

MAINE STATE LEGISLATURE

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HUMAN RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1337, L.D. 1800, Bill, "An Act to Rename Boarding Care Facilities and Expand Their Definitions"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 22 MRSA §2053, sub-§3-A, as amended by PL 1993, c. 390, §5, is further amended to read:

3-A. Health care facility. "Health care facility" means a nursing home or boarding-home that is, or will be upon completion, licensed under chapter 405; a residential care facility that is, or will be upon completion, licensed under the laws of the State, chapter 1663; a hospital; a community mental health facility; or a community health center.

Further amend the bill in section 6 in that part designated "§7901-A." by striking out all of subsections 2 and 3 and inserting in their place the following:

2. Residential care. "Boarding Residential care" means care which that is greater than that necessarily attendant upon mere eating and lodging services, but which is less than that attendant upon nursing home care or hospital care. "Boarding Residential care" may include personal supervision, protection from environmental hazards, diet care, care concerning grooming, hand and foot care, skin care, mouth and teeth care, shampooing, bathing, assistance in ambulation, supervision and assistance in the administration of medications, diversional or motivational activities, and stimulation of, or assistance in, activities of daily living or physical exercise and limited nursing services.

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2 3. **Residential care facility.** "Boarding Residential care
 4 facility" means a house or other place ~~classified as either an~~
 6 adult foster home or a boarding home which that, for
 8 purpose of providing residents with boarding residential care as
 10 defined in subsection 2. A residential care facility includes,
 12 but is not limited to, facilities formerly defined and regulated
 14 as adult foster homes and boarding homes under this section. A
 16 "boarding residential care facility" does not include a licensed
 18 nursing home, a supported living arrangement certified by the
 20 Department of Mental Health and Mental Retardation or certified
 22 elderly congregate housing.'

Further amend the bill in section 7 by striking out all of
 subsection 1 and inserting in its place the following:

18 '1. **Rules.** The commissioner shall ~~promulgate~~ adopt rules
 20 for boarding various types of residential care facilities, which
 22 shall. These rules must include but need are not be limited to
 24 rules pertaining to administration, staffing, the number of
 26 residents, the quality of care, the quality of treatment, if
 28 applicable, the health and safety of staff and residents, the
 30 rights of residents, community relations, the administration of
 32 medication, criteria for placement of residents who are 17 years
 34 of age or older and under 18 years of age and licensing
 36 procedures. There shall be The commissioner may adopt separate
 38 rules promulgated for boarding homes and foster homes various
 40 types of residential care facilities.

In establishing the rules for the administration of medication,
 the commissioner shall consider, among other factors, the general
 health of the persons likely to receive medication, the number of
 persons served by the facility and the number of persons employed
 by the facility. In the rules for the administration of
 medication established for ~~boarding homes~~ residential care
facilities, the Department of Human Services shall ~~shall~~ may require
 unlicensed personnel to have successfully completed a program of
 training and instruction, approved by the department for the
 administration of medication which, that is not limited to
 in-service training.'

Further amend the bill by striking out all of sections 9 and
 10 and inserting in their place the following:

46 'Sec. 9. 22 MRSA §7904-A, as amended by PL 1987, c. 304, §§3
 48 and 4; is further amended to read:

50 **§7904-A. Fire safety inspection**

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1. **Inspection required.** No A license may not be issued by the department to a boarding residential care facility until the department has received from the State Fire Marshal a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392, to make fire safety inspections. This statement, which shall must indicate that the boarding residential care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452, shall must be furnished annually by the State Fire Marshal to the department.

2. **Fees.** The department shall establish and pay reasonable fees to the State Fire Marshal or municipal official for each such inspection.

3. **Requirements for facilities with 17 or more beds.** Any boarding A residential care facility which that has a capacity of 17 or more beds shall must comply with the Life Safety Code, chapter 21 22 or 23, the residential board and care occupancies sectien sections for large facilities, adopted by the State Fire Marshal. In addition, the following requirement must be met.

A. Any A building of 2 or more stories shall must be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

4. **Requirements for facilities with more than 6 but fewer than 17 beds.** Any boarding A residential care facility which that has a capacity of more than 6 but fewer than 17 beds shall must comply with the Life Safety Code, chapter 21 22 or 23, the residential board and care occupancies sectien sections for small facilities, adopted by the State Fire Marshal. In addition, the following requirements must be met.

A. Any A building of 2 or more stories shall must be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

B. Automatic emergency lights shall must be provided in such the number and location as required by the State Fire Marshal.

5. **Requirements for residential care facilities with 6 or fewer beds.** The department may permit any boarding--home

2 residential care facility having 6 or fewer ambulatory residents
3 who can evacuate the facility without the assistance of another
4 person in 2 or less minutes to comply with the one-family and
5 2-family dwelling requirements of the Life Safety Code adopted by
6 the State Fire Marshal.

7 ~~6. --- Adult foster homes with one to 4 ambulatory residents.~~
8 ~~Adult foster homes having one to 4 ambulatory residents who can~~
9 ~~evacuate the facility without the assistance of another person in~~
10 ~~2 or less minutes shall comply with the one family and 2 family~~
11 ~~dwelling requirements of the Life Safety Code adopted by the~~
12 ~~State Fire Marshal.~~

13 7. Local regulations. Any A local regulations which affect
14 regulation that affects the life-safety requirements of any
15 boarding a residential care facility and which are that is more
16 stringent than those referred to in this section shall ~~take~~ takes
17 precedence.

18 Sec. 10. 22 MRSA §7905, as amended by PL 1991, c. 69, §§2 and
19 3, is further amended to read:

20 §7905. Personal funds of residents

21 1. Permission to manage personal funds. No An operator or
22 agent of any boarding a residential care facility may not manage,
23 hold or deposit in a financial institution the personal funds of
24 any a resident of the facility, unless the operator or agent has
25 received written permission ~~therefor~~ from:

26 A. The resident, if the resident has no guardian, trustee
27 or conservator;

28 B. The resident's guardian, trustee or conservator, if that
29 person exists and can be reached; or

30 C. The department, if a guardian, trustee or conservator
31 exists, but can not be reached.

32 2. Itemized accounting. Any An operator or agent who,
33 after receiving written permission pursuant to subsection 1,
34 manages or holds the personal funds of any a resident, shall
35 maintain an account for these funds, which shall must include for
36 each resident a separate, itemized accounting for the use of the
37 that resident's personal funds, with supporting documentation for
38 every expenditure in excess of \$2.

39 3. Depositing personal funds. The department may require
40 an operator or agent of a boarding residential care facility to

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2 deposit in a financial institution the personal funds of a
resident, if the resident has a guardian, trustee or conservator
4 who can not be reached.

6 **4. Use of personal funds by operator prohibited.** Under no
circumstances shall ~~any~~ may an operator or agent of a ~~boarding~~
8 residential care facility use the personal funds of ~~any a~~
resident for the operating costs of the facility or for services
10 or items ~~which that~~ are reimbursable on a reasonable cost basis.
The personal funds of ~~any a~~ resident shall ~~may~~ not be commingled
12 with the business funds of the facility or with the personal
funds or accounts of the owner, ~~any a~~ member of the owner's
14 family or ~~any an~~ employee of the facility.'

16 Further amend the bill in section 13 by striking out all of
the indented paragraph and inserting in its place the following:

18 Whenever there are pertinent and available health and other
records about a person who seeks admission as a resident to a
20 ~~boarding~~ residential care facility, those records shall ~~shall~~ must be
provided to the administrator of the facility at least 7 days
22 prior to the date of admission, unless there are compelling
reasons ~~which that~~ make this impossible or impractical. If there
24 are compelling reasons, including, but not limited to, emergency
situations, the administrator shall ~~shall~~ must receive, by not later
26 than the date of admission, a written note ~~which that~~:

28 Further amend the bill in section 16 in the indented
paragraph in the 2nd line (page 6, line 48 in L.D.) by striking
30 out the following: "which" and inserting in its place the
following: '~~which that~~'

32 Further amend the bill in section 17 in subsection 2 in
34 paragraph A in the 4th line (page 7, line 14 in L.D.) by striking
out the following: "shall" and inserting in its place the
36 following: '~~shall~~ must'

38 Further amend the bill by striking out all of sections 20 to
40 22 and inserting in their place the following:

42 '**Sec. 20. 22 MRSA §7942, sub-§3,** as enacted by PL 1987, c.
774, §4, is amended to read:

44 **3. Long-term care facility.** "Long-term care facility"
46 means ~~any--boarding a residential~~ care facility subject to
licensure pursuant to chapters 1663 and 1665, and ~~any a~~ skilled
48 nursing or intermediate care facility or unit subject to
licensure pursuant to chapter 405, ~~with the exception of adult~~
~~foster-homes.~~

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2 **Sec. 21. 22 MRSA §7943, sub-§1**, as enacted by PL 1987, c. 774,
§4, is amended to read:

4 **1. License required.** It shall-be is a violation of this
chapter for any a person to manage or operate any a long-term
6 care facility as defined in this chapter ~~or adult foster home as~~
~~defined in section 7901-A~~ without first obtaining a license
8 therefor to manage or operate a long-term care facility.

10 **Sec. 22. 22 MRSA §7944, sub-§1, ¶C**, as enacted by PL 1987, c.
774, §4, is amended to read:

12 C. The department may impose a penalty upon a long-term
14 care facility. ~~In no event may any~~ A penalty or a
combination of penalties imposed on a facility may not be
16 greater than a sum equal to \$5 times the total number of
residents residing in the facility per violation, up to a
18 maximum of \$5,000 for each instance in which the department
issues a statement of deficiency to a skilled nursing or
20 intermediate care facility, or \$3 times the total number of
residents residing in the facility per violation, up to a
22 maximum of \$3,000 in each instance in which the department
issues a statement of deficiency to any ~~boarding~~ residential
24 care facility.

26 **Sec. 23. Report on use of vouchers for long-term care.** By December
1, 1994 the Department of Human Services shall submit a report to
28 the joint standing committee of the Legislature having
jurisdiction over human resource matters regarding the degree to
30 which existing opportunities for using vouchers for long-term
care services are being exercised. The department shall include
32 in the report an analysis of the reasons existing vouchers are or
are not being used, an assessment of whether federal waivers are
34 obtainable to use vouchers in the Medicaid program and the
department's plans regarding vouchers.

36 **Sec. 24. Assisted living rules.** By July 1, 1994 the Department
of Human Services shall adopt rules in accordance with the Maine
38 Revised Statutes, Title 5, chapter 375 regarding assisted
living. In drafting the rules, the department shall seek the
40 advice of consumers of assisted living services, providers of
assisted living services, the State Fire Marshall and the
42 Long-term Care Task Force appointed by the Commissioner of Human
Services. The rules must include, but are not limited to, the
44 following:

46 1. A definition of assisted living that includes a range of
48 services from in-home assistance to facility-based care but does
not include supported living as certified by the Department of
50 Mental Health and Mental Retardation;

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2. A recognition that different levels of assisted living require different levels of regulation; and

3. A level of regulation that provides necessary protection for consumers without unduly restricting choice or increasing costs.

Until rules are adopted under this section assisted living facilities must be regulated according to applicable existing laws. A person or entity may not represent one's self as an assisted living facility or offer assisted living services until rules are adopted under this section.

Sec. 25. Accreditation progress report. By December 1, 1994 the Commissioner of Mental Health and Mental Retardation shall submit a progress report to the joint standing committee of the Legislature having jurisdiction over human resource matters regarding the activities and recommendations of the process action team that, under the auspices of the Governor's Commission on Supported Employment, is addressing the issues of national accreditation, minimum standards and quality in disability services.

Sec. 26. Feasibility of long-term care development account. The Department of Human Services shall review the law governing certificates of need in the Maine Revised Statutes, Title 22, chapter 103 and determine the need for and feasibility of establishing a long-term care certificate of need development account. The department shall submit its recommendations along with any necessary implementing legislation to the joint standing committee of the Legislature having jurisdiction over human resource matters by November 1, 1994.'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The Department of Human Services will realize some minor savings from the ability to issue two year rather than one year licenses under certain circumstances. The department will also experience minor increases of General Fund revenue due to the shift from a flat fee to a per bed fee for foster homes.

2 The additional costs to report on the use of vouchers for
3 long-term care and the feasibility of establishing a long-term
4 care development account can be absorbed by the Department of
5 Human Services utilizing existing budgeted resources.

6 The Department of Mental Health and Mental Retardation will
7 incur some minor additional costs to prepare and submit a
8 progress report on the issues of national accreditation, minimum
9 standards and quality of services. These costs can be absorbed
10 within the department's existing budgeted resources.'

12
14 **STATEMENT OF FACT**

16 This amendment makes the following changes and additions to
17 the bill.

18
19 1. Currently, boarding homes are eligible to receive
20 financing through the Maine Health and Higher Educational
21 Facilities Authority. Because the bill replaces the term
22 "boarding home" with the term "residential care facility," an
23 amendment must be made to the Maine Health and Higher Educational
24 Facilities Authority laws in the Maine Revised Statutes, Title
25 22, chapter 413. The term "residential care facility" also
26 includes adult foster homes. Therefore, changing the term
27 "boarding home" to "residential care facility" in Title 22,
28 chapter 413 expands the group of facilities that are eligible for
29 financing under that chapter.

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31 2. The amendment clarifies that supported living
32 arrangements certified by the Department of Mental Health and
33 Mental Retardation are not residential care facilities.

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35 3. The amendment retains several definitions that were
36 mistakenly stricken in section 20 of the bill.

37
38 4. The amendment requires the Department of Human Services
39 to submit a report to the Legislature regarding the use of
40 vouchers in long-term care services.

41
42 5. The amendment requires the Department of Human Services
43 to adopt assisted living rules by July 1, 1994 and to enforce
44 applicable existing laws in the interim. The amendment prohibits
45 providers from using the term "assisted living" until the rules
46 are adopted.

47
48 6. The amendment requires the Department of Mental Health
and Mental Retardation to submit a progress report to the

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Legislature regarding the activities of a process action team that is addressing issues of accreditation, minimum standards and quality in disability services.

7. The amendment requires the Department of Human Services to study the need for and feasibility of a long-term care development account in the certificate-of-need program. The department is required to submit its findings to the Legislature by November 1, 1994.

8. The amendment adds a fiscal note to the bill and conforms existing law to current drafting standards.