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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)

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.

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.