

**Commission to Study Long-term Care Facilities  
Agenda for Meeting, October 11, 2013  
Cross Office Building Room 209, 9am to 4pm**

1. Welcome and introduction of commission members and commission staff
2. Review of Resolve 2013, Chapter 78
3. Overview of duties of the commission and documents and policy areas referenced in the resolve

**A. Access in urban and rural areas**

(1) Specific issues and member questions and discussion

- The viability of privately owned facilities in rural communities
- Issues related to location for nursing facilities in urban and rural areas
- The impact on rural populations of nursing home closures
- Progress report on alternatives to minimum staffing ratios, from Commissioner Mary Mayhew to Health and Human Services Committee, January 7, 2013

(2) Information needed for work of the commission, discussion among members

(3) Opportunity for testimony from interested parties and the public

(4) Policy questions, for example, How can access to nursing facility services in rural and urban areas be maintained?

**B. Staffing and regulatory requirements**

(1) Specific issues and member questions and discussion

- LD 1246, minimum staffing requirements based on resident need over a 24-hour time period
- Progress report on alternatives to minimum staffing ratios, from Commissioner Mary Mayhew to Health and Human Services Committee, January 7, 2013
- Resolve 1997, Chapter 81 final report of the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities
- Collaborative agreements between long-term care facilities and critical access hospitals for purpose of sharing resources

(2) Information needed for work of the commission, discussion among members

(3) Opportunity for testimony from interested parties and the public

(4) Policy questions, for example, How can staffing and regulatory requirements provide flexibility to the facilities and safeguard high quality services?

**C. Reimbursement**

(1) Specific issues and member questions and discussion

- LD 928, reimbursed based on pay-for-performance
- LD 1245, reimbursement based on acuity of nursing facility residents

- LD 928, reimbursement based on a high percentage of residents whose care is reimbursed under the MaineCare program
- Resolve 1997, Chapter 81 final report of the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities
- Progress report on alternatives to minimum staffing ratios, from Commissioner Mary Mayhew to Health and Human Services Committee, January 7, 2013

- (2) Information needed for work of the commission, discussion among members
- (3) Opportunity for testimony from interested parties and the public
- (4) Policy questions, for example, How can long-term care facility reimbursement be changed to further new long-term care policy goals while continuing support for existing facilities and services?

**D. Duty to report with findings and recommendations, including suggested legislation by 12/4/13**

- 3. Discussion of commission meeting schedule, October 25 and November 8 and 15.
- 4. Identification of information needed for 3 remaining meetings of the commission
  - A. Information to be requested from DHHS?
  - B. Information to be requested from other sources?

## STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

S.P. 331 - L.D. 986

**Resolve, To Establish the Commission To Study Long-term Care Facilities**

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

Whereas, it is necessary that this legislation take effect immediately in order to allow sufficient time for the Commission To Study Long-term Care Facilities to conduct its work; 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

**Sec. 1. Commission To Study Long-term Care Facilities established.**

**Resolved:** That, notwithstanding Joint Rule 353, the Commission To Study Long-term Care Facilities, referred to in this resolve as "the commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 11 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature; and

3. Six members appointed by the Governor who possess expertise in the subject matter of the study, as follows:

A. The director of a long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;

B. The director of a statewide association representing long-term care facilities and one representative of a 2nd association of owners of long-term care facilities;

C. A person who serves as a city manager of a municipality in the State;

D. A person who serves as a director or who is an owner or administrator of a nursing facility in the State; and

E. A representative of the Governor's office or the Governor's administration; and be it further

**Sec. 3. Chairs; subcommittees. Resolved:** That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission. The chairs of the commission are authorized to establish subcommittees to work on the duties listed in section 5 and to assist the commission. The subcommittees must be composed of members of the commission and interested persons who are not members of the commission and who volunteer to serve on the subcommittees without reimbursement. Interested persons may include representatives of nursing facilities with a high percentage of residents whose care is reimbursed through the MaineCare program, individuals with specialized knowledge in implementing an acuity-based staffing system, individuals with expertise in acuity-based reimbursement systems, a representative of an agency that provides services to the elderly and any other persons with experience in nursing facility care; and be it further

**Sec. 4. Appointments; convening of commission. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business; and be it further

**Sec. 5. Duties. Resolved:** That the commission shall study the following issues and the feasibility of making policy changes to the long-term care system:

1. Funding for long-term care facilities, including the development of an acuity-based reimbursement system as proposed in Legislative Document 1245 of the 126th Legislature, "Resolve, Directing the Department of Health and Human Services To Create a More Equitable, Transparent Resource Allocation System for Nursing Facilities Based on Residents' Needs," and the development of a pay-for-performance program to encourage and reward strong performance by nursing facilities as proposed in Legislative Document 928 of the 126th Legislature, "An Act To Improve MaineCare Nursing Home Reimbursement To Preserve Access and Promote Quality";

2. Staffing and regulatory requirements, including the development of minimum staffing requirements based on a 24-hour time period as proposed in Legislative Document 1246 of the 126th Legislature, "An Act To Promote Greater Staffing Flexibility without Compromising Safety or Quality in Nursing Facilities";

3. Collaborative agreements with critical access hospitals for the purpose of sharing resources;

4. Reimbursement mechanisms to reimburse facilities for which the MaineCare program is the payor for a high percentage of the residents as proposed in Legislative Document 928 of the 126th Legislature, "An Act To Improve MaineCare Nursing Home Reimbursement To Preserve Access and Promote Quality";

5. The viability of privately owned facilities in rural communities; and

6. The impact on rural populations of nursing home closures.

In performing the study the commission shall review the final report of the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities established by Resolve 1997, chapter 81; and be it further

**Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the commission; and be it further

**Sec. 7. Information and assistance. Resolved:** That the Commissioner of Health and Human Services, the State Auditor and the State Budget Officer shall provide information and assistance to the commission as required for its duties; and be it further

**Sec. 8. Report. Resolved:** That, no later than December 4, 2013, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 126th Legislature.

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

# Commission to Study Long-term Care Facilities

Resolve 2013, Ch. 78

**Total Members: 11**

**Appt Deadline: 8/22/13**

## **Governor**

*1 City Manager*

**Appointment** Diane M. Barnes

*1 Director of a long-term care ombudsman program*

**Appointment** Brenda Gallant

*1 Director of a statewide association representing long-term care facilities*

**Appointment** Richard Erb

*1 Nursing facility director, owner, or administrator*

**Appointment** Philip A. Cyr

*1 Representative of a statewide association of long-term care facility owners*

**Appointment** S. John Watson

*1 Representative of Governor's Office*

**Vacant**

## **President of the Senate**

*2 Senate Members*

**Appointment** David C. Burns

**Appointment** Margaret M. Craven

## **Speaker of the House**

*3 House Members*

**Appointment** Peter C. Stuckey

**Appointment** Richard S. Malaby

**Appointment** Richard R. Farnsworth

**\*\* Members Appointed = 10**

**Total Members = 11 \*\***

**Commission to Study Long-term Care Facilities**  
**Resolve 2013, Ch. 78**  
**September 19, 2013**

**Appointment(s) by the Governor**

**Diane M. Barnes**  
PO Box 1273  
Calais, ME 04619  
207-454-2512  
[manager@calaismaine.org](mailto:manager@calaismaine.org)

City Manager

**Philip A. Cyr**  
435 Washburn Street  
Caribou, ME 04736  
207-498-3102  
[philcyr@caribourehab.com](mailto:philcyr@caribourehab.com)

Nursing facility director, owner, or administrator

**Richard Erb**  
Maine Health Care Association  
317 State Street  
Augusta, ME 04330  
207-623-1146  
[rerb@mehca.org](mailto:rerb@mehca.org)

Director of a statewide association representing long-term care facilities

**Brenda Gallant**  
196 Beechnut Hill Road  
Wiscasset, ME 04578  
207-621-1079  
[bgallant@maineombudsman.org](mailto:bgallant@maineombudsman.org)

Director of a long-term care ombudsman program

**S. John Watson Jr.**  
41 Craige Street  
Portland, ME 04102  
207-221-7000  
[jwatson@thecedarsportland.org](mailto:jwatson@thecedarsportland.org)

Representative of a statewide association of long-term care facility owners

**Appointment(s) by the President**

**Sen. Margaret M. Craven – Chair**  
41 Russell Street  
Lewiston, ME 04240  
207-783-1897  
[mmcraven@roadrunner.com](mailto:mmcraven@roadrunner.com)

Senate Member

**Sen. David C. Burns**  
159 Dodge Road  
Whiting, ME 04691  
207-733-8856  
[David.Burns@legislature.maine.gov](mailto:David.Burns@legislature.maine.gov)

Senate Member

**Commission to Study Long-term Care Facilities**  
**Resolve 2013, Ch. 78**  
**September 19, 2013**

**Appointment(s) by the Speaker**

<b>Rep. Peter C. Stuckey – Chair</b> 20 Vaill Street Portland, ME 04103 207-773-3345 <a href="mailto:Peter.Stuckey@legislature.maine.gov">Peter.Stuckey@legislature.maine.gov</a>	House Member
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<b>Rep. Richard R. Farnsworth</b> 55 Old Mast Road Portland, ME 04102 207-878-9663 <a href="mailto:Reprichard.farnsworth@legislature.maine.gov">Reprichard.farnsworth@legislature.maine.gov</a>	House Member
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<b>Rep. Richard S. Malaby</b> 52 Cross Road Hancock, ME 04640 207-422-3146 <a href="mailto:Reprichard.malaby@legislature.maine.gov">Reprichard.malaby@legislature.maine.gov</a>	House Member
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Staff:  
Jane Orbeton 287-1670  
OPLA  
Anna Broome  
OPLA

Carried over to 2014



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 928

H.P. 652

House of Representatives, March 7, 2013

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**An Act To Improve MaineCare Nursing Home Reimbursement To  
Preserve Access and Promote Quality**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MALABY of Hancock.  
Cosponsored by Representatives: DUNPHY of Embden, SANDERSON of Chelsea, SIROCKI  
of Scarborough, STUCKEY of Portland.

1105 of new format

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

2 **Sec. 1. 22 MRSA §1708, sub-§3**, as corrected by PL 2001, c. 2, Pt. A, §33 and  
3 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

4 **3. Compensation for nursing homes.** A nursing home, as defined under section  
5 1812-A, or any portion of a hospital or institution operated as a nursing home, when the  
6 State is liable for payment for care, must be reimbursed at a rate established by the  
7 Department of Health and Human Services pursuant to this subsection. The department  
8 may not establish a so-called "flat rate." This subsection applies to all funds, including  
9 federal funds, paid by any agency of the State to a nursing home for patient care. The  
10 department shall establish rules concerning reimbursement that:

11 A. Take into account the costs of providing care and services in conformity with  
12 applicable state and federal laws, rules, regulations and quality and safety standards;

13 B. Are reasonable and adequate to meet the costs incurred by efficiently and  
14 economically operated facilities;

15 C. Are consistent with federal requirements relative to limits on reimbursement  
16 under the federal Social Security Act, Title XIX;

17 D. Ensure that any calculation of an occupancy percentage or other basis for  
18 adjusting the rate of reimbursement for nursing facility services to reduce the amount  
19 paid in response to a decrease in the number of residents in the facility or the  
20 percentage of the facility's occupied beds excludes all beds that the facility has  
21 removed from service for all or part of the relevant fiscal period in accordance with  
22 section 333. If the excluded beds are converted to residential care beds or another  
23 program for which the department provides reimbursement, nothing in this paragraph  
24 precludes the department from including those beds for purposes of any occupancy  
25 standard applicable to the residential care or other program pursuant to duly adopted  
26 rules of the department; and

27 E. Contain an annual inflation adjustment that:

28 (1) Recognizes regional variations in labor costs and the rates of increase in  
29 labor costs determined pursuant to the principles of reimbursement and  
30 establishes at least 4 regions for purposes of annual inflation adjustments; and

31 (2) Uses the applicable regional inflation factor as established by a national  
32 economic research organization selected by the department to adjust costs other  
33 than labor costs or fixed costs;

34 ~~Rules adopted pursuant to this paragraph are routine technical rules as defined in~~  
35 ~~Title 5, chapter 375, subchapter II-A.~~

36 F. For nursing home fiscal years beginning on and after July 1, 2013, provide for a  
37 supplemental payment under the MaineCare program to nursing homes that provide  
38 services to a high percentage of MaineCare residents as follows:

39 (1) Nursing homes whose MaineCare patient days exceed 70% of total patient  
40 days, determined on an annual basis, must receive this supplemental MaineCare  
41 payment; and

1                   (2) For each one percent increment above 70%, eligible nursing homes must  
2                   receive a supplemental MaineCare payment of \$0.20 per MaineCare patient day;  
3                   and

4                   G. For nursing home fiscal years beginning on and after July 1, 2014, implement a  
5                   pay-for-performance program to encourage and reward strong performance by  
6                   nursing homes.

7                   (1) Criteria for incentive payment must include both improvement in  
8                   performance and high levels of performance in specified areas, including, but not  
9                   limited to, resident and family satisfaction, resident choices available, clinical  
10                   measures and staffing levels.

11                   (2) Payments pursuant to this paragraph must be in addition to amounts  
12                   otherwise provided in accordance with applicable principles of reimbursement,  
13                   and the program must be implemented in a manner that does not result in any  
14                   reduction of the amount that would be paid to any home in the absence of a  
15                   pay-for-performance program.

16                   (3) Payments pursuant to this paragraph may not be required to be returned to  
17                   the State if they remain in the possession of a nursing home at the time of a state  
18                   audit.

19                   Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
20                   chapter 375, subchapter 2-A.

21                   **Sec. 2. Emergency rules.** Notwithstanding the Maine Revised Statutes, Title 5,  
22                   section 8054, the Department of Health and Human Services may adopt emergency rules  
23                   to implement Title 22, section 1708, subsection 3, paragraph F without the necessity of  
24                   demonstrating that immediate adoption is necessary to avoid a threat to public health or  
25                   safety or the general welfare, if notice is given through a MaineCare provider list and 5  
26                   days or more are allowed for comment prior to adoption of the rules. The emergency  
27                   rules and subsequent permanent rules must be made effective retroactively to July 1,  
28                   2013.

29                   **Sec. 3. Appropriations and allocations.** The following appropriations and  
30                   allocations are made.

31                   **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**  
32                   **Nursing Facilities 0148**

33                   Initiative: Appropriates state funds and allocates matching federal funds for cost-of-  
34                   living increases for MaineCare reimbursement to nursing facilities in the 2014-2015  
35                   biennium.

36			
37	<b>FEDERAL EXPENDITURES FUND</b>	<b>2013-14</b>	<b>2014-15</b>
38	All Other	\$2,835,000	\$2,948,400
39			
40	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>\$2,835,000</b>	<b>\$2,948,400</b>

1			
2	<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
3	All Other	\$1,665,000	\$1,731,600
4			
5	<b>GENERAL FUND TOTAL</b>	<u>\$1,665,000</u>	<u>\$1,731,600</u>

6 **SUMMARY**

7 This bill provides supplemental MaineCare payments to nursing homes that serve a  
8 high percentage of MaineCare residents and establishes a pay-for-performance program  
9 in nursing homes.

10 The Department of Health and Human Services is authorized to adopt emergency  
11 rules to take effect retroactively to July 1, 2013 for the establishment of the supplemental  
12 MaineCare payments to nursing homes that serve a high percentage of MaineCare  
13 residents.

14 The bill also appropriates state funds and allocates matching federal funds for cost-  
15 of-living increases for MaineCare reimbursement to nursing facilities in the 2014-2015  
16 biennium.

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 9, 2013  
To: Joint Standing Committee on Health & Human Services  
From: Jane Orbeton, Legislative Analyst

### **LD 928, An Act To Improve MaineCare Nursing Home Reimbursement To Preserve Access and Promote Quality**

#### **SUMMARY:**

1. This bill provides supplemental MaineCare payments to nursing facilities that are in addition to the existing principles of reimbursement as follows:

- For NF fiscal years beginning on or after 7/1/13, nursing facilities for which more than 70% of total patient days are paid by MaineCare qualify for a supplemental payment;
- For NF fiscal years beginning on or after 7/1/14, nursing facilities that score high in resident and family satisfaction, availability of resident choices, clinical measures and staffing levels qualify for a pay-for-performance payment. The pay-for-performance funding is prohibited from decreasing funding under the principles of reimbursement, so it appears to be money in addition to regular MaineCare funding.

2. DHHS is authorized to adopt emergency rules to implement the bill.

3. The bill includes \$2,835,000 GF and the federal match for MaineCare cost-of-living increases for nursing facilities. Please note that the bill as written does not include funding for the supplemental payment or the pay-for-performance payment. At the public hearing the sponsor suggested adding funding of \$1,000,000 from the General Fund to fund the pay-for-performance initiative. *Note: This still leaves the high MaineCare population initiative unfunded.*

#### **ADDITIONAL INFORMATION NEEDED BY COMMITTEE:**

1. Information was requested on the number and size of nursing facilities that provide over 70% of their total inpatient days to residents whose care is reimbursed by MaineCare. It might be helpful to have estimates of the cost to DHHS in General Fund funding for over 65% MaineCare residents, over 70% MaineCare residents and over 75% MaineCare residents.
2. It might be helpful to have further detail on what it means to score high in resident and family satisfaction, availability of resident choices, clinical measures and staffing levels.

#### **FISCAL IMPACT:**

The bill was supposed to include \$1,000,000 for pay-for-performance. It does not include funding for the high number of MaineCare residents.



Date: 6/6/13

(Filing No. H-365)

Majority

HEALTH AND HUMAN SERVICES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 652, L.D. 928, Bill, "An Act To Improve MaineCare Nursing Home Reimbursement To Preserve Access and Promote Quality"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)  
Nursing Facilities 0148

Initiative: Appropriates and allocates funds for a 2% increase in MaineCare reimbursement rates for nursing facility services.

20	<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
21	All Other	\$1,226,770	\$1,635,693
22			
23	<b>GENERAL FUND TOTAL</b>	<u>\$1,226,770</u>	<u>\$1,635,693</u>

24	<b>FEDERAL EXPENDITURES FUND</b>	<b>2013-14</b>	<b>2014-15</b>
25	All Other	\$1,963,789	\$2,618,386
26			
27	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<u>\$1,963,789</u>	<u>\$2,618,386</u>
28			

SUMMARY

This amendment is the majority report of the committee. This amendment deletes all of the provisions of the bill and inserts an appropriation and an allocation sufficient to

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 652, L.D. 928

1 grant to nursing facilities a 2% rate increase in MaineCare reimbursement rates for  
2 nursing facilities.

3 **FISCAL NOTE REQUIRED**

4 (See attached)

**COMMITTEE AMENDMENT**



# 126th MAINE LEGISLATURE

LD 928

LR 1105(02)

## An Act To Improve MaineCare Nursing Home Reimbursement To Preserve Access and Promote Quality

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-365)  
Committee: Health and Human Services  
Fiscal Note Required: Yes

### Fiscal Note

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
<b>Net Cost (Savings)</b>				
General Fund	\$1,226,770	\$1,635,693	\$1,635,693	\$1,635,693
<b>Appropriations/Allocations</b>				
General Fund	\$1,226,770	\$1,635,693	\$1,635,693	\$1,635,693
Federal Expenditures Fund	\$1,963,789	\$2,618,386	\$2,618,386	\$2,618,386

#### Fiscal Detail and Notes

Provides appropriations of \$1,226,770 in 2013-14 and \$1,635,693 in 2014-15 for the State's share of the costs of a two percent increase in MaineCare reimbursement rates for nursing facility services. This is assumed to be a one-time but permanent increase in MaineCare nursing facility rates, effective October 1, 2013.



# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

(207) 287-1400

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## Richard S. Malaby

52 Cross Road

Hancock, ME 04640

Business: (207) 422-6806

Fax: (207) 422-3105

E-Mail: [info@crockerhouse.com](mailto:info@crockerhouse.com)

### *LD 928, An Act to Improve MaineCare Nursing Home Reimbursement to Preserve Access and Promote Quality*

Standing Committee on Health and Human Services

Representative Richard Malaby

May 3, 2013

Good afternoon Senator Craven and Representative Farnsworth and the distinguished members of the Health and Human Services Committee. I am Richard Malaby, Representative from House District 34 and I am here to introduce LD 928, An Act to Improve MaineCare Nursing Home Reimbursement to Preserve Access and Promote Quality.

I am not unaware of the challenges of crafting the biennial budget. Nonetheless I feel that we have chronically underfunded our nursing homes to the point where it threatens their very existence. Just look at these facts:

- MaineCare bases its rates on the year 2005 cost of care
- Because we use 2005 as the base year, the gap between costs and reimbursements continues to grow (\$29 Million in 2011)
- The average daily rate for MaineCare reimbursement is \$185 (\$7.71/hr)
- Staff wages and benefits account for 75% of the MaineCare rate
- Maine is 1 of only 8 states with 100% of its nursing homes voluntarily enrolled in the Advancing Excellence Campaign
- Maine's nursing homes outperform the national average on several key quality measures

District 34    Gouldsboro, Hancock, Lamoine, Sorrento, Sullivan, Waltham and Winter Harbor, plus the unorganized territory of Fletchers Landing Township

Printed on recycled paper

This bill does three things to address the reimbursement issue. The first is to provide a modest, 2% COLA. The MaineCare reimbursement rules already provide a mechanism for this, but it must be funded annually. This bill does that over the biennium.

This bill provides supplemental MaineCare payments to nursing homes that serve a high percentage of MaineCare residents.

Finally, the bill establishes a pay-for-performance program in nursing homes. There are numerous “sticks” in our licensing system to penalize nursing homes financially if they provide less than optimal care. I have attempted to provide a “carrot” that rewards those who go above and beyond in caring for our elderly and disabled citizens. These homes receive national quality awards and set positive examples for their peers.

When the bill was originally drafted it included a \$1 million state fiscal note to fund the pay for performance program. The Revisors office inadvertently removed that portion of the fiscal note, so we would need to amend the bill accordingly to appropriate the initial funding for a pay for performance program.

I ask for your unanimous support for the amended version of this bill and I would be happy to answer any question you might have.

Passed, Resoloe 2013,  
chapter 78



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 986

S.P. 331

In Senate, March 12, 2013

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**Resolve, To Establish the Commission To Study Long-term Care  
Facilities**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*D M Grant*

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BURNS of Washington.  
Cosponsored by Representative MAKER of Calais and  
Senators: COLLINS of York, CRAVEN of Androscoggin, CUSHING of Penobscot,  
JACKSON of Aroostook, Representatives: LONG of Sherman, MALABY of Hancock,  
NADEAU of Fort Kent, TURNER of Burlington.

Researched, 10/20/13, 10/20/13

87 10/20/13

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**Sec. 1. Commission To Study Long-term Care Facilities established.**  
**Resolved:** That the Commission To Study Long-term Care Facilities, referred to in this resolve as "the commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 13 members appointed as follows:

- 1. Three members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;
- 2. Four members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature; and
- 3. Six members appointed by the Governor who possess expertise in the subject matter of the study, as follows:
  - A. The director of a long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;
  - B. The director of a statewide association representing long-term care facilities;
  - C. A person who serves as a city manager of a municipality in the State;
  - D. A person who serves as a director of a nursing facility in the State;
  - E. A person who represents consumers of long-term care services who reside in long-term care facilities in the State; and
  - F. The director of a statewide association of area agencies on aging; and be it further

**Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission; and be it further

**Sec. 4. Appointments; convening of commission. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business; and be it further

**Sec. 5. Duties. Resolved:** That the commission shall study funding for long-term care facilities, staffing and regulatory requirements, collaborative agreements with critical access hospitals for the purposes of sharing resources, differential reimbursement mechanisms to reimburse facilities for which the MaineCare program is the payor for greater than 85% of the residents, the viability of privately owned facilities in rural communities and the impact on rural populations of nursing home closures. In performing the study the commission shall review the final report of the Commission to

1 Examine Rate Setting and the Financing of Maine's Long-term Care Facilities established  
2 by Resolve 1997, chapter 81; and be it further

3 **Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide  
4 necessary staffing services to the commission; and be it further

5 **Sec. 7. Information and assistance. Resolved:** That the Commissioner of  
6 Health and Human Services, the State Auditor and the State Budget Officer shall provide  
7 information and assistance to the commission as required for its duties; and be it further

8 **Sec. 8. Report. Resolved:** That, no later than December 4, 2013, the commission  
9 shall submit a report that includes its findings and recommendations, including suggested  
10 legislation, for presentation to the Second Regular Session of the 126th Legislature.

11 **SUMMARY**

12 This resolve establishes the Commission To Study Long-term Care Facilities. The  
13 commission has 13 members and is required to report by December 4, 2013.

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 9, 2013

To: Joint Standing Committee on Health & Human Services

From: Jane Orbeton, Legislative Analyst

### **LD 986, Resolve, To Establish the Commission To Study Long-term Care Facilities**

#### **SUMMARY:**

This resolve establishes the Commission to Study Long-term Care Facilities. The commission has 13 members, 3 appointed by the President, 4 by the Speaker and 6 by the Governor. The Commission is a standard legislative commission, staffed through the Legislative Council and required to report by December 4, 2013.

The resolve requires the Commissioner of HHS, the State Auditor and the State Budget Officer to provide information and assistance.

The duties of the commission include studying long-term care funding, staffing and regulatory requirements, collaborative agreements with critical access hospitals, bonus payments for greater than 85% MaineCare, the viability of privately owned facilities in rural communities and the impact of nursing facility closures on rural populations.

#### **ISSUES FROM TESTIMONY:**

1. Leading Age, a housing provider, suggested that the commission include housing providers who are for-profit and non-profit and who serve MaineCare and high-acuity populations. Leading Age also suggested better articulation of duties and that funding be provided sufficient to engage experts or consultants.

#### **FISCAL IMPACT:**

No information available at this time.

SMS  
ROFS

L.D. 986

Date: 6/5/2013

(Filing No. S-201)

HEALTH AND HUMAN SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

126TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 331, L.D. 986, "Resolve, To Establish the Commission To Study Long-term Care Facilities"

Amend the resolve by striking out everything after the title and before the summary and inserting the following:

**Sec. 1. Commission To Study Long-term Care Facilities established.**

**Resolved:** That the Commission To Study Long-term Care Facilities, referred to in this resolve as "the commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 13 members appointed as follows:

1. Three members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;

2. Four members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature; and

3. Six members appointed by the Governor who possess expertise in the subject matter of the study, as follows:

A. The director of a long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;

B. The director of a statewide association representing long-term care facilities and one representative of a 2nd association of owners of long-term care facilities;

C. A person who serves as a city manager of a municipality in the State;

D. A person who serves as a director or who is an owner or administrator of a nursing facility in the State; and

E. A representative of the Governor's office or the Governor's administration; and be it further

COMMITTEE AMENDMENT

1           **Sec. 3. Chairs; subcommittees. Resolved:** That the first-named Senate  
2 member is the Senate chair and the first-named House of Representatives member is the  
3 House chair of the commission. The chairs of the commission are authorized to establish  
4 subcommittees to work on the duties listed in section 5 and to assist the commission. The  
5 subcommittees must be composed of members of the commission and interested persons  
6 who are not members of the commission and who volunteer to serve on the  
7 subcommittees without reimbursement. Interested persons may include representatives of  
8 nursing facilities with a high percentage of residents whose care is reimbursed through  
9 the MaineCare program, individuals with specialized knowledge in implementing an  
10 acuity-based staffing system, individuals with expertise in acuity-based reimbursement  
11 systems, a representative of an agency that provides services to the elderly and any other  
12 persons with experience in nursing facility care; and be it further

13           **Sec. 4. Appointments; convening of commission. Resolved:** That all  
14 appointments must be made no later than 30 days following the effective date of this  
15 resolve. The appointing authorities shall notify the Executive Director of the Legislative  
16 Council once all appointments have been completed. After appointment of all members,  
17 the chairs shall call and convene the first meeting of the commission. If 30 days or more  
18 after the effective date of this resolve a majority of but not all appointments have been  
19 made, the chairs may request authority and the Legislative Council may grant authority  
20 for the commission to meet and conduct its business; and be it further

21           **Sec. 5. Duties. Resolved:** That the commission shall study the following issues  
22 and the feasibility of making policy changes to the long-term care system:

23           1. Funding for long-term care facilities, including the development of an acuity-  
24 based reimbursement system as proposed in Legislative Document 1245 of the 126th  
25 Legislature, "Resolve, Directing the Department of Health and Human Services To  
26 Create a More Equitable, Transparent Resource Allocation System for Nursing Facilities  
27 Based on Residents' Needs," and the development of a pay-for-performance program to  
28 encourage and reward strong performance by nursing facilities as proposed in Legislative  
29 Document 928 of the 126th Legislature, "An Act To Improve MaineCare Nursing Home  
30 Reimbursement To Preserve Access and Promote Quality";

31           2. Staffing and regulatory requirements, including the development of minimum  
32 staffing requirements based on a 24-hour time period as proposed in Legislative  
33 Document 1246 of the 126th Legislature, "An Act To Promote Greater Staffing  
34 Flexibility without Compromising Safety or Quality in Nursing Facilities";

35           3. Collaborative agreements with critical access hospitals for the purpose of sharing  
36 resources;

37           4. Reimbursement mechanisms to reimburse facilities for which the MaineCare  
38 program is the payor for a high percentage of the residents as proposed in Legislative  
39 Document 928 of the 126th Legislature, "An Act To Improve MaineCare Nursing Home  
40 Reimbursement To Preserve Access and Promote Quality";

41           5. The viability of privately owned facilities in rural communities; and

42           6. The impact on rural populations of nursing home closures.

1 In performing the study the commission shall review the final report of the  
2 Commission to Examine Rate Setting and the Financing of Maine's Long-term Care  
3 Facilities established by Resolve 1997, chapter 81; and be it further

4 **Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide  
5 necessary staffing services to the commission; and be it further

6 **Sec. 7. Information and assistance. Resolved:** That the Commissioner of  
7 Health and Human Services, the State Auditor and the State Budget Officer shall provide  
8 information and assistance to the commission as required for its duties; and be it further

9 **Sec. 8. Report. Resolved:** That, no later than December 4, 2013, the commission  
10 shall submit a report that includes its findings and recommendations, including suggested  
11 legislation, for presentation to the Second Regular Session of the 126th Legislature.'

12 **SUMMARY**

13 The resolve establishes the Commission To Study Long-term Care Facilities. This  
14 amendment changes the membership of the commission so that it consists of 7  
15 Legislators, one representative of a nursing facility, 2 representatives of long-term care  
16 facilities, one director of a long-term care ombudsman program, one person representing  
17 a municipality and one person representing the Governor's office or the Governor's  
18 administration. This amendment adds to the duties of the commission duties derived  
19 from 3 bills that were before the Joint Standing Committee on Health and Human  
20 Services, Legislative Document 928, Legislative Document 1245 and Legislative  
21 Document 1246. The amendment authorizes the chairs of the commission to establish  
22 subcommittees composed of interested persons, including representatives of nursing  
23 facilities with a high percentage of residents whose care is reimbursed through the  
24 MaineCare program, individuals with specialized knowledge in implementing an acuity-  
25 based staffing system, individuals with expertise in acuity-based reimbursement systems,  
26 a representative of an agency that provides services to the elderly and any other persons  
27 with experience or interest in nursing facility care. The amendment directs the  
28 commission to submit a report with findings and recommendations to the 126th  
29 Legislature by December 4, 2013.

**FISCAL NOTE REQUIRED**  
(See attached)



# 126th MAINE LEGISLATURE

LD 986

LR 49(02)

**Resolve, To Establish the Commission To Study Long-term Care Facilities**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (6201)**  
**Committee: Health and Human Services**  
**Fiscal Note Required: Yes**

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## Fiscal Note

### Legislative Cost/Study

#### Legislative Cost/Study

The general operating expenses of this study commission are projected to be \$4,000 in fiscal year 2013-14. The Legislature's proposed budget includes \$10,000 in fiscal year 2013-14 and \$10,000 in fiscal year 2014-15 for legislative studies. Whether the amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The additional costs of providing staff assistance to the study commission can be absorbed by the Legislature utilizing existing budgeted resources.

#### Fiscal Detail and Notes

Additional costs to the Department of Health and Human Services are expected to be minor and can be absorbed within existing budgeted resources.

*126th Legislature*  
*Senate of*  
*Maine*  
*Senate District 29*

*Senator David C. Burns*  
*Judiciary Committee*  
*Inland Fisheries and Wildlife Committee*  
*Government Oversight Committee*  
*3 State House Station*  
*Augusta, ME 04333-0003*  
*(207) 287-1505*

*159 Dodge Rd*  
*Whiting, ME 04691*  
*(207) 733-8865*

**Testimony from  
Senator David C. Burns**

**LD 986, "Resolve, To Establish the Commission To Study Long-term Care  
Facilities"**

**Joint Standing Committee on Health and Human Services**

**May 3, 2013**

Senator Craven, Representative Farnsworth, members of the Health and Human Services Committee; my name is David Burns and I represent Senate District 29, which is comprised of all of Washington County and eleven communities in Hancock and Penobscot Counties. I am pleased to be here today to introduce LD 986, "Resolve, To Establish the Commission To Study Long-term Care Facilities."

I have brought this bill to you because we have a serious problem in many rural communities keeping our nursing homes open. Last July, Atlantic Rehabilitation and Nursing Center in Calais closed its doors. Both Calais Regional Hospital and Down East Community Hospital in Machias were inundated with patients who needed skilled nursing. Those needing long-term nursing services had to be placed in Ellsworth, Bangor, Bar Harbor, and other areas long distances from their homes and families.

This problem isn't unique to Washington County. Most of our rural and poorer areas are susceptible to this. Those rural communities where a large portion of the population is dependent upon MaineCare obviously will have a large portion of their elderly in nursing homes subject to MaineCare reimbursement. Because that reimbursement rate does not cover the costs of staffing and running a smaller facility, these privately owned or corporately owned nursing homes cannot break even, let alone make a profit. The funding formula and requirements placed upon long-term care facilities is so complicated and possibly outdated, we are forcing them to close down. Companies such as Atlantic Rehabilitation and Nursing Care are forced to relocate their "bed allotment," which they own the rights to, into areas where they have a better return in their investment. That is why they moved their beds to Hancock County where the economy of scale and a larger portion of private pay patients give them a profit. That's just a good business decision.

Unfortunately, that leaves areas such as Calais and similar communities with no affordable way to keep a long-term care facility in their communities. The inhumane

hardships this creates for some of our most cherished and vulnerable citizens are almost indescribable. Consider a gentleman in his 90's who visited daily his wife in the Calais nursing home, seven days a week. When closure of the Calais home happened, she was relocated to Machias. This is around 100 miles round trip from Calais, over some of the worst roads in the State, in winter driving. Please try to envision your mother or dad in that predicament. Don't we owe our elderly and our family members more than this?

Nursing facilities were initially created to prepare for the trends we now see in Maine with one of the oldest populations per capita. They were cost-based reimbursed and based upon the Certificate of Need process. Both the process and the logic were simple.

However, because of changes in reimbursements, a freeze on creating new beds and changes of Medicare funding, it is no longer simple. Now "beds" are bought, sold and banked, and patients are relocated to areas where more profit can be realized rather than meeting the needs of a community. I am also told by experienced administrators that running a nursing facility in an efficient manner or keeping the residents healthy and well is actually penalized by the system. I don't think that is what we want for a system.

After the closure of the nursing facility in Calais, City leaders created a task force to research this issue and try to find a way to re-establish a facility in the area that could continue to serve the greater Calais area. There are no other options between Danforth and Machias for that purpose. You will hear more about this from Calais City Manager Diane Barnes today. Representatives Maker, Cassidy, former Senator Raye and I worked with that task force to try to find some solutions. There were very few options available to us.

It became clear to many of us that this system that allows nursing facilities to vanish from rural communities regardless of how much need there is, needed to have a comprehensive examination by people that fully understand the need, funding, license requirements, staffing, Federal and State regulations, and other important elements. We believed that until such a comprehensive study is done, the problem will continue to worsen and the State will continue to subsidize the system based on inflexible and outdated formulas rather than based upon efficiency, need, and the welfare of the people we are supposed to serve.

As important as it may be for these facilities to make a profit, there is an undeniable duty for us to care for our most vulnerable populations who cannot care for themselves, a need that is more important than the bottom dollar. If our law enforcement agencies, emergency medical personnel, and public safety agencies operated under the same profit model, these essential services would disappear in most of our rural regions.

We have tried to construct a balance on this proposed study group, which would be able to understand and address the issues that are plaguing this system. Each of these non-legislative committee positions represent an area of expertise that will be needed to address these. Ideally, I would have liked to have seen more positions added reflecting additional backgrounds; however, we were confined by Joint Rules as to the make-up of

legislative study groups. As you work this bill, I hope you will consider the value and potential input of each of these carefully, and if you deem appropriate, substitute in an area where there is a need.

There are other bills I also support, which will address primarily the funding formula and MaineCare reimbursement formula. That is very important; however, I believe it is necessary to comprehensively address all aspects of our long-term care policy before funding changes can be decided upon.

In closing, I would ask that while you consider this proposal you keep one philosophy in mind. A very experienced administrator of a family-owned nursing home said:

“Care should be close to home where people get better attention from friends and family; where you remain someone’s mother or father, co-worker, friend, teacher, as a person and community member, someone you know; not a stranger from a faraway place representing the next member, set of diagnoses, improved revenue stream or checkmark in the census box.”

Isn’t that what you want for your mom, dad or you? I hope you will support this request for a comprehensive study of how we provide for the elder members of our families.

Thank you.



# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
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## Joyce A. Maker

89 Lafayette Street  
Calais, ME 04619

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RepJoyce.Maker@legislature.maine.gov

## TESTIMONY OF REPRESENTATIVE JOYCE A. MAKER

IN SUPPORT OF L.D. 986

### **Resolve, To Establish the Commission To Study Long-term Care Facilities**

Before the Joint Standing Committee on Health and Human Services

May 3, 2013

Good afternoon Senator Craven, Representative Farnsworth and members of the Joint Standing Committee on Health and Human Services. I am Representative Joyce Maker, representing House District 31, which includes the towns of Baileyville, Baring, Calais, Charlotte, Indian Township, Perry, Pleasant Point and Robbinston. As a cosponsor of this bill, I'm here today to support L.D. 986, Resolve, To Establish the Commission To Study Long-term Care Facilities.

The commission created by this bill would be valuable in studying many different issues affecting long-term care facilities, such as staffing and regulatory requirements, as well as collaborative agreements with critical access hospitals for the purpose of sharing resources. This commission would issue a report back to the Legislature by the end of the year.

The issue of long-term care facilities is close to my heart. Last session, I was a cosponsor on a bill to require notification of health care facilities that may be negatively affected by a certificate of need application. This bill was prompted, as some of you may be aware, by the application of Atlantic Healthcare to construct a new \$8.5 million nursing home in Ellsworth to replace Atlantic Rehabilitation and Nursing Center in Calais. The closing of this 50-bed facility in Calais left 92 health care workers jobless and dozens of former nursing home residents now living elsewhere. This facility was essential to our community and I was distressed to watch elderly citizens become displaced. I spoke in opposition to the facility closure, as did a number of others. Sadly, there was nothing we could do.

It was heart wrenching to see families separated from each other and I believe we need to do all we can to prevent situations like what happened in Calais from happening again. Situations like this are why I hope you support L.D. 986.

Testimony of the City of Calais  
In favor of LD 986

Diane Barnes, City Manager

Senator Craven, Representative Farnsworth, members of the Health & Human Service Committee, my name is Diane Barnes and I am testifying on behalf of the City of Calais in favor of LD 986.

We are a community of a little more than 3,000 residents and are a service center for a regional population of around 15,000. I have been city manager in Calais for nearly 6 years and have been a municipal official for 27 years. As city manager, my role is to oversee the administration of city business ranging from its economic development to preparing and managing budgets, supervising heads of departments as well as interacting with and reporting to the city council members and the public. Given my unique perspective, I am well-positioned to see the challenges and great opportunities that are presenting Calais.

Atlantic Rehabilitation Nursing Center (ARNC) was one of the five (5) largest employers in our community. The loss of over ninety (90) healthcare positions has been a major challenge for this area. The relocation of 52 nursing facility residents in Calais has had a negative impact on the existing primary care physician pool in the area. The 2010-2012 Maine State Health Plan and the Plan for Improving Rural Health in Maine both have identified current and projected shortages in healthcare professionals. Health care personnel are difficult to recruit and retain in a rural setting. By eliminating a long term health care provider that has been licensed for 52 nursing facility bed rights will leave a current and future population of individuals and their families without adequate geographical access to quality healthcare.

What does this mean to the City of Calais? The ARNC utilized more than 5% of our water and sewer system. This directly equates to a significant loss in revenue to our utility department of over \$34,000 in Water & Sewer user fees. The ARNC facility which is in the process of being demolished has created a gap or direct loss to Calais in taxable property of \$29,000 in the interim and potentially more looking toward the future. This is an immediate Loss to the City and Taxpayers of \$63,000 annually.

Given the revenue shortfall discussed the Water & Sewer Department will not be able to continue to maintain its current level of service, allow for the ongoing maintenance all while struggling to continue capital and infrastructure improvements as required by State and Federal mandates. This will ultimately result in a rate increase that will affect every rate payer including the most disadvantaged population. Some basic services are required regardless of how many residents we have and the cost for these services continue to remain the same or increase annually regardless of how many taxpayers are supporting them. Each year, we have to weigh municipal services with increased scrutiny and must ultimately seek a rate increase or turn to our tax base in the way of higher property tax to make up the financial shortfall caused by the departure of ARNC. This increase in city tax rates tends to be counterproductive when the City engages in future community development or redevelopment efforts of current businesses. The tax increases and inability to be in position to offer breaks or incentives could cause in the future more negative trends in attracting and keeping business opportunity.

The difficulties in our regional economy over a long period of years have caused us to realize a substantially high level of unemployment in the area. (National 9.1%, Maine 7.6%, Washington County 11.6% and Calais 12.5%). This accounts for a great number of local residents living below the Federal poverty line and therefore they tend to have a high rate of dependency on the MaineCare and other governmental subsidy programs. These high unemployment numbers can only further result in the

disturbing trend that we are dealing with throughout Washington County, that being the exodus of its residents and the resultant decreased population between the ages of 15-59 (working age tax payers).

One of our greatest and most noticeable challenges that can be directly tied to this in our area is the population outlook projected through 2028. According to the State Planning Office Economics and Demographics Team, the population trend shows growth in every age category for men and women over the age of 65. These projections suggest a current and future need for nursing facility beds in our region as well as good paying professional and paraprofessional occupations to attract and retain a vibrant workforce. Whereas, Washington County Community College has a popular nursing program that has attracted a variety of students from the traditional student fresh out of high school to those adult learners who have delayed college enrollment to begin families or may now simply want a career change. This program has the potential to continue and be very successful given the need for medical professionals in rural Maine or become an unintended casualty of the ARNC closure and the subsequent exodus of these working aged residents.

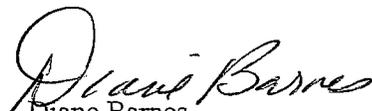
With all of these issues seemingly at work against the community, the Calais Regional Hospital (CRH) and its ability to attract primary care physicians to meet the needs of a rural and aging population of northeastern Washington County has begun to materialize. With the recent closure of the ARNC and relocation of it's patients it is safe to assume the CRH will begin to encounter recruitment and retention troubles with their physicians.

I believe all of the factors discussed will have a negative impact on health status of individuals served in this rural area which is in direct conflict with the State Health Plan's vision and strategies for improving health care in Maine and the goal of the Rural Health Work Group and Maine Center for Disease Control and Prevention Office of Rural Health and Primary Care as defined in their Rural Health Plan titled "A Plan for Improving Rural Health in Maine".

In closing, I would like to share with you my personal experience regarding the closure of the ARNC. My mother in-law was a resident of ARNC. My husband had to make the difficult decision of where to move her so that she would still be close to her family. He decided to relocate her to Oceanview Nursing Home in Lubec which is a wonderful facility but an hour drive one-way from Calais. This was a difficult move for a 97 year old woman. This closure of ARNC has had an impact on our family, the community, but most of all, the people themselves.

I urge you to support LD 986 to establish a Commission to study long-term care facilities to examine the impact on rural nursing home closures in areas that have an urgent need for primary care physicians, high populations of MaineCare patients and realign the fee structure for reimbursement to health care facilities so that they will be sustainable in the future. Follow the current State Health Plan's framework for improved outcomes, better health status, and affordable health care for all Maine by following the vision for the Plan.

Respectfully Submitted,

  
Diane Barnes  
City Manager

Ought Not to Pass  
(Included in LD 986)



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1245

H.P. 879

House of Representatives, March 27, 2013

**Resolve, Directing the Department of Health and Human Services  
To Create a More Equitable, Transparent Resource Allocation  
System for Nursing Facilities Based on Residents' Needs**

(EMERGENCY)

---

Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative STUCKEY of Portland.  
Cosponsored by Senator CRAVEN of Androscoggin and  
Representatives: FARNSWORTH of Portland, SANBORN of Gorham.

copy of 10/14/10  
(copy of 10/14/10)

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,** residents' acuity in Maine's nursing facilities has increased significantly  
4 since the State tightened its MaineCare eligibility rules in the mid-1990s, making Maine's  
5 acuity and costs of care among the highest in the country; and

6       **Whereas,** Maine's nursing facility reimbursement rates annually lag behind the  
7 actual costs of caring for Maine's high-acuity patients by approximately \$30,000,000 due  
8 to rate limits derived from 2005 data and arbitrary peer group averages that do not  
9 adequately take into account resident need; and

10       **Whereas,** state funding for Maine's nursing facilities is disproportionately and  
11 unsustainably reliant upon private pay, Medicare and provider tax revenues, which is  
12 causing a growing number of high-acuity, high-cost nursing facilities to need changes in  
13 reimbursement to take place as soon as possible; and

14       **Whereas,** all nursing facilities currently collect and report MaineCare acuity based  
15 on a resource utilization group scale; and

16       **Whereas,** a growing number of nursing facilities are facing critical and  
17 unsustainable financial challenges and need changes in reimbursement to take place as  
18 soon as possible; and

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

23       **Sec. 1. Department of Health and Human Services to amend rules on**  
24 **reimbursement of nursing facilities. Resolved:** That the Department of Health  
25 and Human Services shall amend its rules in the MaineCare Benefits Manual, Chapter III,  
26 Section 67 to eliminate the current peer grouping method of establishing upper limits for  
27 reimbursement and establish a rate-setting method that:

28       1. Determines patient acuity using the existing measures of acuity, resource  
29 utilization groups and data already collected and reported to the Department of Health  
30 and Human Services for all MaineCare patients and sets rates as a uniform percentage of  
31 Medicare resource utilization group rates adjusted for urban and rural markets but based  
32 on General Fund appropriations available for MaineCare;

33       2. Determines standards for exceptions for qualified providers with:

34       A. Demonstrated atypical nursing services and other operating costs related to high  
35 acuity and high turnover and high medical costs; and

36       B. Specialized or atypical service delivery in areas where access to care is in  
37 jeopardy;



## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 9, 2013

To: Joint Standing Committee on Health & Human Services

From: Jane Orbeton, Legislative Analyst

### **LD 1245, Resolve, Directing the Department of Health and Human Services To Create a More Equitable, Transparent Resource Allocation System for Nursing Facilities Based on Residents' Needs**

#### **SUMMARY:**

This resolve instructs the Department of Health and Human Services to change MaineCare reimbursement for nursing facilities as follows:

1. Eliminate the current nursing home reimbursement peer group limits,
2. Establish a capitated system that treats all facilities equally by setting MaineCare rates as a percentage of the existing Medicare acuity-based resource utilization group rates.
3. Use available MaineCare funds to determine the base percentage and also have a pool of funds of up to 10% of the pool available for exceptions and rewards.
4. Require the department to publish on a publicly accessible website its reimbursement rates and any related exception adjustments of all providers.

At the public hearing the sponsor suggested an amendment, a copy of which is attached. The amendment directs DHHS to:

- Develop a plan for a new reimbursement system for nursing facilities. The plan would draw on methodologies for hospital and nursing facility reimbursement and must maximize the use of funds and minimize the negative impact on consumers, existing services and providers of services.
- Report to the HHS Committee by December 1, 2013, providing details of the plan and a funding mechanism for the plan.

#### **ISSUES FROM TESTIMONY:**

1. Objection was made at the public hearing to payment by peer grouping, which is not the same as patient acuity. The speaker, John Watson, from The Cedars in Portland, stated that underfunding is a national issue.
2. Concerns were expressed about altering the case mix reimbursement existing system, since to Rick Erb of the Maine Health Care Association this bill appears to eliminate the

direct care, routine costs and fixed cost components of the principles of reimbursement and move to a system entirely dependent of RUG scores. There were concerns expressed about RUGs not being real time and not an effective staffing method and about the current system shortchanging facilities that take high-need residents.

**ADDITIONAL INFORMATION NEEDED BY COMMITTEE:**

1. Information was requested on nursing facility reimbursement, resource utilization groups (RUGs) and acuity levels.
2. Information was requested on the position of DHHS on this bill.

**FISCAL IMPACT:**

No information available at this time.

LD 1245

Date: May 2, 2013

Drafter: JO

File: G:\COMMITTEES\HUMAmdnts\126th 1st\Amend LD 1245.docx

**Proposed Committee Amendment to LD 1245, From Rep Peter Stuckey  
Resolve, Directing the Department of Health and Human Services to Create a  
More Equitable, Transparent Resource Allocation System for Nursing  
Facilities Based on Residents' Needs**

Amend the resolve by adding a new section 3 to read:

**Sec. 3. Plan for new reimbursement system. Resolved:** that the Department of Health and Human Services shall develop a plan for a new reimbursement system for nursing facilities and shall report to the Joint Standing Committee on Health and Human Services by December 1, 2013, providing the details of the plan and a funding mechanism to implement the plan. The plan for reimbursement must draw upon methodologies for reimbursing hospitals through the MaineCare principles of reimbursement and Medicare reimbursement for long-term care facilities and hospitals. The plan for reimbursement must utilize to the greatest extent possible resources already in use in the long-term care system, maximizing the potential of those resources and minimizing negative impact on consumers, existing services and providers of those services.

**SUMMARY**

This amendment directs the Department of Health and Human Services to develop a plan for a new reimbursement system for nursing facilities and to report to the Joint Standing Committee on Health and Human Services by December 1, 2013, providing the details of the plan and a funding mechanism to implement the plan. The plan for reimbursement must draw upon methodologies for reimbursing hospitals through the MaineCare principles of reimbursement and Medicare reimbursement for long-term care facilities and hospitals. The plan for reimbursement must utilize to the greatest extent possible resources already in use in the long-term care system, maximizing the potential of those resources and minimizing negative impact on consumers, existing services and providers of those services.

**Testimony for  
The Joint Committee on Health & Human Services  
on LD 1245**

**"Resolve, Directing the Department of Health and Human Services To Create a  
More Equitable, Transparent Resource Allocation System for Nursing  
Facilities Based on Residents' Needs"  
(Emergency)**

**Friday, May 3, 2013**

Good afternoon Senator Craven, Representative Farnsworth, and esteemed colleagues on the Health & Human Services Committee. I am Peter Stuckey and I represent District # 114 (part of Portland). I am here to present LD 1245, Resolve, Directing the Department of Health and Human Services To Create a More Equitable, Transparent Resource Allocation System for Nursing Facilities Based on Residents' Needs.

This is a resolve requiring the Department to draft rules for MaineCare payments to nursing facilities, as a uniform percentage of the federal Medicare rates set for the Resource Utilization Groups that are already part of the payment mix for nursing facilities in Maine that accept Medicare residents. And the RUG acuity scale is already used for every resident in nursing facilities in Maine.

First, the rates would have to be discounted to remove costs Medicare pays, but MaineCare does not, things like lab work and other blood tests. The bills for those services to MaineCare patients go right to DHHS. Then the rates would be adjusted for urban and rural markets, adjustments already in place in Medicare in Maine.

And finally the rules would create a pool of up to 10% of available General Funds for differential payments to providers who respond to atypical high acuity, high cost situations and to providers with disproportionately high MaineCare populations.

Initially, I proposed that this reimbursement restructuring be done within the existing Nursing Facilities GF baseline. However, recognizing that:

- current rate limits derived from 2005 data and arbitrary peer group averages do not adequately take into account resident need,
- Maine's nursing facility reimbursement rates annually lag behind the actual costs of caring for Maine's high-acuity patients by approximately \$30,000,000,
- MaineCare direct care services are now underfunded by more than \$14,000,000 annually,
- Medicare has not reimbursed the full cost of direct care services since 2007, and
- Maine can no longer rely on Non-MaineCare, non-Medicare revenues to fully subsidize our system.

I would like to amend this bill to instruct the Department to draft, in addition to the rules, a plan or initiative that would bring MaineCare funding more in line with the level of reimbursements of costs paid to hospitals and other parts of the health care system, and report that initiative to the Joint Standing Committee on Health and Human Services by December 1, 2013.

Ought Not to Pass  
(Included in LD 986)



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1246

H.P. 880

House of Representatives, March 27, 2013

**An Act To Promote Greater Staffing Flexibility without  
Compromising Safety or Quality in Nursing Facilities**

(EMERGENCY)

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLCENT M. MacFARLAND  
Clerk

Presented by Representative STUCKEY of Portland.  
Cosponsored by Senator CRAVEN of Androscoggin and  
Representatives: FARNSWORTH of Portland, SANBORN of Gorham.

2024 of 2024 12/20

(Copy of the bill)

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,** Maine's typical nursing facility resident reflects an acuity that is among  
4 the highest in the country; and

5 **Whereas,** Maine's minimum staffing rules were established years ago when resident  
6 acuity was vastly different from today; and

7 **Whereas,** the current minimum staffing rules do not require nursing facilities to  
8 staff based on resident acuity or need; and

9 **Whereas,** establishing acuity-based staffing standards would give providers  
10 patient-centered staffing flexibility, a benchmark for staffing to resident need, a threshold  
11 for quality and safety that relates to Maine's high resident acuity and a basis for a more  
12 appropriate allocation of resources according to resident need; and

13 **Whereas,** the acuity measurement tools used to achieve acuity-based staffing are  
14 already required and being used by all Maine's nursing home providers and can be easily  
15 translated to nationally established quality thresholds in support of acuity-based staffing  
16 in addition to state oversight; and

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

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

22 **Sec. 1. 22 MRSA §1812-C, sub-§5-A** is enacted to read:

23 **5-A. Required staffing pattern.** A staffing pattern in a nursing home must be in  
24 conformity with this subsection and with rules adopted by the department. Rules adopted  
25 pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375,  
26 subchapter 2-A.

27 A. The rules adopted by the department must specify the number of hours of nursing  
28 care per patient day to achieve minimum staffing standards, based on a 24-hour  
29 period of time, required to meet resident needs and to meet thresholds for safety,  
30 quality and the prevention of resident harm.

31 B. The rules adopted by the department must also specify that the number of hours of  
32 nursing care required to meet resident needs be specific to resident acuity as  
33 determined by the resource utilization group category that is assigned to each  
34 resident.

35 **Sec. 2. Rulemaking.** The Department of Health and Human Services shall adopt  
36 rules to implement this Act. Notwithstanding the Maine Revised Statutes, Title 22,  
37 section 1812-C, subsection 5-A, the initial rules adopted by the department to implement

1 this Act are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; any  
2 amendments to the initial rules adopted pursuant to this Act are major substantive rules in  
3 accordance with Title 22, section 1812-C, subsection 5-A. The initial rules adopted by  
4 the department to establish nursing home staffing ratios must be in accordance with this  
5 section.

6 1. The required hours of care by a registered nurse, licensed practical nurse and  
7 certified nursing assistant and the total hours of care per patient day for each resource  
8 utilization group category must be derived from the national nursing home staff time  
9 measurement study, known as the "Staff Time and Resource Intensity Verification  
10 project," initiated by the federal Centers for Medicare and Medicaid Services and  
11 adjusted upwards to reflect the State's acuity.

12 2. The State's upward acuity adjustment and staffing threshold must be derived by  
13 adding a uniform measure of times expressed in terms of hours per patient day to each  
14 resource utilization group category that ensures that the total nursing hours per patient  
15 day are not lower than that level that, according to data from the federal Centers for  
16 Medicare and Medicaid Services' online survey, certification and reporting system,  
17 reflects higher levels of deficiencies for resident harm than is approved by the  
18 Department of Health and Human Services and the long-term care ombudsman program  
19 established pursuant to the Maine Revised Statutes, Title 22, section 5106, subsection  
20 11-C.

21 3. A nursing home must apply its actual census and resident-specific hours per  
22 patient day per resource utilization group score derived pursuant to subsection 2 to  
23 establish its facility-specific staffing threshold on a daily basis.

24 4. Survey and oversight procedures must include a tool for collecting resident census  
25 and resident acuity according to resource utilization groups, and compare the facility-  
26 specific staffing threshold with actual staffing.

27 5. A nursing home shall submit staffing information and data to the Department of  
28 Health and Human Services at the request of the department.

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

### 31 SUMMARY

32 Currently, nursing home staffing ratios are calculated based on individual 8-hour  
33 shifts. This bill requires the Department of Health and Human Services to adopt acuity-  
34 based staffing, calculated over a 24-hour period and tied to a quality and safety threshold  
35 established by federally gathered data relevant to resident harm. Nursing homes would  
36 still ultimately be required to staff according to residents' needs.

37 The bill provides that changes to the licensing rules are major substantive rules.

**OFFICE OF POLICY AND LEGAL ANALYSIS**

Date: May 9, 2013

To: Joint Standing Committee on Health & Human Services

From: Jane Orbeton, Legislative Analyst

**LD 1246, An Act To Promote Greater Staffing Flexibility without Compromising Safety or Quality in Nursing Facilities**

**SUMMARY:**

Currently, nursing home staffing ratios are calculated based on individual 8-hour shifts. This bill requires DHHS to adopt acuity-based staffing, calculated over a 24-hour period and tied to quality and safety, and sufficient to meet residents' needs.

The bill provides that changes to the licensing rules are major substantive rules.

The sponsor is proposing an amendment that will simplify the bill while retaining acuity-based staffing requirements that are derived from RUG categories and that are figured on 24-hour time periods.

**ISSUES FROM TESTIMONY:**

1. A suggestion was made to explore staffing requirement options prior to establishing RUGs as the new system.

**ADDITIONAL INFORMATION NEEDED BY COMMITTEE:**

1. Information was requested on current staffing level requirements. Phyllis Powell, DHHS, responded that staffing is required as follows: 1 direct-care provider per 5 residents on the day shift, 1 for every 10 residents on the evening shift and 1 for every 18 residents on the night shift. Federal CMS requires staff sufficient to provide nursing and related services to attain or maintain the highest practical physical, mental and psychological well-being of each resident, as determined by resident assessments and individual plans of care.

**FISCAL IMPACT:**

No information available at this time.

## Orbeton, Jane

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**From:** Powell, Phyllis <Phyllis.Powell@maine.gov>  
**Sent:** Monday, May 06, 2013 4:40 PM  
**To:** Orbeton, Jane  
**Cc:** Adolphsen, Nick; Smith, Bonnie; Albert, Kenneth  
**Subject:** FW: Emailing: Chapter 9 10-144 Chapter110.pdf  
**Attachments:** Chapter 9 10-144 Chapter110.pdf

**Importance:** High

Greetings: I have attached the Regulations Governing The Licensing and Functioning of Skilled Nursing Facilities for the State of Maine. Also to consider is the federal requirement and unallocated language.

Unallocated language exists: Public Laws of 1999 as Passed at 2nd Regular Session of 119th Legislature, Chapter 731, PART BBBB:

"The minimum staffing ratios may not be less than the following:  
A. On the day shift, one direct-care provider for every 5 residents;  
B. On the evening shift, one direct-care provider for every 10 residents; and  
C. On the night shift, one direct-care provider for every 18 residents."

CMS requires that 483.30 "The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practical physical, mental, and psychological well-being of each resident, as determined by resident assessments and individual plans of care."

And: "The facility must designate a licensed nurse to serve as charge nurse on each tour of duty (8 consecutive hours a day, 7 days a week."

The facility must designate a registered nurse to serve as the director of nursing on a full time basis."

And: "Staff is defined as licensed nurses (RNs and/or LPNs/LVNs), and nurse aides."

And: "Full Time" is defined as working 35 or more hours per week."

And: a SNF must provide the services of a registered nurse for more than 40 hours per week.

Certain waivers may be available.

Please let me know if you need additional information.

The message is ready to be sent with the following file or link attachments:

Chapter 9 10-144 Chapter110.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

10-144 Chapter 110  
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF  
SKILLED NURSING FACILITIES  
AND  
NURSING FACILITIES

CHAPTER 9

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RESIDENT CARE STAFFING

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- j. Recommending to the administrator the number and levels of nursing personnel, supplies and equipment for safe resident care;
- k. Establishing priorities for budget items that are necessary to provide services;
- l. Participating in the Quality Assurance Committee and other committees as necessary.

9.A.3. Licensed Staff Coverage

- a. There shall be a Registered Professional Nurse on duty for at least eight (8) consecutive hours each day of the week.
- b. Licensed nurse coverage shall be provided according to the needs of the residents as determined by their levels of care. The following minimum coverage shall be met:

1. Day Shift

- a. In each facility there shall be a licensed nurse on duty seven (7) days a week.
- b. Each facility must designate a Registered Professional Nurse or a Licensed Practical Nurse as the charge nurse. In facilities with twenty (20) beds or less, the Director of Nursing may also be the charge nurse.
- c. In facilities larger than twenty (20) beds, in addition to the Director of Nursing, there shall also be another licensed nurse on duty.
- d. An additional licensed nurse shall be added for each fifty (50) beds above fifty (50).
- e. In facilities of one hundred (100) beds and over, the additional licensed nurse shall be a Registered Professional Nurse for each multiple of one hundred (100) beds.

2. Evening Shift

- a. There shall be a licensed nurse on duty eight (8) hours each evening.
- b. An additional licensed nurse shall be added for each seventy (70) beds.
- c. In facilities of one hundred (100) beds and over, one of the additional licensed nurses shall be a Registered Professional Nurse.

3. Night Shift

- a. There shall be a licensed nurse on duty eight (8) hours each night.
- b. An additional licensed nurse shall be added for each one hundred (100) beds.

10-144 Chapter 110  
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF  
SKILLED NURSING FACILITIES  
AND  
NURSING FACILITIES

CHAPTER 9

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RESIDENT CARE STAFFING

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- c. In facilities of one hundred (100) beds and over there shall be a Registered Professional Nurse on duty.
- d. Registered Professional Nurse on Call

All licensed nursing facilities, regardless of size, shall have a Registered Professional Nurse on duty or on call at all times.

- e. Private Duty Nurses

The presence of private duty nurses shall have no effect on the nursing staff requirements.

9.A.4. Minimum Staffing Ratios

- A. The nursing staff-to-resident ratio is the number of nursing staff to the number of occupied beds. Nursing assistants in training shall not be counted in the ratios.

The minimum nursing staff-to-resident ratio shall not be less than the following:

- 1. On the day shift, one direct-care provider for every 5 residents;
- 2. On the evening shift, one direct-care provider for every 10 residents; and
- 3. On the night shift, one direct-care provider for every 15 residents

The definition of direct care providers and direct care is found in Chapter 1 of these Regulations.  
(see Page 2)

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9.A.5. Multi-Storied Facilities

There shall be staff assigned to each resident floor at all times when residents are present.

9.B. Assignment of Tasks

9.B.1. Licensed Practical Nurse

Only nursing tasks for which that nurse has been trained and which are within the LPN scope of practice, as defined by the Maine State Board of Nursing, shall be assigned to the LPN.

9.B.2. Certified Nursing Assistants

The nursing tasks assigned to a CNA shall only be those for which the CNA has been trained and which are within the scope of the duties, as defined by the Maine State Board of Nursing rules and regulations.

9.B.3. Nursing Assistant

- a. Prior to the initial assignment of a nursing task to a nursing assistant, the Registered Professional Nurse shall determine if the individual is enrolled in a course preparing nursing assistants. The Registered Professional Nurse may assign to that individual only those tasks for which the individual has been satisfactorily prepared as documented by the instructional staff. Such



# HOUSE OF REPRESENTATIVES

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## **Peter C. Stuckey**

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### **Testimony for The Joint Committee on Health & Human Services on LD 1246**

### **"An Act To Promote Greater Staffing Flexibility without Compromising Safety or Quality in Nursing Facilities" (Emergency)**

**Friday, May 3, 2013**

Good afternoon Senator Craven, Representative Farnsworth, and esteemed colleagues on the Health & Human Services Committee. I am Peter Stuckey. I represent District # 114 (part of Portland). And I am here today to present LD 1246, "An Act to Promote Greater Staffing Flexibility without Compromising Safety or Quality in Nursing Facilities."

This bill is pretty simple. It promotes the flexibility providers are seeking by changing the minimum direct service staffing hours from different numbers for three 8-hour shifts to one number per resident day. And it ties that number to the required minimum staffing level for each resident as established by the Resource Utility Group (RUG) acuity scale employed by the federal CMS and already in place in all nursing facilities in Maine, and administered with all residents, including Maine Care.

So on any given day, in any given nursing facility in the State of Maine, anyone with authorized access to residents' files and the facility's staff schedule could easily compute, and confirm for compliance, the facility's minimum staffing requirement in hours of direct care service per resident day.

Staffing flexibility, without compromising safety or quality of care, based on resident acuity and resident need...and it's virtually no extra administrative work for the facility or the Department.

Just right for late on a Friday afternoon.

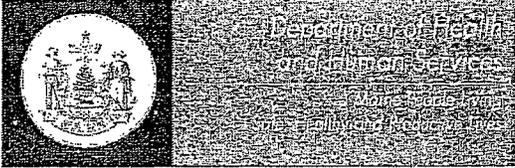
I did learn one other thing about staffing from my time with the LD 1700 workgroup and ongoing discussions with Brenda Gallant, Maine's Long Term Care Ombudsman. There are experts, including people at the federal CMS and here in Maine, who say that regardless of the acuity scale staffing requirements, there is a minimum below which resident health and safety becomes compromised. These experts put that level at 4.1 hours per resident/patient day.

I chose not to include that number in this bill because I wanted to stay focused on acuity and simplicity. But I'd be happy to consider a friendly amendment to include a resident safety threshold minimum.

The minimum being proposed during the LD 1700 discussions was closer to 3 hours per resident/patient day. As I recall, that was the number the algebra generated using the three 8-hour shift minimums.

You'll note that in the LD 1700 progress report, the recommended actions for addressing flexible staffing levels and connecting resident acuity and staffing standards were to include them in the current revisions to the nursing facility rules presently underway within the Department. As far as I know, that work is still going on.

Again, I'd like to thank all the folks who have helped me understand this issue, and the much larger underlying issue of fixing the funding of our State's nursing facilities.



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services  
Commissioner's Office  
221 State Street  
11 State House Station  
Augusta, Maine 04333-0011  
Tel: (207) 287-3707; Fax (207) 287-3005  
TTY Users: Dial 711 (Maine Relay)

January 7, 2013

Senator Margaret M. Craven, Chair  
Representative Richard R. Farnsworth, Chair  
and Members of the Joint Standing Committee on Health and Human Services  
#100 State House Station  
Augusta, ME 04333-0100

**RE: DHHS "Progress Report" to Committee regarding LD 1700, *An Act to Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes***

Dear Senator Craven, Representative Farnsworth, and Members of the Joint Standing Committee on Health and Human Services:

Please accept the attached "progress report" regarding an alternative method of calculating minimum staffing levels in nursing homes. This progress report is sent in response to your letter dated April 11, 2012 (attached). The Department was asked to convene and facilitate a workgroup to continue the discussion begun before your committee during the public hearing and work sessions on LD 1700 regarding more flexible staffing standards that preserve quality of care, do not lower current staffing levels and improve efficiency.

The workgroup held six meetings and reached immediate and ongoing consensus that flexible staffing is a desired goal, and that it is appropriate for the Department to re-examine current, minimum, shift-based staffing ratios for nursing facilities. However, due to the complexity of the impact of staffing standards on reimbursement, it is recommended that your committee during the 126<sup>th</sup> Legislature consider submitting a resolve establishing a Legislative Commission to study issues related to nursing facility staffing standards including rate-setting, resident acuity, and quality patient care. The use of legislative resources is needed to address this complex topic that impacts the delivery of quality care in Maine nursing facilities.

If you have any questions, please contact Ken Albert, Director of the Division of Licensing and Regulatory Services, at 207-287-9257.

Sincerely,

Mary Mayhew  
Commissioner

MCM/kiv

Enclosure

cc: Kenneth Albert, RN, Esquire, Director, Division of Licensing and Regulatory Services  
Ricker Hamilton, Director, Office of Aging and Disability Services  
Stephanie Nadeau, Director, Office of MaineCare Services

# An Alternative Method of Calculating Minimum Staffing Levels in Nursing Facilities

∞

*"We are impressed by the strong interest in more flexible staffing standards that preserve quality of care, do not lower current staffing levels and improve efficiency."* Letter (excerpt) from Senator McCormick and Representative Strang Burgess, Chairs, Joint Standing Committee on Health and Human Services, to Mary Mayhew, Commissioner, Department of Health and Human Services.

Progress Report  
December 2012

Progress Report to the Joint Standing  
Committee on Health and Human Services,  
125<sup>th</sup> Maine State Legislature

Submitted by the Department of Health and Human Services,  
Division of Licensing and Regulatory Services

This report was prepared by:  
The Division of Licensing and Regulatory Services  
Department of Health and Human Services  
41 Anthony Avenue  
11 State House Station  
Augusta, ME 04333-0011

For further information, please contact:  
Phyllis Powell, Assistant Director  
(207) 287-9300  
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## Table of Contents

I.	LD 1700 WORK GROUP: STAFFING LEVELS IN NURSING FACILITIES	4
	1) Background	
	2) Participants	
	3) Charge	
	4) Process	
II.	RECOMMENDATIONS	5
	1) Flexible Staffing Levels in Nursing Facilities	
	2) Connecting resident acuity and staffing standards	
	3) Impact of staffing standards on reimbursement	
III.	DRAFT RESOLVE	7
IV.	ATTACHEMENTS	9

## I. LD 1700 WORK GROUP: STAFFING LEVELS IN NURSING FACILITIES

- 1) **Background:** LD1700, *An Act to Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes*, directed the Department of Health and Human Services (DHHS) to amend its minimum staffing rules to provide flexibility in staffing by setting standards based upon the 24-hour day. The Joint Standing Committee on Health and Human Services (HHS), 125<sup>th</sup> Legislature, voted against LD1700, but stated the following in a letter to the Commissioner of DHHS: "We were impressed by the strong interest in more flexible staffing standards that preserve quality of care, do not lower current staffing levels and improve efficiency." Additionally, the Committee wrote that it "is interested in encouraging the continuation of the productive discussions that began during consideration of this bill."

The Committee's letter to the Commissioner of DHHS requested that DHHS convene a workgroup stating, "the working group should consider survey and certification data and information, connecting resident acuity and staffing standards, and the impact of staffing standards on reimbursement." The Committee requested that DHHS report to the HHS Committee by December 1, 2012, on the progress made by the workgroup, including any recommendations and proposed changes to law and rule.<sup>1</sup>

- 2) **Participants.** Joining the workgroup from the legislature were Representatives Peter C. Stuckey and Meredith N. Strang Burgess. Phyllis Powell, Assistant Director DLRS Medical Facilities Unit, facilitated the work of the group. Other members included representatives of the Long-term Care Ombudsman Program, the Maine Health Care Association, LeadingAge of Maine and New Hampshire, the Alzheimer's Association/Maine Chapter, the Maine Hospital Association, the Office of Aging and Disability Services, and Division of Licensing and Regulatory Services. A number of interested parties attended to share their views relative to minimum staffing ratios and quality of care.<sup>2</sup>
- 3) **Charge.** The workgroup was established to provide a forum to continue the discussion begun before the HHS committee that generated strong interest regarding more flexible staffing standards that preserve quality of care, do not lower current staffing levels and improve efficiency.
- 4) **Process.** The workgroup was convened and a series of meetings held on a two-week rotating schedule. Additionally, work group members benefited from the presence of subject matter experts at certain meetings as identified in the minutes. Examples of participating subject matter experts include: Colin Lindley, Director of Rate Setting for DHHS; Richard Lawrence, Healthcare Financial Analyst (former rate setting analyst); Catherine McGuire, Muskie School of Public Service (MDS); Kathleen Tappan, DLRS (MDS); Tammy Steuber, DLRS,

<sup>1</sup> Attachment 1: Communication from the Legislature to the Commissioner of DHHS dated April 11, 2012.

<sup>2</sup> Attachment 2: Work group members and subject matter experts who participated in the meetings.

Paralegal. Additional written material was submitted by several members of the workgroup.<sup>3</sup>

This "progress report," prepared by DHHS, represents the workgroup's recommendations. The draft progress report was distributed to workgroup participants and their comments reviewed for inclusion in this report.

## II. RECOMMENDATIONS

- 1) ***Flexible Staffing Levels in Nursing Facilities:*** The workgroup reached immediate and ongoing consensus that flexible staffing is a desired goal, and that it is appropriate for the Department to re-examine current, minimum, shift-based staffing ratios for nursing facilities. "Traditional shift-based staffing patterns of 7:00-3:00, 3:00-11:00 and 11:00-7:00 are outdated and do not consider individual patient needs. Several facilities have adopted 12 hour shifts." (Maine Healthcare Association). The workgroup also agreed that any adjustment to the present minimum staffing requirements should assure that minimum staffing requirements do not fall below the existing staffing ratio.

**Action:** The department will examine nursing facility staffing ratios as a part of revisions to the nursing facility rules presently in the amendment process.

- 2) ***Connecting resident acuity and staffing standards:*** Federal and state certification standards require that facilities staff to meet patients' needs.

**Action:** This requirement will be articulated in the revised nursing facility rules (in process).

- 3) ***Impact of staffing standards on reimbursement: A discussion with DHHS rate setting staff and other subject matter experts*** indicated that there is not a direct correlation between staffing standards (ratios) and reimbursement. Further, there does not exist a uniform methodology for evaluating patient acuity as it relates to staffing levels. As such, there is no consistent and direct correlation between acuity and staffing standards in Maine. Due to the complexities involved (rate setting process, patient acuity measures, state and federal regulations, reimbursement methodologies, etc.) the work group recommends the formation of a Commission or other legislatively authorized group to study and propose recommendations, including legislation to address the interrelationship between staffing, reimbursement, and the delivery of safe and quality care.

According to LeadingAge representatives, "reimbursement is a common concern among providers since the last rebasing of providers occurred in 2005, and the

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<sup>3</sup> Attachment 3: Minutes of the workgroup meetings.

acuity of Maine patients has increased since then.” According to figures provided by the Maine Healthcare Association “MaineCare underpays nursing homes for their direct care costs by \$14 million.”

**Action:** The work group recommends that a legislatively authorized Commission or work group be established to work with the MaineCare Program, the Division of Audit and the Rate Setting Unit to further clarify the relationship between the provider network, patient acuity, provider reimbursement and rebasing. Further, it is recommended that this work group should be formally established by the Legislature with specific staffing and designated participants who are appointed based on clearly defined criteria.

### III. DRAFT RESOLVE

#### Resolve, To Establish a Commission To Study An Alternative Method of Calculating Minimum Staffing Levels in Nursing Facilities

**Sec. 1. Study Commission established. Resolved:** That the Commission to Study An Alternative Method of Calculating Minimum Staffing Levels in Nursing Facilities, referred to in this resolve as "the commission," is established, and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consist of the following members:

1. Five members appointed by the President of the Senate as follows:
  - A. Two members of the Senate, including one member of the party holding the highest number of seats and one member of the party holding the 2<sup>nd</sup> highest number of seats; and
  - B. Three members who are experts in the field of nursing facility services; and
2. Five members appointed by the Speaker of the House as follows:
  - A. Two members of the House of Representatives, including one member of the party holding the highest number of seats and one member of the party holding the 2<sup>nd</sup> highest number of seats; and
  - B. Three members who are consumer advocates for, or family members of, consumers of nursing facility services;
3. One member of the Governor's office designated by the Governor at the Speaker's request;
4. An appropriate number of persons within the Department of Health and Human Services; and
5. Other persons, as appropriate; and be it further

**Sec. 3. Chairs. Resolved:** that the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission; and be it further

**Sec. 4. Appointments; convening of commission. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the commission,

which must be no later than 30 days following the appointment of all members; and be it further

**Sec. 5. Duties. Resolved:** That the commission shall examine and make recommendations on the development of an alternative method of calculating minimum staffing levels in nursing facilities that addresses more flexible staffing standards that preserve quality of care, do not lower current staffing levels and improve efficiency. The study commission shall also examine and make recommendations on issues related to nursing facility staffing standards including rate-setting, provider reimbursement, resident acuity, and quality patient care; and be it further

**Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the commission; and be it further

**Sec. 7. Report. Resolved:** That, no later than December 1, 2013, the commission shall submit a written report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 126<sup>th</sup> Legislature.

#### SUMMARY

This resolve establishes a legislative study commission to continue the work begun by the 125<sup>th</sup> Legislature (LD 1700) and the subsequent workgroup convened by the Department of Health and Human Services pursuant to a letter from the Chairs of the Joint Standing Committee on Health and Human Services to further study and make recommendations on the multifaceted issues involved in the development of an alternative method of calculating minimum staffing levels in nursing facilities.

#### IV. ATTACHMENTS

- Attachment 1: Communication from the Legislature to the Commissioner of DHHS dated April 11, 2012.
- Attachment 2: List of workgroup members and subject matter experts who participated in the meetings.
- Attachment 3: Minutes of the workgroup meetings.
- Attachment 4: 10-144 Code of Maine Rules Chapter 110: Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities (Chapter 9).
- Attachment 5: Legislative History of LD 1700: 125th Maine Legislature, Second Regular Session, Legislative Document No. 1700, H.P. 1252, House of Representatives, December 23, 2011, "Ought Not To Pass" and related testimony (Provided by the Maine State Law and Legislative Reference Library, an Office of the Maine Legislature).
- Attachment 6: Documents submitted by the Maine Healthcare Association (Rick Erb): Letter to Kenneth Albert dated November 21, 2012; Undated submission "*Flexibility was the entire purpose of LD 1700;*" Undated submission "*Nursing Facility with 60 Residents, Nursing Facility with 100 Residents.*"
- Attachment 7: Documents submitted by LeadingAge-Maine New Hampshire (An association of not-for-profit senior living and care communities): "Considerations and Recommendations re: LD 1700 *An Act to Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes*, dated November 29, 2012;" a one-page chart that includes "state funding of actual allowable direct care costs;" and a one-page chart that includes "acuity rank" for 49 facilities. (Source: Filed cost reports for 2009 for PEER GROUP 2). Submitted by J. Watson.
- Attachment 8: Documents submitted by the Maine Long-Term Care Ombudsman Program (Brenda Gallant): "Complaints Received by the Maine Long-Term Care Ombudsman Program, October 1, 2010 – September 30, 2011;" and an 11/21/12 email with suggested language changes for the progress report.
- Attachment 9: Documents submitted by BerryDunn: "NF Direct Care MaineCare Underfunding – 5 Years Trend;" "Schedule of Hours Per Patient Day (PPD) By Nursing Category;"

"Schedule of NF Nursing Hours Per Patient Day (PPD) and Direct Care Underfunding For 2010."

- Attachment 10: National Study: *"Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2005 Through 2010,"* (October 2011) by Charlene Harrington, Ph.D., R.N., Professor Emeritus University of California, San Francisco, CA 94118, [Charlene.Harrington@ucsf.edu](mailto:Charlene.Harrington@ucsf.edu)
- Attachment 11: National Study: *"Nursing Home Staffing Standards In State Statutes And Regulations,"* (December 2010), by Charlene Harrington, Ph.D., R.N., Professor Emeritus University of California, San Francisco, CA 94118, [Charlene.Harrington@ucsf.edu](mailto:Charlene.Harrington@ucsf.edu)
- Attachment 12: **Nursing Home Compare** - Medicare.gov  
[www.medicare.gov/nhcompare/](http://www.medicare.gov/nhcompare/)
- Attachment 13: CHARTBOOK, Older Adults and Adults with Disabilities: Population and Service Use Trends in Maine, (Excerpts from DRAFT 2012 Edition), Muskie School of Public Service, University of Southern Maine.



Elder Services  
An Office of the  
Department of Health and Human Services

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

## People We Serve Services We Provide

### Long-Term Services & Supports (SFY 2009)

MaineCare-Funded	# of People	% of Total	Amount of Expenditures	% of Total
Nursing Facilities	4,756	38%	\$245.2 million	65%
Residential Care	3,133	25%	\$ 78.2 million	21%
Adult Family Care/ALEs	272	2%	\$ 5.1 million	1%
Home-Based Services	4,217	34%	\$ 47.3 million	13%
Total	12,377	100%	\$375.8 million	100%

State-Funded	# of People	% of Total	Amount of Expenditures	% of Total
Home-Based Care	1,124	27%	\$ 6.0 million	64.5%
Independent Support	2,383	57%	\$ 2.0 million	21.5%
Other	647	16%	\$ 1.3 million	14%
Total	4,154	100%	\$ 9.3 million	100%



## **Nursing Homes**

In the mid 1990s, Maine made a conscious effort to reduce dependency on nursing homes and limit their use to the neediest residents.

Maine has 6,974 nursing home beds, approximately 3,500 fewer than it had 20 years ago. (Sources: DHHS and MHCA database)

Maine's 31 nursing home beds per 1,000 residents age 65+ is the lowest in New England. In 2010, this number ranked Maine 38<sup>th</sup> among all states. (Source Across the States; Profiles in LTC)

Statewide nursing home occupancy rates average 91%. (Source: DHHS)

The percentage of Maine's age 85+ population residing in nursing homes declined by 30% from 2000 to 2008, and has leveled off since then. (Source DHHS)

Maine nursing homes care for one of the neediest populations in the country. The average number of Activities of Daily Living (ADL) requiring assistance is 4.37. This is 3<sup>rd</sup> highest in country (Source: CMS)

Maine nursing homes have the nation's second highest rate of dementia at 56.6%, second highest in the country. (Source: CMS)

According to a 2011, AARP study, only 1.3% of Maine Nursing home residents were considered "low need". This was the lowest proportion in the country. (Source: AARP State Scorecard on LTC)

The nursing home payer mix is 66% MaineCare, 15% Medicare, 19% Private Pay (Source: CMS)

According to audited cost reports, Maine nursing homes were underpaid by \$29.5 million in 2011. This is the difference between the allowable cost of providing services and actual MaineCare reimbursement. The average nursing home lost \$19.23 per day for each of its MaineCare residents. (Source: Berry Dunn Certified Public Accountants)

## **Assisted Living / Residential Care**

Maine has been able to reduce nursing home utilization partly because of the development of Medicaid Assisted Living, also known as Residential Care, or PNMIs.

The residential care system was built on a social model instead of a medical model and on average, facilities are less than half the size of nursing homes. (Source: DHHS)

The average number of people served in Residential Care increased from 3,089 to 3,959 from 2000 to 2006 but has remained flat since then. (Source: DHHS)

Approximately a quarter of people currently served in Residential Care are also medically eligible for nursing home care. In many cases these are residents who have aged in place. (Source: DHHS)

Resident acuity in residential care (as measured by case mix index) has increased by 24% over the past 12 years. (Source: DHHS and Muskie school)

Forty-seven percent of residents have a dementia diagnosis. (Source: DHHS)

The average age of Maine's residential care residents is 80.6. The average age in nursing homes is 81.4. (Source: DHHS)

Maine's residential care facilities average 92% occupancy. (Source: Muskie School)

The residential care payer mix is 80% MaineCare, 20% Private Pay. (Source: DHHS/Muskie School)

According to audited cost reports, residential care facilities were underpaid by \$4.6 million in 2011. This is the difference between allowable costs and actual MaineCare reimbursement. (Source: Berry Dunn Certified Public Accountants)

## **Economic Impact of Long Term Care Facilities**

The economic impact of all long term care facilities (nursing homes and assisted living) in Maine is \$2.2 billion per year, which represents 4.2% of the State's economic activity.

This includes 23,450 direct employees and another 7,750 indirectly employed. Labor income for direct employees is \$732.5 million per year.

(Source: American Health Care Association using Impact Analysis for Planning (IMPLAN) software and data, 1999)

From Resolve 1997.

STATE OF MAINE  
118TH LEGISLATURE  
SECOND REGULAR AND SECOND SPECIAL SESSIONS

Chapter 81

Final Report  
of the

COMMISSION TO EXAMINE  
RATE SETTING AND THE FINANCING OF  
MAINE'S LONG-TERM CARE FACILITIES

November 20, 1998

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## Executive Summary

### I. Legislative history and commission process

The 118th Maine Legislature established the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities in 1997 with the passage of Resolve of 1997, Chapter 81 and the amendment to it passed in Resolve of 1997, Chapter 129.

The duties of the commission include examination of the following issues concerning long-term care facilities:

1. The setting of rates for the different payers within the long-term care system for nursing facility services, including monthly charges and charges for resident services and supplies, and ensuring affordability;
2. The levels of profit guaranteed by the rate of reimbursement, a comparison of rates among the different states and financial stability within the system;
3. The advisability of rate equalization between private and public payers, implementation of rate equalization and what the possible benefits and detriments might be for nursing facility residents;
4. The case mix payment system for private paying patients;
5. The possibility of regulating the long-term care nursing facility industry in the manner of regulating public utilities;
6. The relationship between staffing levels and quality of care and maintaining high-quality care;
7. Mechanisms for providing consumer participation in decisions on the reimbursement for nursing facility care under the Medicaid program; and
8. Salaries, dividends and management fees in nursing facilities.

The commission met 15 times during its work over two interim sessions. Experts in the field of nursing facility quality of care and reimbursement met with the commission and participated in telephone conferences with commission members. Interested parties representing nursing facilities, regulators and consumer advocates attended meetings and provided information to the commission. The commission considered the following issues: nursing facility reimbursement by Medicare, Medicaid, insurance and private pay sources, the Medicaid Principles of Reimbursement, rate setting, rate equalization, the financial health of the nursing facility industry, employment issues, financial assistance from the Maine Health and Higher

Educational Facilities Authority, quality of nursing facility care, minimum staffing requirements, paperwork reduction initiatives and interaction with consumers and families.

## II. Commission recommendations

The Commission believes that Maine residents should have access to high quality long-term care services in their homes and communities and in long-term care facilities close to their homes. To ensure that these services are available, long-term care facilities and agencies must be financially healthy and consumers must be able to plan for their care and to understand the services that are provided in the long-term care system. To these ends the commission makes the following recommendations:

**1. Outcome-based incentives.** The commission recommends that the Legislature direct the Department of Human Services to undertake pilot projects to reward high quality care in nursing facilities based on successful performance by the facilities. The commission suggests that successful performance be measured using quality indicators from the Minimum Data Set already in use and from consumer and family satisfaction surveys. The commission suggests that successful performance may be rewarded by means of financial rewards, favorable public information, decreased regulation by the State or in other ways. The commission cautions the department to preserve consumer choice in urban and rural settings to the extent practical, to avoid preserving with financial or other assistance facilities that perform poorly because of incompetence and to avoid inadvertently restricting access to care.

**2. Reimbursement for nursing facility care through the Medicaid system.** The commission is persuaded that reimbursement to nursing facilities through the Medicaid program may be inadequate to ensure high quality care to residents. The commission recognizes, however, that the need for more reimbursement for facilities needs to be balanced against the need to fund home and community based care. Therefore, the commission recommends that the Department of Human Services review the Principles of Reimbursement as well as information from facilities in order to identify the specific areas in which reimbursement is inadequate.

The commission recommends that the Legislature direct the Department of Human Services to develop new approaches to reimbursement targeted to specific problems, including the following, and report to the Legislature's Joint Standing Committee on Health and Human Services by February 1, 1999:

- A) Examining operating costs to determine specific areas in which reimbursement may be inadequate. In doing so the department should consider the following options for reimbursement:
- reimbursing facilities' costs for medical directors at a level reflecting the increased acuity of nursing facility residents;
  - merging the indirect and routine cost components;

- reimbursing for all aspects of direct care for residents, including medical supplies, in one cost category so that they may be adjusted by case mix;
- reviewing the most recent information from time studies being used for the Medicare prospective payment system and making a determination whether the time study presently in use reflects nursing costs in Maine's facilities and is appropriate for use; and
- studying employment markets, labor costs and turnover rates at facilities around the State and, for those facilities that are at or above direct care limits, developing methods for providing increased reimbursement. This study should be done in conjunction with the Department of Labor and should build upon the work already done by that department and by the Maine Health Care Association;

B) Re-basing reimbursement rates from 1993 to 1996 or the most recent complete audited year and adopting new medians and cost caps in order to keep up with the higher costs faced by facilities due to inflation, increased paperwork requirements, and higher resident acuity. In doing so the department should consider the following options for re-basing:

- re-basing costs with an emphasis on those most directly impacting high quality resident care; and
- re-basing cost components on a rolling schedule whether periodically or when a stated event occurs, such as when 50% of the facilities are over the cap;

C) Tying caps applicable to the different cost components to the size of the facility, placing higher caps on the smaller facilities, which are often in rural areas, in recognition of the higher costs faced by those facilities and the importance of maintaining access to nursing facility care in rural areas; and

D) Removing any reimbursement incentives that have unintended adverse impacts on resident care.

**3. Minimum staffing requirements.** The commission recommends that the Legislature direct the Department of Human Services to replace its current minimum staffing ratios with minimum staffing requirements that:

- A) are tied to the acuity level of residents and to the other needs of residents that effect the quality of their lives; and
- B) ensure that adequate numbers of direct care staff are available at all times to meet residents' needs.

The commission recommends that the Commissioner of Human Services present a proposal to implement and fund these new requirements to the Legislature's Joint Standing Committee on Health and Human Services by March 1, 1999.

**4. Rate Setting.** While some members of the commission support the concept of rate equalization, they recognize that legislation requiring nursing facilities to charge equal

rates to Medicaid residents and private payers could require additional legislative appropriations which would jeopardize needed funding for home and community based care. Accordingly, the commission does not recommend that equal rates be mandated at this time.

**5. Paperwork reduction.** The commission recommends that the Legislature direct the Commissioner of Human Services to report to the Joint Standing Committee on Health and Human Services by June 1, 1999 with a plan to reduce paperwork in nursing facilities which must include consideration of the opportunities presented by advancing technology and the feasibility of linking data between the Minimum Data Set (MDS 2.0) and Medical Eligibility Determination (MED'96) forms.

**6. Interaction with consumers and families.** The commission recommends that the Legislature take the following actions:

- A) direct the Department of Human Services to improve the provision of information on long-term care services, costs and performance; and
- B) strengthen and make more independent the Long-term Care Steering Committee by allocating more resources to it and changing its duties so that it advises the Commissioner and the Legislature.

**7. Flex beds.** The commission encourages the Department of Human Services and the Maine Health Care Association to continue their work on a proposal to allow the use of "flex beds," by which the commission means that beds licensed for long-term or residential care may be used to meet the changing needs of residents and may be reimbursed according to the level of care provided. The commission cautions that any proposal must not compromise the quality of life of a facility's residents.

**8. Regulatory barriers to high quality care.** The commission recommends that the Legislature direct the Commissioner of Human Services to study and identify regulatory barriers to high quality care and make recommendations for relief or modification of rules and report to the Joint Standing Committee on Health and Human Services by January 1, 2000.

**9. Long-term care insurance information.** The commission recommends that the Legislature direct the Bureau of Insurance to:

- A) collect information on long-term care insurance and provide a report by March 1 each year to the Commissioner of Human Services, the Joint Standing Committee on Health and Human Services and the public. The information collected should include the number and types of policies purchased by consumers, the cost of premiums, daily benefit levels and the duration of benefits. Information should also be collected on policies paying benefits to or for consumers, including the types of policies, daily benefit levels and remaining duration of benefits; and

B) conduct a study of the use of individual income tax credits as incentives to encourage the purchase of long-term care insurance. The study should analyze the effectiveness of tax credits in encouraging the purchase of long-term care insurance in other states and the anticipated cost to the State from establishing a tax credit for all or part of the premium cost of qualifying long-term care policies. The Bureau should provide a report to the Joint Standing Committee on Health and Human Services by January 1, 2000.

**10. Report on changes in long-term care.** The commission recommends that the Legislature direct the Commissioner of Human Services to consult with the Long-term Care Steering Committee, study changes in the delivery and financing of long-term care and report to the Joint Standing Committee on Health and Human Services by March 1, 2000. The report should cover changes in the delivery of long-term care in facilities and by home and community-based providers, changes in reimbursement systems including, but not limited to the changes in the Medicare reimbursement system, the use of "flex beds," the quality of care provided to residents of Maine, the growth in home and community-based care and the availability of services and providers in all parts of the State.

**11. Medicare reimbursement system.** The commission recommends that the Legislature pass a legislative resolution opposing the change to the proposed prospective payment reimbursement system that has been instituted in the federal Medicare program for the reasons that it is flawed in its structure and that its application will cause financial hardship for Maine's long-term care facilities and will reduce the quality of care provided to Maine's residents. The commission is concerned that the new reimbursement system will lower reimbursement for care, cause the loss of skilled nursing facility beds available under the Medicare program and restrict access to care for residents who are eligible for Medicare. Maine was one of six states participating in a demonstration project under the Medicare program. Nursing facilities in all states that participated in the demonstration project are in jeopardy because the system omitted reimbursement for Part B pharmaceuticals for providers in states that participated in the demonstration project. Commission members fear that the new reimbursement system will lower reimbursement for staffing to a national average, which is below the staffing level provided in Maine facilities, and thus will lower the quality of care provided in Maine.

## Public Law 1999, Chapter 731, Part BBBB

(Some initiatives derived from the Commission to Examine Rate Setting and the Financing of Maine's Long-term Care Facilities, 1997 and 1998)

### PART BBBB

**Sec. BBBB-1. Rule amendment regarding Medicaid long-term care policy and the home care program.** The Department of Human Services shall review and amend its rules regarding Medicaid long-term care policy in order to enhance the flexibility of Medicaid benefits to the extent possible under federal law. The department shall consider the report of the Joint Advisory Committee on Select Services for Older Persons dated January 2000. The review must include but is not limited to the feasibility of amending Medicaid rules to ensure that consumers do not lose critical benefits when they make a transition from the state-funded home care program to the Medicaid program. Rules adopted pursuant to this section take effect January 1, 2001. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-2. Rule amendment regarding consumers of long-term care services who have chronic conditions that change.** The Department of Human Services shall amend its rules regarding eligibility for nursing facility services to allow for increased eligibility for consumers of long-term care services who have chronic conditions that change enough to qualify and disqualify them for services on a cyclical basis. Rules adopted pursuant to this section take effect October 1, 2000. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-3. Labor force initiatives.** The Department of Human Services and the State Board of Nursing, in consultation with consumers, providers and other interested parties, shall adopt or amend rules and propose such legislation to the Legislature as may be required to create career ladders and address labor shortage issues. By August 1, 2000, the Department of Human Services shall amend its rules to provide for continuing certification on the Maine Registry of Certified Nursing Assistants of a certified nursing assistant who, over a 24-month period, performs for 8 hours nursing or nursing-related services that are supervised by a registered nurse. The rules may not require that nursing or nursing-related services be performed in a nursing facility or hospital. The rules must be retroactive for 2 years. Rules adopted pursuant to this provision are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-4. Provision of best practices forums.** The Department of Human Services shall participate in a series of best practices forums to provide educational workshops and opportunities to providers of long-term care services. Workshops and forums may be cosponsored by entities other than the department.

**Sec. BBBB-5. Development of standardized contracts and rule adoption.** The Department of Human Services shall develop and adopt rules to require the use of standardized contracts to be used for long-term care services between the service provider and the consumer when appropriate to the service and setting. Rules adopted pursuant to this section take effect January 1, 2001. Rules adopted or amended pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-6. Rule amendment regarding default licensing.** The Department of Human Services and the Department of Public Safety shall amend their rules regarding licensing for long-term care facilities and services to provide for default licensing for new applicants. The rules must provide that default licensing takes effect when a new applicant has filed a completed

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application, has not been provided the necessary notifications, inspections or services from state agencies and a period of more than 90 days has elapsed since notification that the application is complete. The Department of Human Services and the Department of Public Safety and persons or entities performing functions for those departments shall notify a new applicant within 2 weeks of filing by the applicant on whether the application is complete. The Department of Human Services and the Department of Public Safety shall provide necessary services and inspections within 90 days of the filing of the completed application. Rules adopted pursuant to this section take effect January 1, 2001. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-7. Expansion of the National Fire Protection Association Life Safety Code inspection capacity.** The Department of Human Services, the Department of Public Safety and municipal fire officials shall work together to devise ways to expand the delegation of the National Fire Protection Association Life Safety Code inspections. The Department of Human Services and the Department of Public Safety shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 2001 on their progress under this section. The joint standing committee of the Legislature having jurisdiction over health and human services matters has authority to report out legislation on life safety code inspections.

**Sec. BBBB-8. Rule amendment regarding the principles of reimbursement for nursing facilities.** The Department of Human Services shall amend the principles of reimbursement for nursing facilities to ensure that reimbursement reflects the current cost of providing services in an efficient manner. The department shall reconsider the provision that allows retention of 25% of cost savings in the direct cost component. The revised principles of reimbursement must merge routine and indirect cost components into a single routine cost component category; must include medical supplies as a direct cost component; must incorporate the most recent time-study information; must rebase to the most recent audited year; must contain an annual inflation adjustment appropriate to the industry; must include performance standards, measurable outcomes and satisfaction surveys of consumers and family members; must utilize cost caps, including, but not limited to, cost caps for facilities based on size; and must recognize regional variations in labor costs. Rules amended pursuant to this section take effect September 1, 2000. Rules amended pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-9. Report on long-term care insurance.** The Department of Human Services, the Maine State Retirement System and the State Employee Health Insurance Program shall work together to study the provision of group long-term care insurance to employees of the State and other public sector employees and retirees and to their family members and to the citizens of the State. The study must consider the CalPERS system operating in California, other models used in other states and the feasibility of regional cooperation among states. The State Employee Health Insurance Program is the lead agency in the study and shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by April 1, 2001 regarding the study and any recommendations.

**Sec. BBBB-10. Development of a public awareness campaign.** The Department of Human Services, Bureau of Elder and Adult Services shall coordinate with the Bureau of Health a public awareness campaign that focuses on the benefits of a healthy lifestyle and the need to plan for long-term care. The department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 2001 on its progress on the campaign.

**Sec. BBBB-11. Staffing ratios.** By October 1, 2000, the Department of Human Services shall amend the rules on minimum staffing ratios in long-term care facilities to provide for ratios in accordance with this provision.

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1. The minimum staffing ratios may not be less than the following:
  - A. On the day shift, one direct-care provider for every 5 residents;
  - B. On the evening shift, one direct-care provider for every 10 residents; and
  - C. On the night shift, one direct-care provider for every 18 residents.
2. The minimum staffing ratio rule must provide definitions for "direct-care providers" and "direct care" as follows:
  - A. "Direct-care providers" means registered nurses, licensed practical nurses and certified nursing assistants who provide direct care to nursing facility residents; and
  - B. "Direct care" means hands-on care provided to residents, including, but not limited to, feeding, bathing, toileting, dressing, lifting and moving residents. "Direct care" does not include food preparation, housekeeping or laundry services except in circumstances when such services are required to meet the needs of an individual resident on a given occasion.

The Department of Human Services shall undertake pilot projects to determine appropriate staffing ratios for mealtimes and shall report on progress on the pilot projects to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 2001.

The Department of Human Services shall begin work to develop staffing ratios based on resident acuity level. In developing the new staffing ratios, the department shall contract with one or more experts in nurse staffing research and long-term care who shall recommend a methodology for determining appropriate ratios. By May 1, 2001, the Commissioner of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the progress of the department in developing acuity-based staffing ratios, a proposal for adopting acuity-based staffing ratios and any required legislation.

**Sec. BBBB-12. Rule amendment regarding licensing and surveys of providers of long-term care services.** Consistent with the requirements of the federal Medicaid and Medicare programs, the Department of Human Services shall amend its rules regarding the duration of licenses for providers of long-term care services and the surveys required of those providers. In preparing the amendments, the department shall consider performance standards, recognized standards of best practice, desired and measurable outcomes and satisfaction surveys of consumers and their families. To the extent not in conflict with the requirements of applicable federal programs, the rules must provide for the reasonable lengthening of license periods and some relaxation of survey requirements for providers of services with a documented track record of consistently high-quality service delivery as measured by performance standards and other appropriate criteria. Rules adopted pursuant to this section take effect July 1, 2001. Rules adopted or amended pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

**Sec. BBBB-13. Rule amendment regarding assessment for eligibility for reimbursement under the Medicaid program for long-term care services.** The Department of Human Services shall review its rules for determining eligibility for reimbursement under the Medicaid program for long-term care. The review process must include consumers, providers and other interested persons. It must identify ways to make the process of assessment of medical condition and cognitive function more flexible without undermining its objectivity. The review must include, but is not limited to, providing the nurse assessor authority to utilize professional skills and to consider input from the consumer's family and physician. The review should include the establishment of guidelines to provide to the nurse assessor standards with regard to consumer need and care plan development. The rules must eliminate the requirement of automatic annual

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assessments of the medical condition of consumers whose medical conditions are unlikely to improve sufficiently to cause a change in their eligibility for services. The review process must also include verification of financial information in the process of determining financial eligibility and cost-sharing for state-funded services. By January 15, 2001, the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters its recommendation and any necessary legislation on assessment for eligibility.

**Sec. BBBB-14. Review of reimbursement under the Medicaid program.** The Department of Human Services shall review its rules on reimbursement for assisted living and home care services and shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 2001 its recommendations for including in the reimbursement formulas for those services, factors for acuity of consumer condition, level of need for services, performance standards and consumer satisfaction surveys.

**Sec. BBBB-15. Establishment of the Long-term Care Implementation Committee.** There is established the Long-term Care Implementation Committee, referred to in this section as the "committee," to monitor the progress of state departments and offices in implementing the provisions of this Part. The committee shall review the adoption and amendment of rules performed in response to this Part and may make recommendations to the Department of Human Services and to the joint standing committee of the Legislature having jurisdiction over health and human services matters for amendments to those rules. The committee shall review the quality of care in the long-term care system.

**1. Membership.** The committee consists of 13 members. The President of the Senate shall appoint 5 members as follows: one member representing providers; one member representing the Long-term Care Steering Committee; one member representing consumers of long-term care services; and 2 Legislators, one representing the joint standing committee of the Legislature having jurisdiction over health and human services matters and one representing the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. One Legislator must represent the majority party and one Legislator must represent the minority party. The Speaker of the House of Representatives shall appoint 5 members follows: one person representing providers; one member representing the long-term care ombudsman program; one member representing consumers of long-term care services; and 2 Legislators, one representing the joint standing committee of the Legislature having jurisdiction over health and human services matters and one representing the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. One Legislator must represent the majority party and one Legislator must represent the minority party. The Commissioner of Human Services or the commissioner's designee and 2 other persons representing the Department of Human Services, appointed by the commissioner, are ex officio members of the committee. All appointments must be complete by January 1, 2001.

**2. Meetings.** The committee may meet up to 9 times per year. The committee members shall select 2 persons from among the members to serve as cochairs. Persons serving as cochairs may serve in that capacity for a maximum of 12 months. The Department of Human Services shall provide staff and support services. Committee members not otherwise reimbursed for expenses of attending meetings are entitled to reimbursement.

**3. Duties.** The committee shall report by February 1, 2001; February 1, 2002; and December 31, 2002 to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The report must include activities of the committee in the prior year, the opinion of the committee on the progress being made to implement this Part and any recommendations for action, including recommending necessary legislation to the Legislature. This section is repealed January 1, 2003.

**Sec. BBBB-16. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Part.

**2000-01**

**HUMAN SERVICES, DEPARTMENT OF**

**Medical Care - Payments to Providers**

All Other \$273,000

Provides for the appropriation of funds to increase wages for home-care workers.

**Nursing Facilities**

All Other 300,000

Provides for the appropriation of funds to provide increased eligibility for consumers of long-term care services who have chronic conditions that change.

**Nursing Facilities**

All Other 1,600,000

Provides for the appropriation of funds to ensure that the principles of reimbursement for nursing facilities reflect the current cost of providing services in an efficient manner.

**Nursing Facilities**

All Other 1,336,000

Provides for the appropriation of funds to increase the minimum staffing ratios in long-term care facilities.

**Long-term Care - Human Services**

All Other 1,074,000

Provides for the appropriation of funds to provide services to persons on waiting lists for home-based care.

**Long-term Care - Human Services**

All Other 327,000

Provides for the appropriation of funds to increase wages for home-care workers.

**Long-term Care - Human Services**

All Other 90,000

Provides for the appropriation of funds for increased costs of home-care programs due to changes in the cost-sharing formula.

**DEPARTMENT OF HUMAN SERVICES**

**TOTAL** \$5,000,000

**Sec. BBBB-17. Allocation.** The following funds are allocated from the Federal Expenditures Fund to carry out the purposes of this Part.

**2000-01**

[Type text]

**HUMAN SERVICES, DEPARTMENT OF**

**Medical Care - Payments to Providers**

All Other \$533,380

Provides for the allocation of funds for the federal match to increase wages for home-care workers.

**Nursing Facilities**

All Other 586,132

Provides for the allocation of funds for the federal match to provide continuing eligibility for consumers of long-term care services who have chronic conditions that change.

**Nursing Facilities**

All Other 3,126,038

Provides for the allocation of funds for the federal match to ensure that the principles of reimbursement for nursing facilities reflect the current cost of providing services in an efficient manner.

**Nursing Facilities**

All Other 2,610,241

Provides for the allocation of funds for the federal match to increase the minimum staffing ratios at long-term care facilities.

**DEPARTMENT OF HUMAN SERVICES**

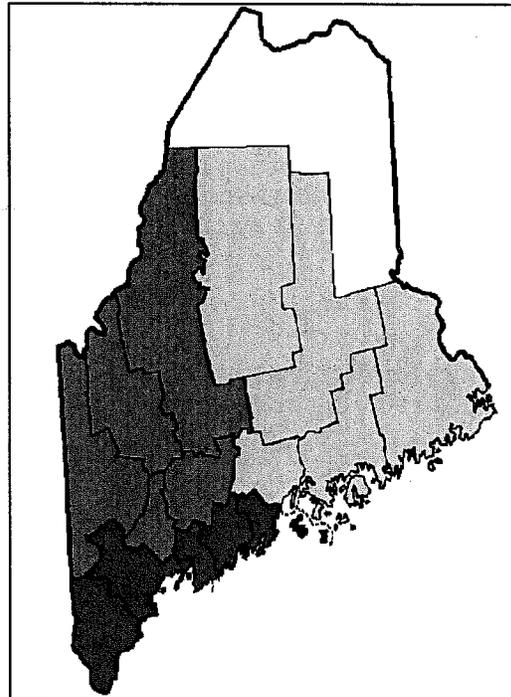
**TOTAL** \$6,855,791

[Type text]

## REGIONAL MAP

Following this document, you will find information regarding cost report data by region for the State of Maine. We have subdivided Maine into four regions organized by county. Below are listed the breakdowns by region and county so that when looking at any of our regional reports you will have a complete understanding of which facilities belong to a particular region.

Color	County	Region
Red	Lincoln	1
Red	Cumberland	1
Red	Knox	1
Red	York	1
Red	Sagadahoc	1
Green	Somerset	2
Green	Androscoggin	2
Green	Kennebec	2
Green	Franklin	2
Green	Oxford	2
Blue	Piscataquis	3
Blue	Penobscot	3
Blue	Waldo	3
Blue	Hancock	3
Blue	Washington	3
Yellow	Aroostook	4





# MaineCare NF Shortfall

## BerryDunn's Industry Cost Data

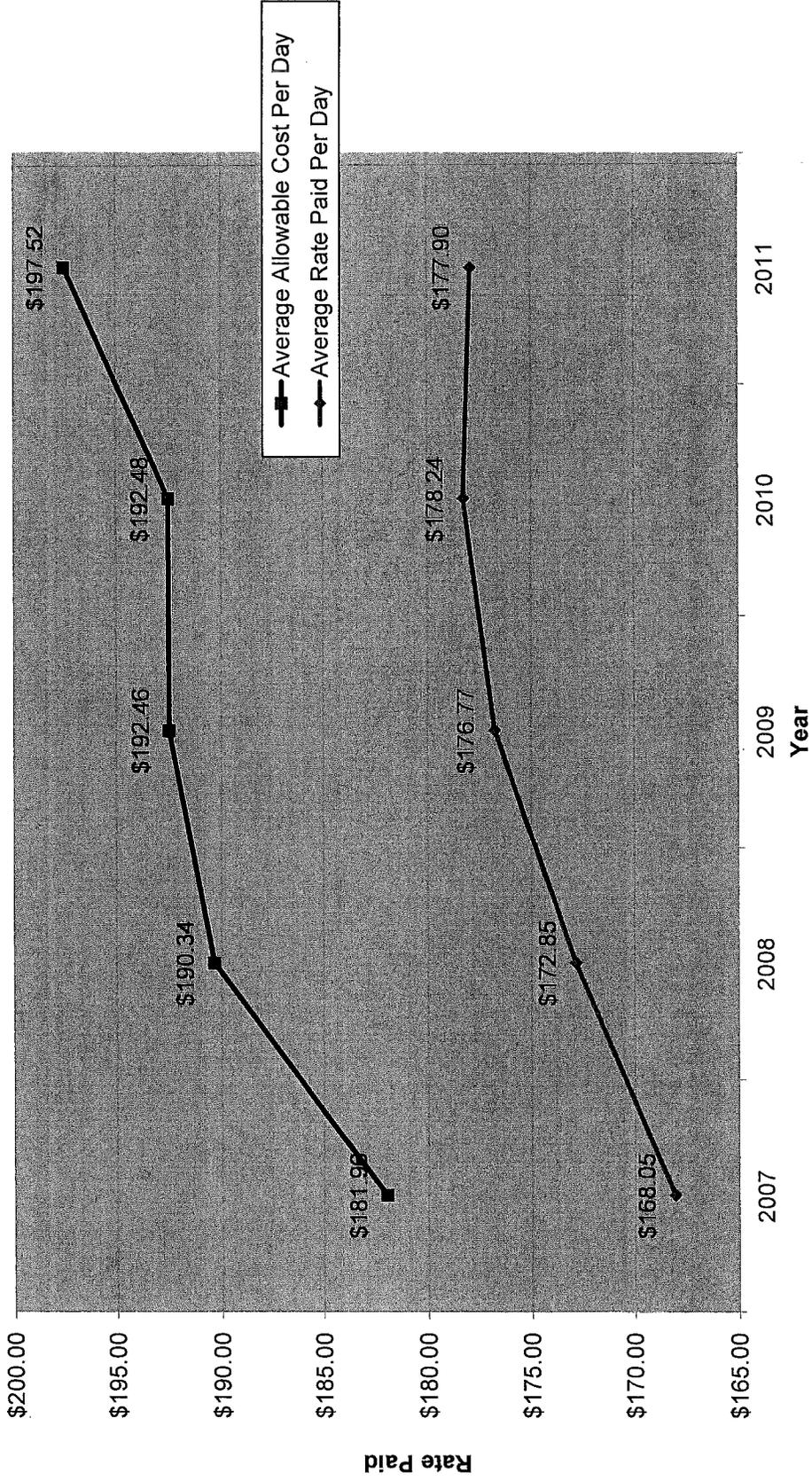
	2009			2010			2011		
	Total	Average Per Facility	Total	Average Per Facility	Total	Average Per Facility	Total	Average Per Facility	
Region 1	\$ (11,432,294)	\$ (326,637)	\$ (9,826,386)	\$ (280,754)	\$ (12,734,002)	\$ (363,829)			
Region 2	(7,063,101)	(220,722)	(7,767,642)	(242,739)	(9,065,383)	(283,293)			
Region 3	(3,366,872)	(124,699)	(3,303,672)	(122,358)	(5,398,985)	(199,962)			
Region 4	<u>(2,294,609)</u>	(208,601)	<u>(1,588,868)</u>	(144,443)	<u>(2,211,407)</u>	(201,037)			
<b>Total</b>	<b>\$ <u>(24,156,876)</u></b>		<b>\$ <u>(22,486,568)</u></b>		<b>\$ <u>(29,409,777)</u></b>				

Note: Based on 2009, 2010 and 2011 cost data. Shortfall represents difference between allowable costs per day and reimbursement per day.

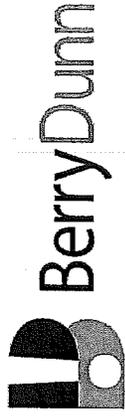
Data includes all non hospital-based facilities and was compiled by BerryDunn utilizing "as-filed" cost reports for each reporting period.



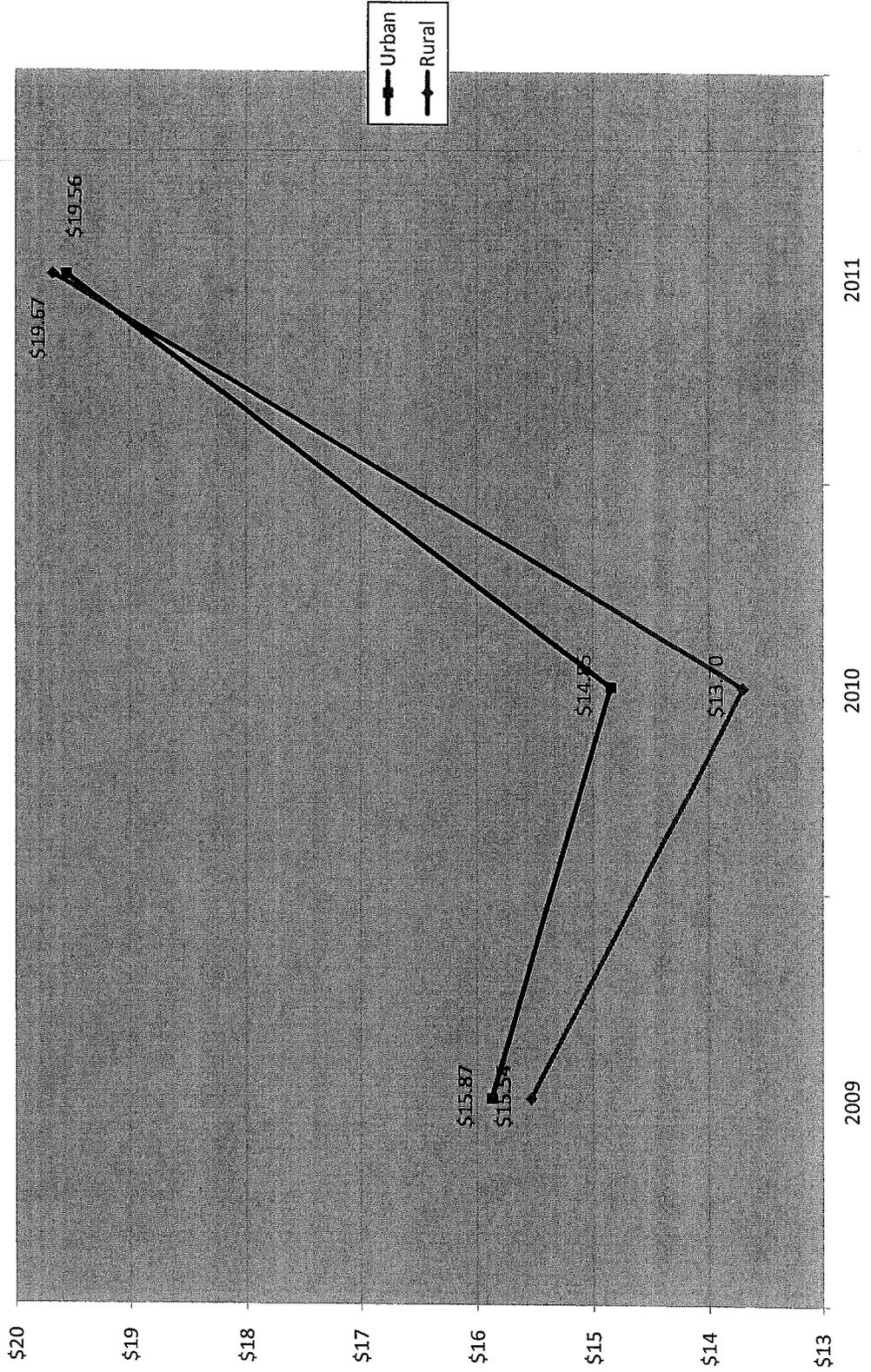
### Five Year Comparison of Average Medicaid Allowable Cost Per Day to Average Rate Paid to Nursing Facilities



Data includes all non hospital-based facilities and was compiled by BerryDunn utilizing "as-filed" cost reports for each reporting period.



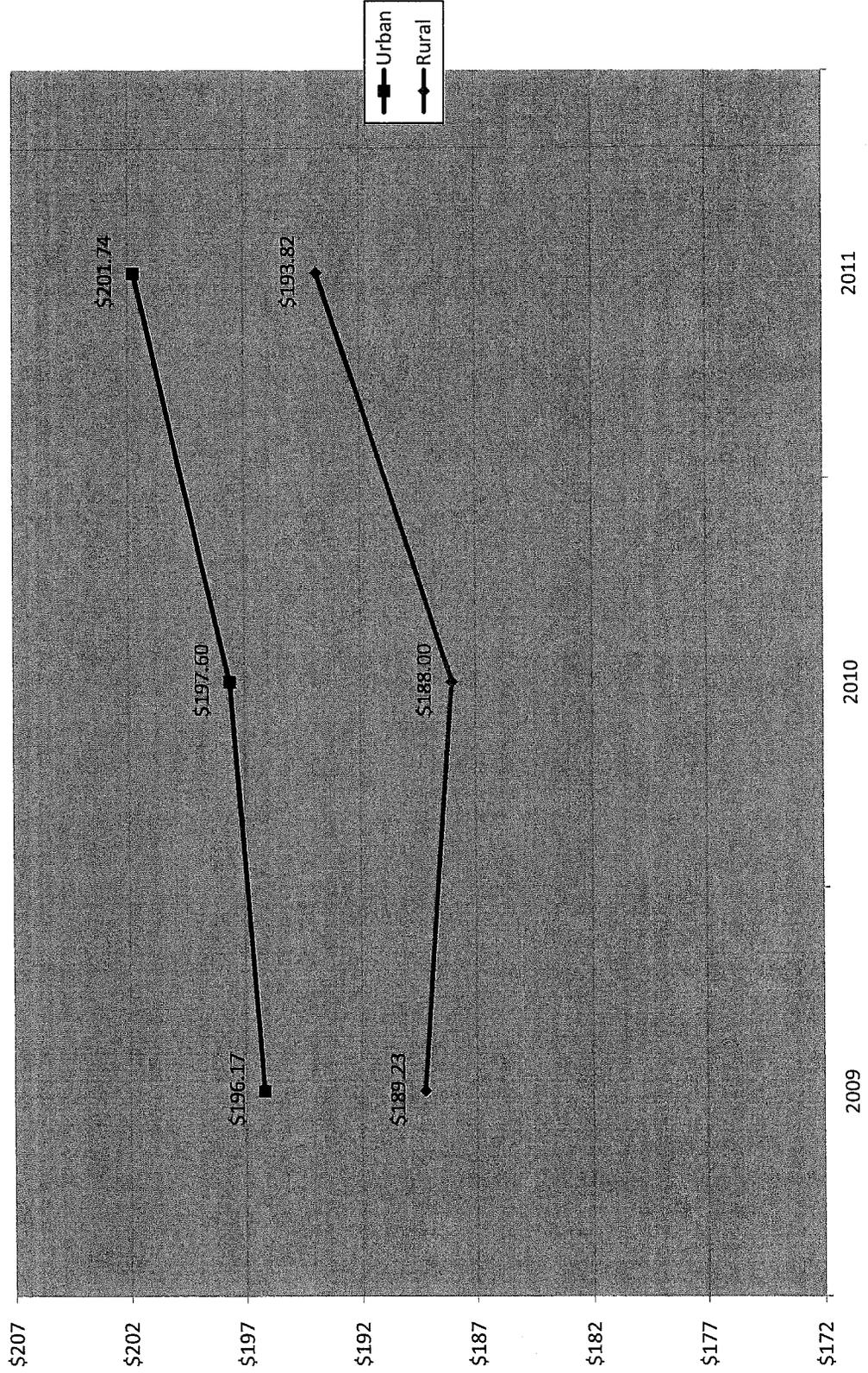
## Average Medicaid Shortfall Per Day



Data includes all non hospital-based facilities and was compiled by BerryDunn utilizing "as-filed" cost reports for each reporting period.  
Urban - includes providers located in Core Based Statistical Areas (CBSA's) of Penobscot County (#12620), Androscoggin County (#30340) and Cumberland, Sagadahoc and York Counties (#38860) as defined by CMS.  
Rural - includes providers located in Core Based Statistical Area (CBSA's) of Aroostook, Piscataquis, Somerset, Franklin, Oxford, Kennebec, Lincoln, Knox, Waldo, Hancock and Washington Counties (#99920) as defined by CMS.



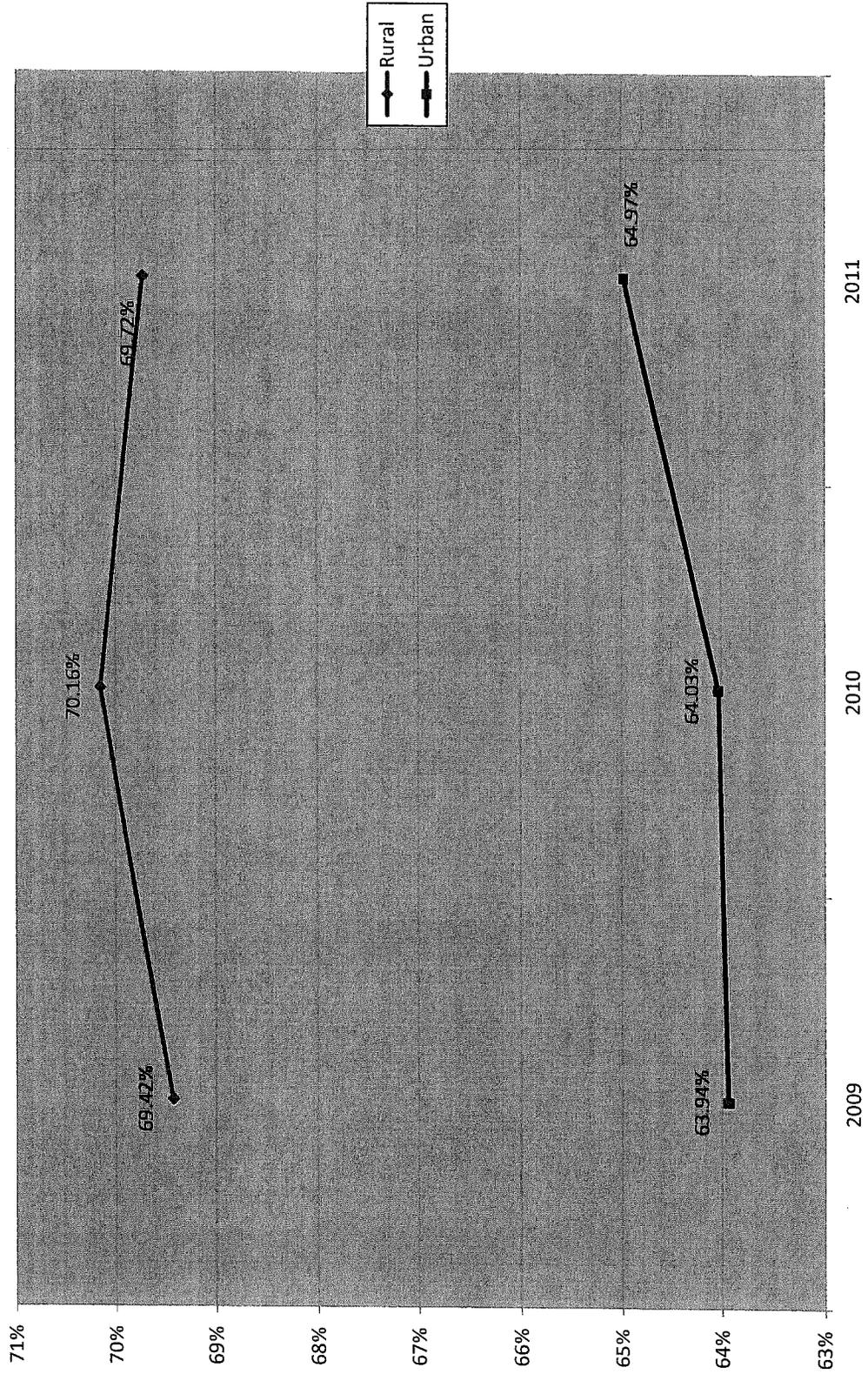
### Average Medicaid Cost Per Day



Data includes all non hospital-based facilities and was compiled by BerryDunn utilizing "as-filed" cost reports for each reporting period.  
Urban - Includes providers located in Core Based Statistical Areas (CBSA's) of Penobscot County (#12620), Androscoggin County (#30340) and Cumberland, Sagadahoc and York Counties (#38860) as defined by CMS.  
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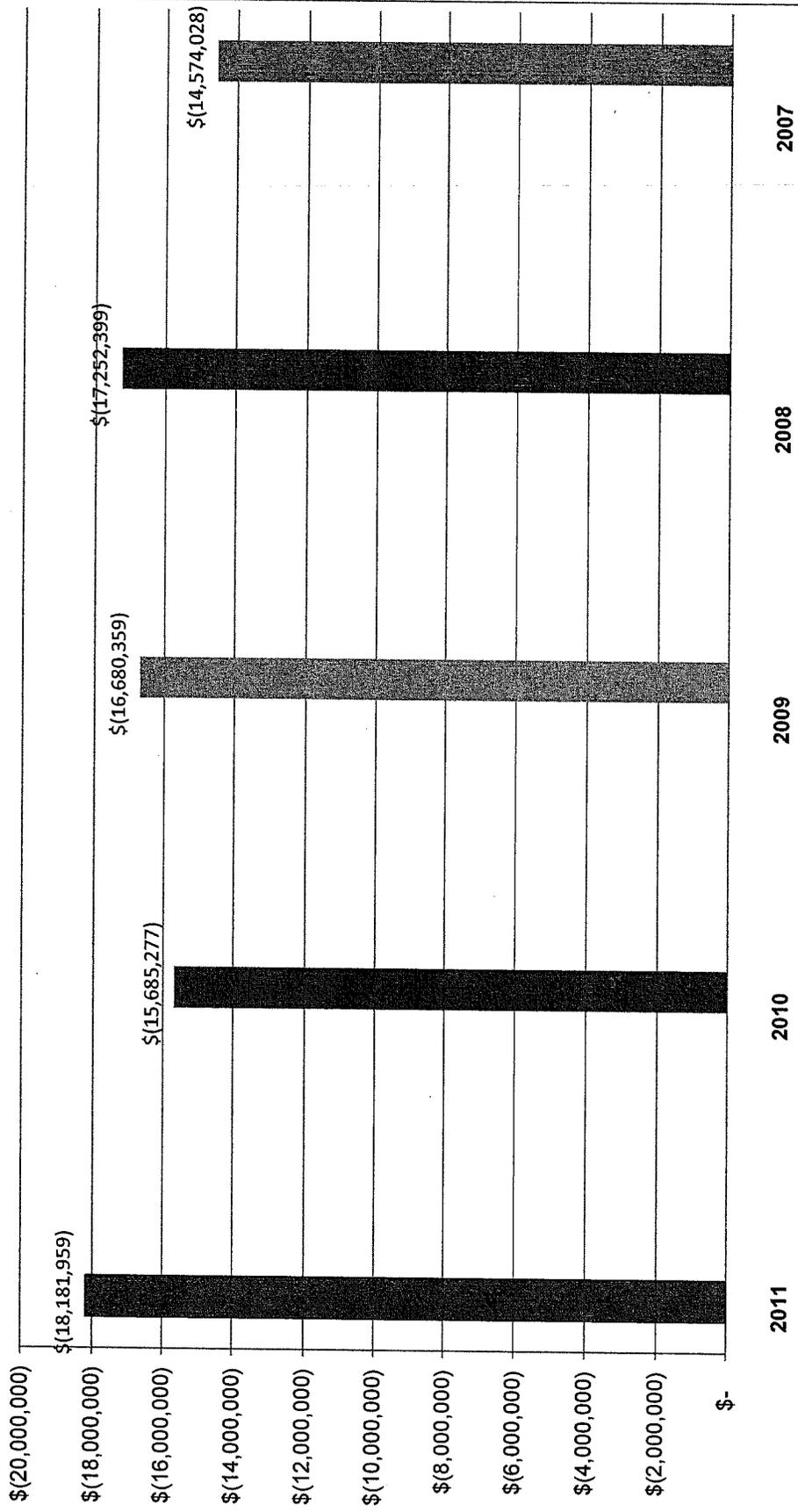
## MaineCare Payor Percentage



Data includes all non hospital-based facilities and was compiled by BerryDunn utilizing "as-filed" cost reports for each reporting period.  
Urban - includes providers located in Core Based Statistical Areas (CBSA's) of Penobscot County (#12620), Androscoggin County (#30340) and Cumberland, Sagadahoc and York Counties (#38860) as defined by CMS.  
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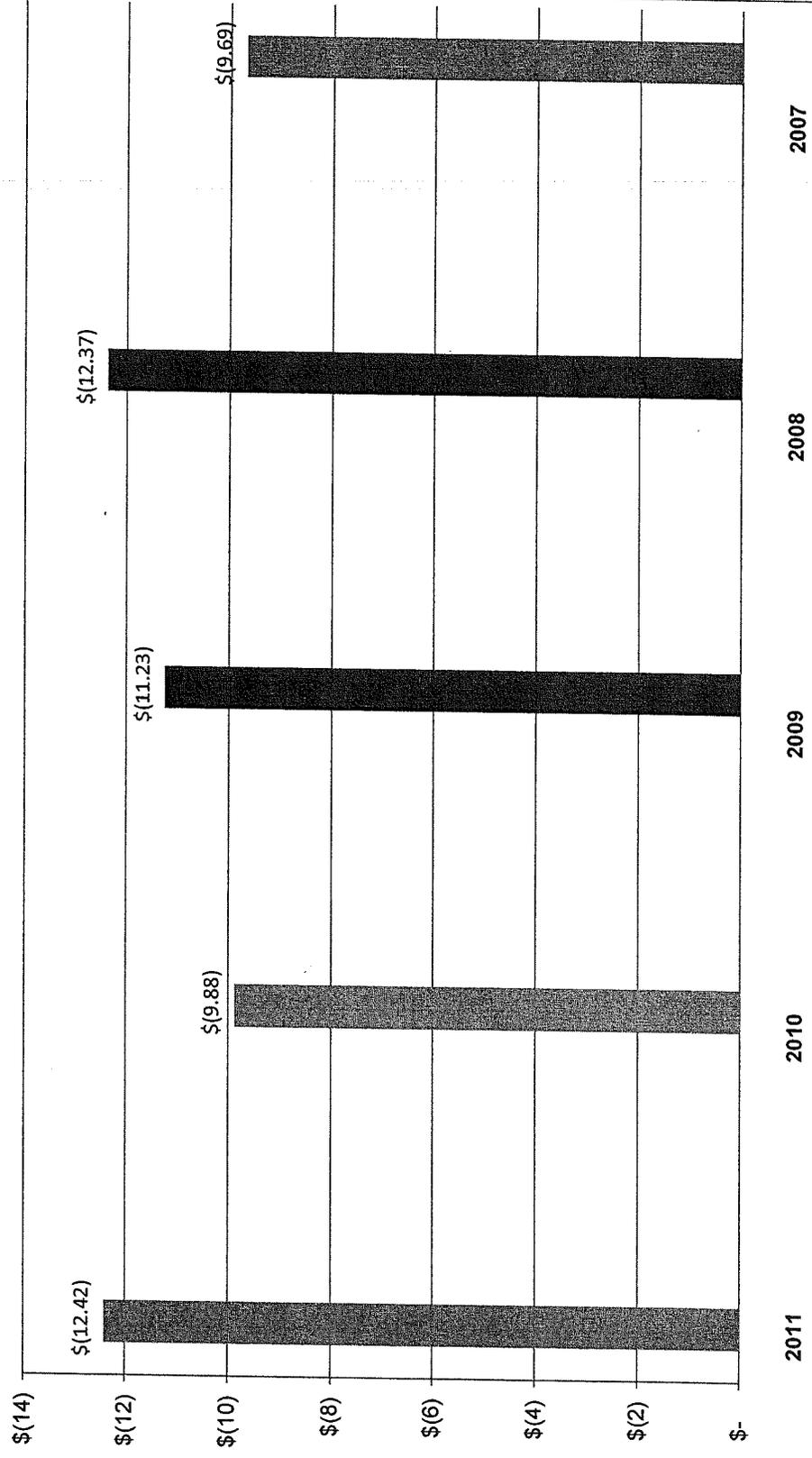
Rick

### NF Direct Care MaineCare Underfunding - 5 Year Trend



Pick

### NF Direct Care MaineCare Underfunding Per Patient Day - 5 Year Trend



**SOURCE: AHCA RESEARCH DEPARTMENT**

**Jun-12**

[http://www.ahcancal.org/research\\_data/oscar\\_data/NursingFacilityPatientCharacteristics/LTC%20STATS\\_HSNF\\_PATIENT\\_2012Q2\\_FINAL.pdf](http://www.ahcancal.org/research_data/oscar_data/NursingFacilityPatientCharacteristics/LTC%20STATS_HSNF_PATIENT_2012Q2_FINAL.pdf)

<b>Facility Certification/Census:</b>	<b>National</b>	<b>Maine</b>	<b>Maine</b>	
	<b>Avg</b>	<b>Maine</b>	<b>Rank</b>	
Dually Certified	91.50%	99.10%	<b>2nd</b>	Highest in country
State Occupancy	83.10%	91.50%	<b>6th</b>	Highest in country
Median Facility Occupancy	86.50%	92.70%	<b>5th</b>	Highest in country
Staffing Hours PPD	3.66	4.23	<b>3rd</b>	Highest in country (CNA hours are cause)

**ACUITY:**

<b>Percentage of Maine NF Residents in need of ADL assistance:</b>	<b>National</b>	<b>Maine</b>	<b>Maine</b>	
	<b>Avg</b>	<b>Maine</b>	<b>Rank</b>	
Bathing	96.00%	96.95%	<b>22nd</b>	
Dressing	90.63%	96.97%	<b>3rd</b>	Highest in country
Eating Dependence	55.52%	56.41%	<b>17th</b>	
Toileting	86.09%	95.85%	<b>1st</b>	Highest in country
Transfers	83.17%	93.28%	<b>2nd</b>	Highest in country

**Percentage of Maine NF Residents with following Medical Conditions :**

Have Bladder Incontinence	59.59%	72.10%	<b>1st</b>	Highest in country
Percentage in Incontinence Training Program	15.49%	34.87%	<b>3rd</b>	Highest in country
On Psychactive Medications	65.83%	73.19%	<b>2nd</b>	Highest in country
Have Depression	48.55%	60.94%	<b>3rd</b>	Highest in country
Have Dementia	48.40%	54.30%	<b>9th</b>	
Have Behavior Symptoms	24.24%	32.34%	<b>3rd</b>	Highest in country

**SOURCE: OSCAR Report dated October 2011**

**2010**

<b>CMS Nursing Hours PPD Threshold for Quality:</b>	<b>4.1</b>			
	<b>National</b>	<b>Maine</b>	<b>Maine</b>	
	<b>Avg</b>	<b>Maine</b>	<b>Rank</b>	
Nursing Hours PPD for 2010	3.94	4.49	<b>4th</b>	Highest in country
Deficiencies per Facility for 2010	9.37	7.41	<b>14th</b>	Best in country
Percentage of Facilities receiving Deficiencies of actual harm or jeopardy:	23.36%	11.11%	<b>2nd</b>	Best in country

**SOURCE: December 2011 Policy Update Report for AHCA on Medicaid Shortfall**

Reimbursement 2009	\$176.81	<b>30th</b>	29 states are higher
Unfunded Costs 2009	(\$15.78)	<b>17th</b>	Highest in country
Reimbursement 2011	\$177.79	<b>33rd</b>	32 states are higher
Unfunded Costs 2011	(\$21.21)	<b>13th</b>	Highest in country



University of California  
San Francisco

Department of Social and Behavioral Sciences

Laurel Heights Campus  
Box 0612

October 8, 2013

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Suite 455  
San Francisco, CA 94118

415.476-3964  
415.476-6552(fax)

Brenda Gallant R.N.  
State Long-Term Care Ombudsman  
Executive Director  
Maine Long-Term Care Ombudsman Program  
61 Winthrop Street  
Augusta, Me. 04330

Dear Ms. Gallant

I am writing to express my strong opposition to proposed reductions in Maine's current nurse staffing standards. I understand that proposals have been made to reduce staffing from the current 3.49 hours per resident per day (hprd) to a 3.0 hprd minimum and to eliminate the current ratio requirements of 1:5, 1:10, 1:15.

As you know, low nurse staffing levels are the single most important contributor to poor quality of nursing home care in the US. Over the past 20 years, more than 100 research studies have documented the important relationship between nurse staffing levels, particular RN staffing, and the outcomes of care. The benefits of higher staffing levels, especially RN staffing, can include lower mortality rates; improved physical functioning; less antibiotic use; fewer pressure ulcers, catheterized residents, and urinary tract infections; lower hospitalization rates; and less weight loss and dehydration (Bostick et al., 2006; Castle, 2008; Spilsbury, Hewitt, Stirk, et al., 2011; U.S. CMS, 2001; Schnelle et al., 2004). Moreover, states that have introduced higher minimum staffing standards for nursing homes have been found to have nurse staffing levels and improved quality outcomes (Bowblis 2011; Harrington, Swan and Carrillo, 2007; Mukamel et al. 2012; Park and Stearns 2009). Moreover, Mukamel et al. (2013) found that higher state staffing standards and regulatory enforcement was cost effective.

A study published by the Centers for Medicare and Medicaid Services (CMS) (2001) found that staffing levels for long-stay residents below 4.1 hours per resident day (hprd) resulted in harm or jeopardy for residents (including levels below 0.75 for RNs and 0.55 for LPNs). The study conducted a simulation analysis which showed that nursing assistant (NA) time should range from 2.8 to 3.2 hprd, depending on the care residents need, just to carry out five basic nursing care activities (CMS, 2001). This amounts to 1 NA per seven residents on the day and evening shifts and 1 NA per 12 residents at night. Nursing homes below these levels had poor quality of care that caused harm and jeopardy. An Institute of Medicine (2003) report recommended the staffing levels identified in CMS 2001 study.

Another study found widespread quality problems in many nursing homes: inadequate assistance with eating; poor verbal interactions; false charting; inadequate toileting assistance; infrequent turning of residents in bed; over half of residents left in bed most of the day; inadequate walking assistance; and widespread untreated pain and untreated depression (Schnelle et al., 2004). The authors concluded that staffing levels were a better predictor of high-quality care processes than quality measures and nursing homes with nurse staffing levels of 4.1 hprd or higher performed significantly better on 13 of 16 care processes compared with homes with lower staffing.

In another paper, experts recommended that minimum nurse staffing levels should be at least 4.5 hprd (Harrington, Kovner, Mezey, Kayser-Jones, et al., Zimmerman, 2000). Of course, nurse staffing levels need to be increased beyond the minimum levels in nursing homes that have high resident acuity (case mix) to assure that the needs of individual residents are met.

In 2013, the average U.S. nursing home provided a total of 4.1 hprd of total nursing care, provided by the Director of Nursing, registered nurses (RNs), licensed vocational or practical nurses (LVN/LPN), and nursing assistants (NAs) (CMS Medicare nursing home compare website). In the U.S., on average, only non-profit and government nursing homes meet the CMS recommended staffing standards because for-profit nursing homes cut staffing to save money (Harrington, Olney, Carrillo, and Kang, 2012). Low nursing home staffing expenditures were directly associated with high nursing home profits (Harrington, Ross, Mukamel, and Rosenau, 2013).

Maine has higher staffing requirements than many other states and its staffing requirements of 3.46 hprd are closer to the 4.1 hprd level recommended by the study for CMS in 2001 and the experts' opinion that the staffing standards should be 4.55 hprd at a minimum. Maine's staffing standards are still below the average 4.1 hprd of actual nursing provided in the US. Because of its staffing requirements, Maine has had higher quality nursing homes than many other states reported on Medicare Nursing Home Compare.

Maine and many other states have established ratios for its staffing standards (Harrington, 2010). Ratios are important because they are easier to understand and measure than when standards are set in hours per resident day. The ratios allow nursing home providers and consumers to quickly count how many residents each staff member is caring for on each shift. This is important provision that promotes transparency in public reporting as well as staffing accountability.

If Maine were to reduce its staffing standards and eliminate its ratio requirements, the quality of care in Maine's nursing homes could dramatically decline in many homes that would take advantage of reduced requirements. Any reduction in Maine's staffing requirements would be a serious step backward.

Sincerely,



Charlene Harrington, Ph.D.  
Professor of Sociology

#### References

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# Charlene Harrington

## EXPERT PROFILE

### Charlene Harrington

Professor Emerita, Sociology and Nursing; Principal Investigator  
University of California, San Francisco; Center for Personal Assistance Services

Agency for Health Care Policy and Research, American Academy of Nursing, California, California Health Care Foundation, C: States, Center for Personal Assistance Services, Charlene Harrington, Committee on Nursing Home Regulation, director, direc California Division of Licensing and Certification, Institute of Medicine, Institute of Medicine Committee, IOM Committee on Ke Safe (Show more tags)

#### Expertise:

long-term care  
nursing homes  
home care  
disability and aging  
home and community services

#### Biography

Dr. Charlene Harrington is a professor emerita of sociology and nursing in the department of social and beha the University of California, San Francisco. She joined the faculty in 1980. Her major interest is in nursing ho she served as the director of the California Division of Licensing and Certification in 1975. She served on the Nursing Home Regulation, whose 1986 report led to the passage of the Nursing Home Reform Act of 1987. I Consumer Information System (funded by the Agency for Health Care Policy and Research from 1995 to 20 NursingHome Compare Web site. She led a team of researchers to design a state-of-the-art California cons funded by the California Health Care Foundation that was launched in October 2002, and she continues to n a new \$4.5 million national Center for Personal Assistance Services, funded by the National Institute on Disc recently served on the Institute of Medicine Committee to study Quality in Long Term Care and the 2003 IOM She has testified before the U.S. Senate Special Committee on Aging several times and is a fellow in the Arr elected to the Institute of Medicine. She has written more than 140 articles and chapters, co-edited five book and other countries.

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#### Links:

Faculty Profile

## **STAFFING IS THE MOST IMPORTANT FACTOR THAT DETERMINES QUALITY OF CARE IN A NURSING HOME**

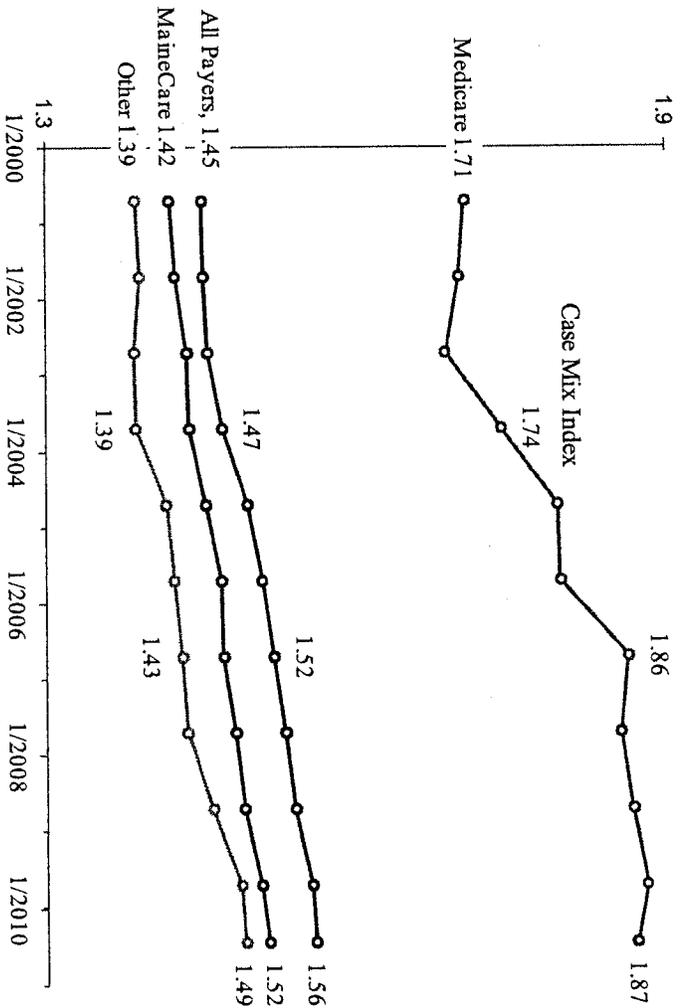
- The Acuity of Maine's nursing homes is among the highest in the country and acuity has risen significantly in recent years

### **DATA SHOWS THAT MAINE NURSING HOME RESIDENTS ARE**

- 1<sup>st</sup> in the country regarding the percentage of residents needing assistance with toileting
- 1<sup>st</sup> in the country regarding residents with bladder incontinence
- 2<sup>nd</sup> in the country regarding the percentage of residents needing assistance with transfers
- 3<sup>rd</sup> in the country regarding the percentage of residents with behavior symptoms
- The percentage of low risk residents who lost control of bowel and bladder is more than one-and-one half times the national average
- 57% of residents have a dementia
- Roughly half of nursing home residents are 85 years of age or older
- Maine Regulations for staffing require: 3.49 HPPD (this includes ratios of 1:5, 1:10, 1:15 and licensed staff)
- **CMS Study 2001 reported that staffing levels below 4.1HPPD may provide care that results in harm and jeopardy to residents**

**Section 10: The intensity of services provided in nursing homes and residential care homes has been increasing**

**Figure 10-1**  
 Maine nursing facilities have seen a steady rise in their average case mix index across all payers between 2000 and 2010  
 (based on the Resource Utilization Group (RUG) Group 5.12)



Case mix index is based on the Resource Utilization Groups (RUG) method for estimating resident acuity. A higher case mix index indicates a greater need for care among residents. The average nursing facility case mix index for MaineCare residents rose by 7% between 2000 and 2010. During that same period, Medicare's average case mix index rose by 9.4%, the index for other payers rose by 7.2%, and the all-payer index increased 7.6%.

Source: Maine Department of Health and Human Services, QR-NF20: Weighted Mean Case Mix Indices Using RUG Group 5.12, All Facilities  
 Note: For the purposes of this report, Medicare case mix is based on the Maine RUG model and weights.

## NURSING HOME STAFFING STANDARDS IN STATE STATUTES AND REGULATIONS

		STATE STANDARD		
State	MINIMUM STAFFING STANDARD FOR SKILLED NURSING OR NURSING FACILITIES	Estimated variance from federal standard for facility with 100 beds	Staffing Standard Citation and URL	Comments
ME	<p><b>SUFFICIENT STAFF:</b> to meet the needs of residents as determined by their levels of care..</p> <p><b>LICENSED STAFF</b> (RN, LPN/LVN)</p> <p>1 DON RN full-time included in            1 RN 8 consecutive hrs, 7 d/wk on Days            1 RN/LPN Charge Nurse 7 d/wk on Days            For 20+ beds: DON may not be Charge Nurse            For 100, 150, 200 etc. beds: add 1 LN for each increment of 50            For 100+: for each multiple of 100, the additional LN shall be an RN and            1 RN/LPN Eve, on duty 8 hrs every eve. and            1 RN/LPN for multiples of 70 beds            For 100+: one of additional LNs shall be an RN and            1 RN/LPN Night &amp; 1 RN/LPN for multiples of 100            For 100+: an RN shall be on duty at night</p> <p><b>DIRECT CARE STAFF</b></p> <p>1:5 ratio Days            1:10 ratio Evenings            1:15 ratio Nights            Include RNs, LPNs, CNAs who provide direct care.</p>	<p>(RN .32)            LN .56            DC 2.93            Total 3.49</p>	<p><b>SAL: Code of ME Rules</b>            10-144 CMR 110 Ch. 9            Sec. 9.A.3 and 9.A.4.            ME Sec of State, Rules By            Department: Eff. 2/1/01</p> <p><a href="http://www.maine.gov/sos/ceec/rule/s/10/ch110.htm">http://www.maine.gov/sos/ceec/rule/s/10/ch110.htm</a></p>	<p><b>Previous Regulation:</b> SC: Public Law 1999 Ch. 731 Sec. BBBB -11 Direct care ratios were: Day 1:5 Eve 1:10 and Night 1:18. Passed &amp; Signed 4-25-00. Eff. 10-1-00.</p> <p><a href="http://www.mainelegislature.org/ros/LO/M/om119th/5pub701-750/5Pub701-750-110.htm">http://www.mainelegislature.org/ros/LO/M/om119th/5pub701-750/5Pub701-750-110.htm</a></p> <p><b>Online Updates:</b> Dept. of Health &amp; Human Services (DHHS) Homepage: <a href="http://www.maine.gov/dhhs/">http://www.maine.gov/dhhs/</a></p> <p><b>DHHS Rule Updates:</b>  <a href="http://www.maine.gov/dhhs/dhrs/rulema/king/index.shtml">http://www.maine.gov/dhhs/dhrs/rulema/king/index.shtml</a></p> <p><b>ME Legislative Updates:</b>  <a href="http://www.mainelegislature.org/legis/bills/">http://www.mainelegislature.org/legis/bills/</a></p>
MI	<p><b>SUFFICIENT STAFF:</b> to meet the needs of residents.</p> <p><b>LICENSED STAFF</b> (RN, LPN/LVN)</p> <p>1 DON RN (with training in gerontology) included in            1 RN/LPN 24 hrs/7d/wk</p> <p><b>DIRECT CARE STAFF</b></p> <p>2.25 hrpd or ratio of            1:8 ratio Days            1:12 ratio Evenings            1:15 ratio Nights            For 30+ beds, exclude time of DON.</p>	<p>(RN .06)            LN .24            DC 2.25            Total 2.31</p>	<p><b>SC: MI Compiled Laws, Public Health Code "Act 368 of 1978"</b>            Sec. 333.21720a(2)            Eff. 3-30-79.</p> <p><a href="http://www.legislature.mi.gov/(S/r30sqz4521dqbqzpy3yk0x45))/mleg.aspx?page=getObject&amp;objectName=mcl-333-21720a">http://www.legislature.mi.gov/(S/r30sqz4521dqbqzpy3yk0x45))/mleg.aspx?page=getObject&amp;objectName=mcl-333-21720a</a></p>	<p><b>Online Updates:</b> For pending legislation, text and status, see MI Legislature homepage:  <a href="http://www.legislature.mi.gov/(S/zhnyok55hztkt4554cfaz2)/mleg.aspx?page=home">http://www.legislature.mi.gov/(S/zhnyok55hztkt4554cfaz2)/mleg.aspx?page=home</a></p>

Activity	Definitions	Time Estimates	Avg Minutes
Bed Mobility	How person moves to and from lying position, turns side to side and positions body while in bed.	0	0
Transfer	How person moves between surfaces – to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet).	5 times, 5 minutes each =	25
Locomotion	How person moves between locations in his/her room and other areas on same floor. If in wheelchair, self-sufficiency once in chair.	6 times, 5 minutes each =	30
Dressing & Undressing	How person puts on, fastens and takes off all items of street clothing, including donning/removing prosthesis.	15 minutes each, 2 x per day =	30
Eating	How person eats and drinks	30 min per meal, 3 x per day =	90
Toilet Use	How person uses the toilet (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter.	60 minutes per day =	60
Personal Hygiene	How person maintains personal hygiene, (exclude bath and showers) add shampoo and nails	30 minutes per day	30
Walking	How person walks for exercise, How person walks around own room, How person walks within home	20 minutes per day	20
Bathing	How person takes full-body bath/shower, sponge bath (EXCLUDE washing of back, hair), and transfers in/out of tub/shower	15 minutes per day	15
<b>TOTAL = 5 Hours per Day</b>			

Activity	Definitions	Time Estimates
Bed Mobility	How person moves to and from lying position, turns side to side and positions body while in bed.	5 – 10 minutes
Transfer	How person moves between surfaces – to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet).	up to 15 minutes per time documented in Plan of Care
Locomotion	How person moves between locations in his/her room and other areas on same floor. If in wheelchair, self-sufficiency once in chair.	5 - 15 minutes per (Document time and number of times done during Plan of Care)
Dressing & Undressing	How person puts on, fastens and takes off all items of street clothing, including donning/removing prosthesis.	20 - 45 minutes daily
Eating	How person eats and drinks	30 minutes per meal
Toilet Use	How person uses the toilet (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter.	5 -15 minutes/use
Personal Hygiene	How person maintains personal hygiene; (exclude bath and showers) add shampoo and nails	20 minutes per day, add 15 minutes/3 times per week for shampoo, 20 minutes per week for nails
Walking	How person walks for exercise, How person walks around own room, How person walks within home	Document time and number of times in plan of care,
Bathing	How person takes full-body bath/shower, sponge bath (EXCLUDE washing of back, hair), and transfers in/out of tub/shower	15 - 30 minutes daily

