirements of the Maine Revised Statutes, Title 22, section 1812-C, subsection 6,
12 paragraph B. The department shall invite the participation of the Maine Long-Term Care
13 Ombudsman Program, the Maine Health Care Association, LeadingAge of Maine and
14 New Hampshire, the Alzheimer's Association, Maine Chapter and other interested
15 stakeholders identified by the department. The department shall provide staffing
16 assistance to the working group using existing resources and shall assist the working
17 group in completing its analysis and recommendations within 90 days of the working
18 group's first convening. The department shall issue proposed rules to comply with Title
19 22, section 1812-C, subsection 6, paragraph B that are consistent with the
20 recommendations of the working group within 30 days following the issuance of those
21 recommendations.

22 **Emergency clause.** In view of the emergency cited in the preamble, this
23 legislation takes effect when approved.

24 **SUMMARY**

25 Currently, nursing home staffing ratios are calculated based on individual 8-hour
26 shifts. This bill requires the Department of Health and Human Services to develop
27 alternative staffing ratios that encourage person-centered care, increase quality and
28 improve efficiency by developing a standard calculated over a 24-hour period. Nursing
29 homes would still ultimately be required to staff according to residents' needs.

30 The bill directs the department to convene a working group to develop such a
31 standard and to invite the participation of representatives of the Maine Long-Term Care
32 Ombudsman Program, the Maine Health Care Association, LeadingAge of Maine and
33 New Hampshire, the Alzheimer's Association, Maine Chapter and other interested
34 stakeholders. The bill provides that amendments to the licensing rules are major
35 substantive rules.