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Maine Health Care Association

Unpacking Legislative, Regulatory, and Policy Changes for Assisted Living in Maine

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Assisted Living Conference ~ April 23, 2025

Agenda

- Introduction
- State Budget Update
- Legislative Update
- Regulatory Changes for Assisted Living and Residential Care Facilities
- Next Steps and Advocacy Efforts
- Policy change including PNMI-C Rate Reform
- Questions

MHCA Advocacy Team:

- Andy Cashman, Founder/Attorney/Lobbyist, Resolve Government Relations
- Ben Hawkins, Director of Public Affairs, MHCA
- Angela Westhoff, President/CEO, MHCA

MHCA represents approximately 200 nursing homes, residential care and assisted living facilities across Maine.

132nd Legislature: Where to Begin

- The First Regular Session of the 132nd Legislature convened on Wednesday, December 4, 2024 at 10:00 am and adjourned sine die Friday, March 21, 2025.
- Pursuant to the Constitution of Maine, Article IV, Part Third, Section 16, the general effective date for nonemergency laws passed in the First Regular Session of the 132nd Legislature is Friday, June 20, 2025.
- The First Special Session of the 132nd Legislature began Tuesday, March 25, 2025.

Legislature Passed Continuing Services Budget:

- LD 609, An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of Law Necessary to the Proper Operations of State Government was signed into law on March 21, 2025.
- This bill passed along party lines and after multiple failed attempts to pass LD 209, An Act to Make Supplemental Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2025. (Emergency) (Governor's Bill)
- This budget is sometimes referred to as the Biennial Budget, Part A, or the skinny budget.

Implications of the Part A Biennial Budget:

- Because LD 609 did not pass with 2/3 majority, it does not take effect until 90 days after adjournment. Given that the legislature adjourned on March 21, 2025, the 90 days would mean the effective date is June 30th.
- The MaineCare budget has a significant deficit due to increased costs & enrollment. There is a $118 million shortfall for this current fiscal year (through June 30, 2025). DHHS is curtailing some providers' payments including hospitals, pharmacies, and DME companies. So far LTC hasn't been impacted.
- Two years baseline funding for Nursing Facilities (MaineCare Section 67) and Private Non-Medical Institutions (Section 97-C) are in Part A.
- It also includes 1.95% COLA for some MaineCare Providers including PNMI-Cs and Adult Family Care homes. Likely to start in July 2025.

Biennial Budget Part B:

- The Appropriations Committee has already heard testimony on the Biennial Budget. The bill is LD 210.
- Given the Democratic majority and the party-line vote on the Part A budget, it seems unlikely that the Legislature will pass the Part B budget with bipartisan support.
- Much of the political tension in the State House this session has revolved around an $118 million shortfall in MaineCare, the state's Medicaid program that provides health coverage to roughly 400,000 low-income residents.
- Maine expanded Medicaid eligibility to more low-income adults in 2019 after voters approved the move in a referendum in 2017. Then COVID happened and “continuous enrollment” kept most Medicaid members on the plan automatically.
- Concerns have been expressed that the skinny budget doesn’t include Year 2 costs of the increased MaineCare enrollment. Republicans want significant reforms.

Next Steps:

- The legislature will put together the Part B Budget.
- Updated revenue forecasts coming in May.
- Some say they are starting to see MaineCare enrollments come down.
- There is about $127 million in the state's general fund to be allocated in the next budget bill, though that could fluctuate based on what specific proposals are taken up.
- There is also the possibility of a proposed referendum to veto the state budget. Some have warned that the petition drive itself could lead to a government shutdown, even if voters eventually reject the effort.
- Path forward is not clear.

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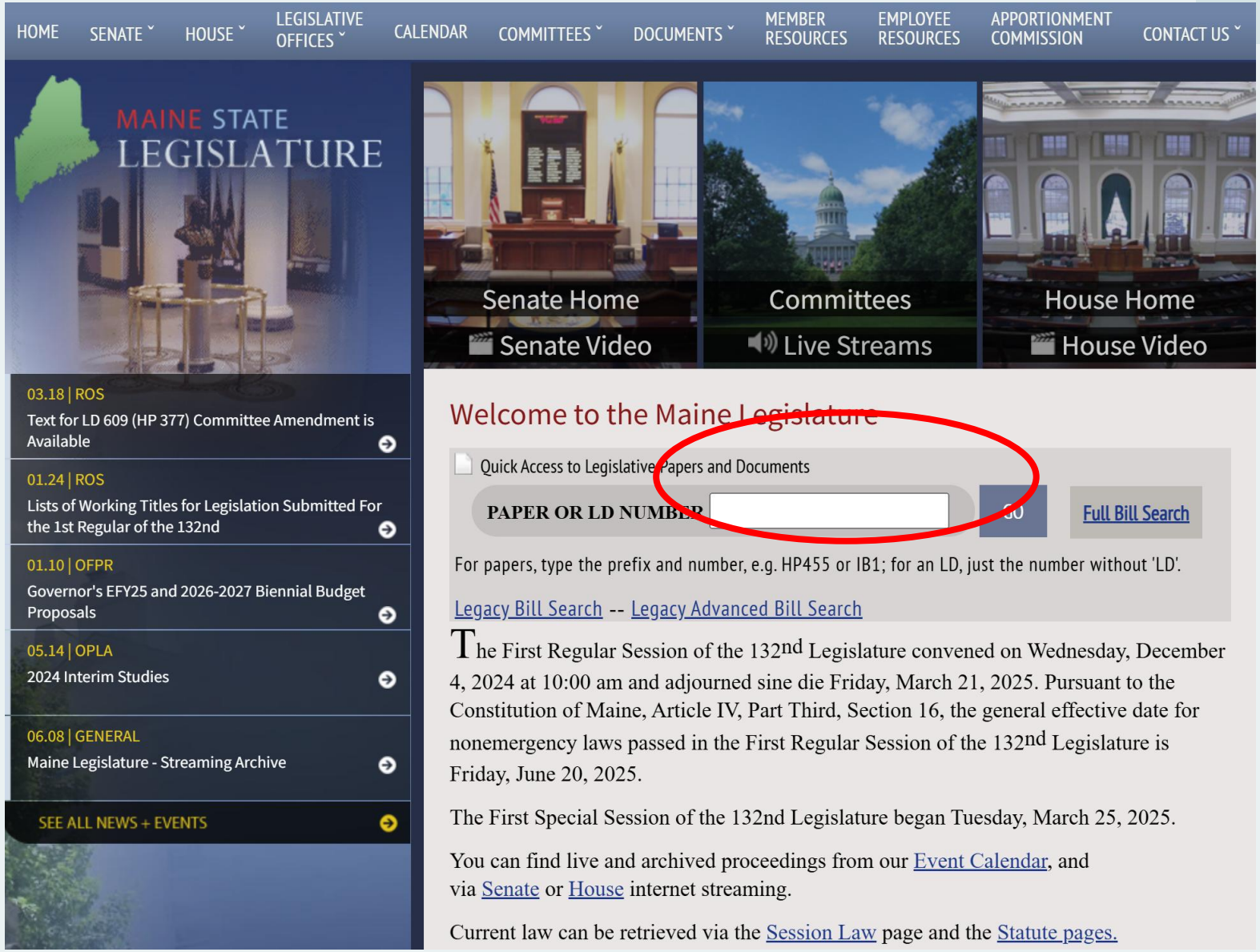
Legislative Update

Legislature's website:

www.legislature.maine.gov

Enter Bill's LD



Legislative Update: Highlights of Bills

- LD 759, An Act to Increase Patient Safety in Long Term Care Facilities (mandatory bed rails): Ought Not to Pass
- LD 763, An Act to Improve Long Term Care Funding for Nursing Facilities: Ought Not to Pass
- LD 772, An Act to Assist Nursing Facilities in the Management of Facility Beds: Ought Not to Pass
- LD 960, An Act Facilitating the Discharge of Hospitalized Patients to Nursing Facilities: no work session scheduled yet
- LD 980, Resolve to Create the Commission to Improve the Oversight of the Long Term Care System: Ought Not to Pass

Bills Continued…

- LD 1243, An Act Regarding the Licensing of Assisted Living Facilities: Ought to Pass as Amended
- LD 1345, Resolve Directing DHHS to Timely Provide Interim Settlement Payments to Long Term Care Facilities: No work session scheduled yet
- LD 1489, Resolve to Provide Stability to Long Term Care Facility Funding (PNMI-C funding): Work Session scheduled for 4/25/25
- LD 1157, An Act to Amend the Laws Relating to the State's Background Check Center: No work session scheduled yet
- LD 768, An Act to Update the Laws Governing the Licensing of Intermediate Care Facilities for Persons with Intellectual Disabilities: No work session scheduled yet
- LD 979, Resolve Regarding Legislative Review of Chapter 113: Assisted Housing Programs Licensing Rule- No work session scheduled yet

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Regulatory Update: Assisted Housing Rulemaking

DHHS Major Substantive Rulemaking for Assisted Housing, Chapter 113

- Provisionally Adopted 10-144 CMR Chapter 113: Assisted Housing Programs Licensing Rules, Part A and Part B.
- First public hearing was held on November 13, 2024 at DHHS. A total of 111 people either testified or submitted written comments.
- A response to comments document from that hearing is available.
- DHHS made changes to the proposed rules and DHHS Commissioner signed the provisionally adopted rules on January 14, 2025.
- Because these are major substantive rules, they are subject to legislative review and approval. Now in the form of a bill LD 979.
- MHCA held a webinar on March 27th and reviewed rule changes.
- Public hearing on LD 979 was held before HHS Committee on April 1st and 44 people testified or submitted written comments.

Who Does the Rule Impact?

These new provisionally adopted rules take 10 different sections of rule for Assisted Living Programs, Residential Care Facilities (Levels I-IV), Private Non-Medical Institutions (Levels I-IV) and Infection Prevention and Control and repeals them and replaces them with two sections:

- Assisted Housing Programs Licensing Rule Part A: Assisted Living Facilities
- Assisted Housing Programs Licensing Rule Part B: Residential Care Facilities

Note: Independent Housing with services are NOT included in this rule.

Provisionally Adopted Rules, Part A Staffing:

- For assisted living providers, the provisionally adopted rule doesn't change staffing requirements.
- General requirement remains: Provide adequate staffing to meet resident needs, implement service plans, and provide safe setting. Staff must be present 24 hours per day.
- Shared staffing still permitted with other levels of assisted housing or nursing facilities. Must maintain clear, documented audit trail, meet staffing requirements for each license, be adequate to meet residents' needs.

Part A, Assisted Living:

In the response to comments document, the Department notes:

"Assisted Living licensees will not be permitted to operate a Dementia or Alzheimer's unit under the new Chapter 113 licensing rule."

- We believe this will impact 246 beds in 8 facilities.
- There has been no clear communication on this topic.

Provisionally Adopted Rules, Part B Staffing:

For Res Care and PNMI Facilities with more than 10 beds, upon implementation of the rule, there is no change to staffing ratios:

- 1:12 7 am- 3 pm (Day)
- 1:18 3 pm- 11 pm (Evening)
- 1:30 11 pm- 7 am (Night)

<u>One Year from the Date of Final Adoption:</u>

- 1:12 7 am – 11 pm (Day)
- 1:25 11 pm- 7 am (Night)

<u>Two Years from the Date of Final Adoption:</u>

- 1:10 7 am- 11 pm (Day
- 1:20 11 pm- 7 am (Night)

Who Can Count in Staffing Ratios?

- Res Care/ PNMI Facilities must have staff present at all times who are at a minimum, qualified, awake, on duty, and readily available, ~~and at least 18 years of age~~.

a. Direct resident care is care provided by staff that provide "hands on" help with activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs) to residents, including care and supervision.

b. Staff whose job descriptions contain duties solely related to laundry, housekeeping, maintenance, administration, and dietary services are not considered direct care staff and may not be counted toward staffing ratios listed in Section 14(B). ~~Direct resident care excludes housekeeping, laundry, social services, administration, maintenance, and dietary service;~~

c. If employees performing the ~~excluded~~ functions listed in Section 14(A)(41)(~~ab~~) also perform assistance with ADLs ~~resident care~~, the hours assigned to each function must be shown on the weekly time schedule and the staff must be trained to perform direct resident care.

d. Only persons who are 18 years of age or older, except for a CNA who may be 16 years of age or older, shall perform direct resident care, and be counted toward staffing requirements for resident care.

Minimum Staffing: Two adults awake overnight has been deleted

~~2. If less than two resident care staff are required by Section 14(B), the facility must ensure that there are at least two responsible adults awake, on duty and readily available at all times, able to act effectively in the event of an emergency.~~

~~a. A staff person serving in any capacity other than direct resident care may be included as long as they are readily available for emergency response. *[Class II, III]*~~

Section 17: Specialized Care Unit Standards

Staffing ratios for Memory Care facilities, at the time of final adoption of the rule :

- 1:12 7 am- 3 pm (Day)
- 1:18 3 pm- 11 pm (Evening)
- 1:30 11 pm- 7 am (Night)

<u>One Year from the Date of Final Adoption:</u>

- 1:10 7 am – 11 pm (Day)
- 1:22 11 pm- 7 am (Night)

<u>Two Years from the Date of Final Adoption:</u>

- 1:8 7 am- 11 pm (Day
- 1:15 11 pm- 7 am (Night)

Direct Observer deleted from Originally Proposed Rule:

~~3. Memory care units must have one employee for shifts between 7am-3pm and 3pm-11pm who is delegated to provide direct observation of residents and who does not have additional assigned duties.~~

Key Implications of the New Regulations:

- New administrative requirements- time to implement & document
- New staffing ratios, while considerably improved, still present a huge challenge with the persistent work force challenges
- Financial cost associated with RN consultant time, increased staffing, training, etc.
- Administrator capacity to oversee multiple sites (res care/ PNMI) now restricted.

F. Maximum number of ~~sites~~ facilities and bed capacity for a single administrator. A licensed administrator may not have oversight responsibility for more than 160 residents in a licensed facility ~~single site~~, or, if overseeing multiple facilities, ~~sites,~~ no more than 3 facilities ~~sites~~ with a total licensed capacity of 50 residents. *[Class II, III]*

Financial and Staff Impact:

Based upon our best estimates, the cost estimate to meet the staffing requirements for **all** Part B facilities will cost **between $30 and $40 million annually. This will be an unfunded mandate.**

This is a calculation going from current staffing minimum ratios to the proposed Year 2 staffing minimums.

By year 2, residential care facilities would need at least **600 additional FTEs.**

What is MHCA Doing?

- We have launched a social media campaign "Vote No on LD 979" targeting policy makers and key influencers.
- Created two videos and several display ads.
- Updated the Who Will Care website: www.whowillcaremaine.com
- Action Alert: Contact Your Legislator
- Advocacy efforts at State House
- Now is a great time to host your local representative and senator for a facility tour. We have materials to help including a Facility Tour Guide!

Contact Your Legislators:

Key Talking Points on LD 979:

- These rules were developed **without proper provider engagement**, in violation of state law.
- Maine's staffing ratios would be **among the highest in the country**—with **no plan to fund them**.
- Data show **no major increase in acuity** or rise in substantiated complaints.
- Without funding, this rule could **accelerate long term care closures**, further straining Maine's system.

Keep in touch!

- Make sure you're on the MCHA E-news Mailing List if you are a member.
- If you're not a member, consider joining MHCA and NCAL!
- Reach out with any questions.
- Let us know if you host a facility tour. We're happy to come and explain why this proposal is poor policy.
- Advocacy matters! Our voices are stronger together!

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Policy Update: Service Provider Tax Repeal & Rate Reform

Unwinding of Service Provider Tax:

- Effective January 1, 2025, per P.L. 2023, Chapter 412, Part XXX, Private Non-Medical Institution (PNMI) and certain home-and community-based services will no longer be subject to the Service Provider Tax (SPT).
- Historically, the Department's general practice has been to incorporate the cost of the SPT into reimbursement rates for these services to reimburse providers the cost of paying for the tax.
- With the repeal of the tax on revenue from these services, it will no longer be appropriate or necessary for the Department to reimburse for the tax.
- This has had a neutral impact on providers to date.

DHHS MaineCare Rate System Reform:

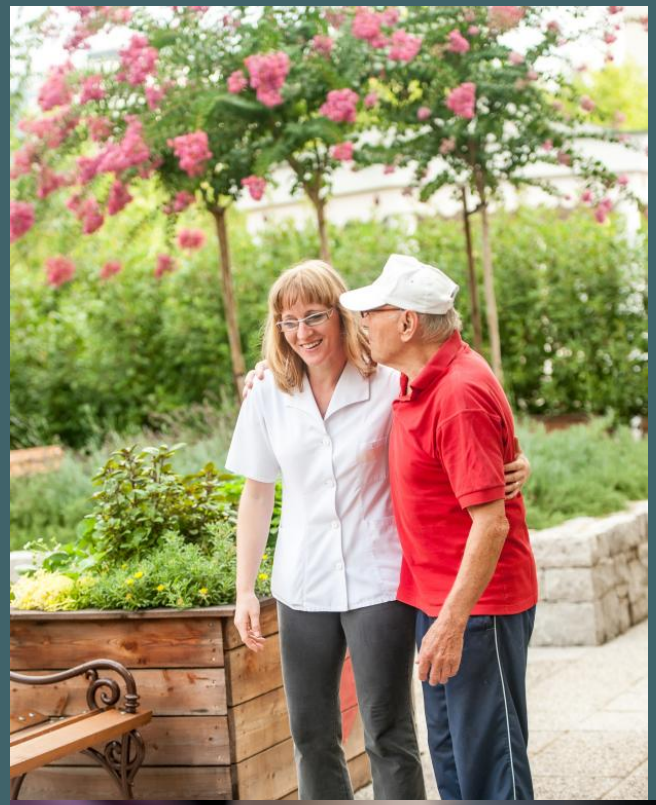
- Rate Determination is a process conducted by the department to establish the reimbursement rate methodology, base rate amount, or payment model for a MaineCare section of policy or for a specific covered service.
- Rate Determination is done through adoption or adaptation of a benchmark rate or methodology from another payer (e.g., private insurance, Medicare, another Medicaid agency) or developed through a rate study. Determinations may also lead to a rate study.
- Website catalogs rate reform efforts: MaineCare Rate System Reform | Department of Health and Human Services
- Rate reform system put into law through P.L. 2022 Ch. 639 (LD 1867, An Act To Codify MaineCare Rate System Reform).

Relevant Rate Determinations:

- Section 2, Adult Family Care Homes, January 1, 2023
- Section 67, Nursing Facilities, January 1, 2025- not fully completed yet
- Section 97-C, Began with Nursing Facility Rate reform but it was set aside. We anticipate work will begin again this summer.
- MHCA put in a bill, LD 1489, Resolve to Provide Stability to Long Term Care Funding that would:
    - Provide cost-of-living increase for residential care facilities (PNMI-C)
    - Require rate determination to be implemented by January 1, 2026.

Summary:

- Budget debate will continue. Statutory adjournment is June 18th, 2025. We've seen sessions go much longer.
- MaineCare deficit won't be solved easily. It will likely require reforms and/or revenue generation.
- MHCA advocacy efforts will continue.
- Please be sure to contact your legislators and make your opinions known and offer to host them for a facility tour.
- Additional regulatory/ policy changes are on the horizon, including rate reform.
- MCHA will continue to keep you informed about changes impacting your facility and your ability to care for your residents. At the end of the day, that's why we're here!



Thank YOU for all that you do!

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Questions?

Thank you!

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