

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 8, 1976

To Kevin Baack, Ph.D., Director Dept. Bureau of Mental Retardation
From Courtland D. Perry, Asst. Att'y General Dept. Mental Health and Corrections
Subject Access to Resident Records at Boarding Care Facilities

This is an informal opinion in response to your request for the advice of this office regarding the following questions:

Does the Department of Mental Health and Corrections have the responsibility or authority to examine records of boarding care facilities, skilled nursing facilities, intermediate care facilities, foster homes for children and adults and boarding homes for children pertaining to residents thereof who are also still on the rolls of the Pineland Center, particularly records of such facilities which relate to the personal finances of such residents? Has any other state agency such responsibility or authority? You addressed the same issue in connection with records of residents of the same facilities who have been discharged from the Pineland Center. The answer is the same as to non-discharged and discharged residents of the Pineland Center; the Department of Mental Health and Corrections is without responsibility or authority to examine financial records of such facilities pertaining to such persons, subject to the exception that if the Bureau of Mental Retardation is the guardian of any such person pursuant to 18 M.R.S.A. § 3621 et seq., the Bureau, by its authorized representatives, is entitled to access to financial records of boarding care facilities, skilled nursing facilities and intermediate care facilities pertaining to its wards under regulations of the Department of Human Services. See Regulation 18 A. 6 of "Regulations Governing the Licensing and Functioning of Boarding Care Facilities," December, 1974, and of "Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Intermediate Care Facilities," December 1974.

As to foster homes for children and adults (those facilities housing less than 3 residents) and boarding homes for children, there are no existing regulations relative to inspection of records. It is our view, however, that the public guardian's authority to manage its ward's funds (Title 18 § 3628) must be said to include the guardian's right of access to records of such facilities pertaining to the funds of its wards.

The legislature has given authority to the Department of Human Services to enter and inspect boarding care facilities, skilled nursing facilities and intermediate care facilities to determine the state of compliance with licensing laws and regulations of such department (22 M.R.S.A. § 1820-A). Such authority has not been given to the Department of Mental Health and Corrections.

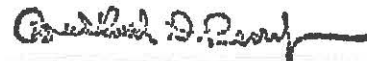
Authorized representatives of the Department of Human Services, pursuant to Regulation 18 A. 5 of the regulations above cited, are authorized to inspect all records of boarding care facilities, skilled nursing facilities and intermediate care facilities. Pertinent to your inquiry is the authority of the representatives of the Department of Human Services to inspect such latter facilities to determine

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the state of compliance with regulations of such department. In that connection we cite Regulation 12 B. 2 appearing in both sets of regulations cited above. This regulation mandates that facility operators keep complete, accurate and current records of funds of residents received and all expenditures and disbursements made by or on behalf of such residents. Such records are also required by the regulation to be made available to the resident and his family. We are of the view that under this regulation the Bureau of Mental Retardation, in its capacity as guardian under Title 18 § 3621 et seq., is also entitled to access to the records pertaining to its wards referred to in the regulation.

The regulations of the Department of Human Services are not specific relative to the authority to inspect records of boarding homes for children (See "Law Providing for the Licensing of Boarding Homes for Children and Rules Pertaining Thereto," April 24, 1975). There is, however, general inspection and investigation authority relative to such facilities vested in the Department of Human Services (Title 22 § 5). As to foster homes for children and adults (those housing less than 3 residents), there is no statutory or regulatory authority which would reach the issue of inspection of records. We advise that where guardianship authority exists over the resident of such home, there also exists the right of access to records pertaining to the funds of any such resident.

CDP/a



Courtland D. Perry
Assistant Attorney General