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An Act To Amend the Laws Governing Assisted Living Programs

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

Whereas, The Atrium, a nonprofit charitable assisted housing program affiliated with The Cedars senior living community in Portland, Maine, is currently ineligible for licensure as an assisted living program under rules of the Department of Health and Human Services due to a business model that relies on membership fees that impose economic obligations above payment of one month's rent; and

Whereas, The Atrium obtained bond financing from the Maine Health and Higher Educational Facilities Authority in 1997 using this business model in order to demonstrate the financial and economic feasibility of the facility; and

Whereas, the Department of Health and Human Services adopted assisted living program rules effective May 29, 1998 after The Atrium completed bond financing and the rules limited resident deposits to not more than one month's rent, and the department has thus far denied licensure to the facility on the basis that its membership fee exceeds one month's rent; and

Whereas, The Atrium has not been authorized to provide nursing services and medication management services to its residents due to its inability to be licensed as an assisted living program; and

Whereas, The Atrium has also been denied exemption from state sales tax, which is available to all nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services pursuant to the Maine Revised Statutes, Title 36, section 1760, subsection 16, paragraph D; and

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

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

Sec. 1. 22 MRSA §7853, sub-§5, as amended by PL 2003, c. 449, §3, is further amended to read:

5. Assisted living program rules. The commissioner shall adopt rules for assisted living programs. In addition to the subject matter of rules listed in subsection 2, the rules must recognize and promote the efficiencies inherent in providing services in the applicable setting with respect to staffing and other responsibilities, while ensuring quality of care and safety. The rules must set requirements and standards for services rendered in the applicable settings that recognize the differences between those settings and private homes served pursuant to chapter 419. The rules must permit staff in assisted living programs to be shared in accordance with section 1812-C, subsection 6-A and section 7914. The rules must permit any facility to be licensed as an assisted living program and be authorized to provide physical therapy, nursing services and medication management services to its residents if the facility:

A. Obtained bond financing from the Maine Health and Higher Educational Facilities Authority in 1997 prior to the department's adoption of rules governing assisted living programs in May 1998; and

B. Relied on a business model using a membership fee structure that imposed significant financial obligations on its residents.

The facility must fulfill all applicable requirements in the department's rules regarding assisted living programs, except that licensure may not be denied on the basis that the membership fee imposes economic obligations that are above the deposit limitation of one month's rent.

Sec. 2. Waiver; rules. The Department of Health and Human Services shall either waive the provisions of the existing rules or amend its rules to accomplish the purpose of this Act.

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

SUMMARY

This bill amends the laws governing assisted living programs to permit The Atrium, a nonprofit charitable housing program affiliated with The Cedars senior living community in Portland, Maine, to be licensed as an assisted living program and authorized to provide physical therapy, nursing services and medication management services to its residents.