

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
FIRST SPECIAL SESSION
107TH LEGISLATURE

(Filing No. H-1119)

COMMITTEE AMENDMENT "*A*" to H.P. 2142, L.D. 2282, Bill,
"AN ACT Relating to Persons Residing in Community Residential
Facilities."

Amend said Bill by striking out all of the title and
inserting in place thereof the following: 'AN ACT Relating to
Community-based Facilities for Children and Adults.'

Further amend said Bill by striking out all of sections
3 and 4 and inserting in place thereof the following:

'Sec. 3. 22 MRSA §1820-A, 1st sentence, as enacted by
PL 1967, c. 334, is amended to read:

The department ~~{Health-and-Welfare}~~ and any duly designated
officer or employee thereof shall have the right to enter upon
and into the premises of any nursing home ~~or boarding-home~~
licensed pursuant to this chapter at any reasonable time in
order to determine the state of compliance with this chapter and
any rules and regulations in force pursuant thereto.

Sec. 4. 22 MRSA §1824 is enacted to read:
§1824. Personal funds of residents

The operator or agent of any skilled nursing or intermediate
care facility, licensed pursuant to this chapter, who manages,
holds or deposits the personal funds of any resident of the facility
shall be subject to all the procedures and provisions included in
section 7905.

Sec. 5. 22 MRSA §3797, as last amended by PL 1975, c. 304, §§1 and 2, is repealed.

Sec. 6. 22 MRSA, sub-T. 6 is enacted to read:

SUBTITLE 6. FACILITIES FOR CHILDREN AND ADULTS

CHAPTER 1661

GENERAL PROVISIONS

§7701. Definitions

1. Children. As used in this subtitle, the word "children" shall mean persons who are not related by blood or marriage to, or who have not been legally adopted by, the licensee or administrator of any facility, defined in sections 8101, 8201 or 8301, which provide services to these children.

2. Facility. As used in this subtitle, the word "facility" shall mean any of the places defined in section 7901, subsection 1, sections 8001, 8101, 8201 or 8301.

§7702. Violation; penalty

any provision of
Whoever violates this subtitle shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

CHAPTER 1663

LICENSES

§7801. License required; term of license

1. License required. No person, firm, corporation or association shall operate:

- A. A boarding care facility;
- B. A drug treatment center;
- C. A children's home;
- D. A child placing agency; or
- E. A day care facility

without having, subject to this subtitle and to rules promulgated by the department under this subtitle, a written license therefor from the department.

2. Term of license. The term of any license, except for a temporary license, issued under this subtitle shall be for one year.

§7802. Issuance of license

1. License issued. The department shall issue a regular license for any facility which complies with applicable law and rules.

2. Failure to meet requirements. When any applicant for a regular license for a facility fails to comply with applicable law and rules, the department may refuse to issue a regular license or may issue a temporary or conditional license.

3. Temporary license. When, in the judgment of the commissioner, the best interest of the public could be so served, the department may issue a temporary license for a specified period not exceeding 90 days during which period corrections specified by the department shall be made by the facility to comply with applicable law and rules.

4. Conditional license. When, in the judgment of the commissioner, the best interest of the public could be so served, the department may issue a conditional license for a period of one year, during which period corrections specified by the department shall be made by the facility to comply with applicable law and rules.

Failure by the conditional licensee to meet the conditions specified by the department shall permit the department to void

the conditional license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the conditional licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left notice thereof at the facility.

5. Subsequent application for regular license. A subsequent application by a facility for a regular license may be considered by the department when the deficiencies set forth by the department at the time of:

- A. Issuance of a temporary license;
- B. Issuance of a conditional license;
- C. Refusal to issue or renew a regular license; or
- D. Revocation of a regular license

have been corrected.

6. Appeals. Any person aggrieved by the department's decision to:

- A. Issue a temporary or conditional license;
- B. Void a conditional license; or
- C. Refuse to issue or renew a regular license

may file within 30 days of the notice of the decision, a complaint with the Administrative Court as provided in Title 5, chapter 305.

The Administrative Court may reinstate a voided conditional license, pending a decision on the appeal to the Administrative Court, unless reinstatement would immediately endanger the health or safety of persons living in or attending the facility.

§7803. Suspension or revocation of license

1. License suspended or revoked. Any license issued under this subtitle may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal action in the facility or conduct or practices detrimental to the welfare of persons living in or attending the facility.

When the department believes that a license should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in Title 5, chapter 305.

2. Emergency suspension. Whenever, on inspection by the department, conditions are found which violate applicable law and rules and which, in the opinion of the commissioner, immediately endanger the health or safety of persons living in or attending a facility, the department by its duly authorized agents may suspend any license issued under this chapter.

When the department has suspended a license under emergency conditions, it shall file a complaint promptly with the Administrative Court as provided in Title 5, chapter 305.

The license shall be suspended when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be served in hand or by certified mail, has left notice of the emergency suspension at the facility.

The license shall be suspended until the department determines that an emergency no longer exists or until a decision is rendered by the Administrative Court.

§7804. Right of entry

The department shall have the right of entry to any facility licensed under this subtitle, at any reasonable time in order to determine the state of compliance by the facility to applicable laws and rules.

To inspect any facility which the department knows or believes is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection.

Any application for a license under this subtitle shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

§7805. Indian reservations

This subtitle shall also apply to the licensing of children's homes and day care facilities located on Indian reservations. The department shall consider for licensure such children's homes and day care facilities as are recommended by the Governor and tribal council of the reservations on which they are located.

CHAPTER 1665BOARDING CARE FACILITIES§7901. Definitions

1. Boarding care facility. As used in this subtitle, the term "boarding care facility" shall mean a house or other place having more than 2 residents which, for consideration, is maintained wholly or partly for the purposes of boarding and caring for the residents.

2. Resident. The word "resident," as used in this subtitle, shall mean any aged, blind, mentally ill, mentally retarded or other person 16 years of age or older who is not related by blood or marriage to the owner or person in charge of the boarding care facility in which the resident lives.

§ 7902. Rules

1. Rules promulgated. The Commissioner shall promulgate rules for boarding care facilities, which shall include but need not be limited to rules pertaining to administration, staffing, the number of residents, the quality of care, the quality of treatment, if applicable, the health and safety of staff and residents, the rights of residents, community relations and licensing procedures.

2. Public hearing. The Commissioner shall hold a public hearing prior to adopting these rules. Notice of the public hearing shall be published once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby.

3. Rules amended or repealed. Rules may be amended or repealed at any time by the Commissioner after like notice and hearing of the portions amended or repealed.

§ 7903. Fees for licenses

The department shall charge an annual fee of \$25 for regular licenses for boarding care facilities having a capacity of 6 or less residents and \$50 for regular licenses for boarding care facilities having a capacity of more than 6 residents.

In addition, the department shall charge a fee of \$25 for temporary or conditional licenses for boarding care facilities having a capacity of 6 or less residents and \$50 for such licenses for boarding care facilities having a capacity of more than 6 residents.

§ 7904. Fire Safety inspection

1. Inspection required. No license shall be issued by the department to a boarding 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, sections 2360, 2391 or 2392, to make fire safety inspections. This statement, which shall indicate that the boarding care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452, shall 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 mentally retarded residents. Notwithstanding any provision referred to under Title 25, section 2452, the department shall permit any boarding care facility, which has a capacity of 15 beds or less and which is maintained for mentally retarded persons or persons with related conditions, to comply with applicable fire safety provisions of the lodging and rooming house section, instead of the institutional occupancies section, of the Life Safety Code which has been adopted by

the State Fire Marshal, if the following conditions are met:

A. Any building of 2 or more stories shall 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 be provided in such number and location as required by the State Fire Marshal.

C. The residents of the facility shall be certified annually by a physician or a psychologist as ambulatory and capable of following directions and taking appropriate action for self-preservation under emergency conditions.

← For purposes of paragraph C, a physician is any person who is licensed in this State to practice medicine or osteopathy and who has had specialized training or at least one year of experience in treating mentally retarded persons; and a psychologist is any person who is licensed in this State as a psychologist or psychological examiner and who has had specialized training or at least one year of experience in providing services to mentally retarded persons. No physician or psychologist who certifies a resident pursuant to paragraph C shall be in the regular employ of or shall have a financial interest in the boarding care facility in which the resident lives.

§ 7905. Personal funds of residents

1. Permission to manage personal funds. No operator or agent of any boarding care facility shall manage, hold or deposit in a financial institution the personal funds of any resident of

the facility, unless the operator or agent has received written permission therefor from:

- A. The resident, if the resident is not mentally retarded and has no guardian, trustee or conservator;
- B. The resident's guardian, trustee or conservator, if such person exists and can be reached; or
- C. The department, if a guardian, trustee or conservator exists, but cannot be reached, or, in the case of a mentally retarded resident, if such resident has no guardian, trustee or conservator.

Whenever the department gives written permission to an operator or agent to manage, hold or deposit the personal funds of any mentally retarded resident, the department shall consult with the Bureau of Mental Retardation, Department of Mental Health and Corrections, in order to determine an appropriate plan for the management of these funds.

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

3. Depositing personal funds. The department may require an operator or agent of a boarding care facility to deposit in a financial institution the personal funds of a resident, if:

- A. The resident has a guardian, trustee or conservator who cannot be reached; or,

B. In the case of a mentally retarded resident, the resident has no guardian, trustee or conservator.

4. Use of personal funds by operator prohibited. Under no circumstances shall any operator or agent of a boarding care facility use the personal funds of any resident for the operating costs of the facility or for services or items which are reimbursable on a reasonable cost basis. ~~the~~ ^{shall not} personal funds of any resident ~~be commingled~~ with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the facility.

§ 7906. Reimbursements to small boarding care facilities for mentally retarded persons

No rule of the department shall be adopted or enforced which would have the effect of denying, solely by reason of size, to any boarding care facility which has a capacity of 6 or less residents and which serves only mentally retarded persons or persons with related conditions, the opportunity to receive from the department reimbursements based on the reasonable costs of operating the facility. In no case shall the maximum allowable costs be less than the ceilings set for boarding care facilities with a capacity of more than 6.

CHAPTER 1667

DRUG TREATMENT CENTERS

§ 8001. Definition of drug treatment center

The term "drug treatment center," as used in this subtitle, shall mean a residential facility, not licensed as a medical care

facility under chapter 405, for the care, treatment or rehabilitation of drug users, including alcohol users.

§8002. Rules

1. Rules promulgated. The Commissioner shall promulgate rules for drug treatment centers, which shall include but need not be limited to rules pertaining to administration, staffing, number of residents, quality of treatment programs; health and safety of staff and residents, community relations and licensing procedures.

2. Public hearing. The Commissioner shall hold a public hearing pursuant to section 7902, subsection 2, prior to adopting, amending or repealing any of these rules.

§ 8003. Fee for licenses

The department shall charge an annual fee of \$50 for regular licenses and a fee of \$50 for temporary conditional licenses for drug treatment centers.

§ 8004. Fire safety

All procedures and other provisions included in section 7904, subsections 1 and 2, for boarding care facilities shall also apply to drug treatment centers.

§ 8005. Additional license not required

No facility licensed as a drug treatment center shall be required to be licensed as a boarding care facility or a children's home.

CHAPTER 1669

CHILDREN'S HOMES

§ 8101. Definition of children's home

As used in this subtitle, the term "children's home" shall

mean a house or other place maintained wholly or partly for the purpose of boarding and caring for one or more children under the age of 16.

The term shall not include boarding schools established solely for educational purposes, hospitals or other institutions established solely for medical care, or summer camps established solely for recreational and educational purposes.

§ 8102. Rules

1. Rules promulgated. The department shall promulgate rules for children's homes, which shall include but need not be limited to rules pertaining to the health and safety of the children and staff, the quality of care provided and licensing procedures.

2. Different classes. The department may, within its rules, provide for different classes of children's homes.

3. Public hearing. The Commissioner shall hold a public hearing pursuant to section 7902, subsection 2, prior to adopting, amending or repealing any of these rules.

§ 8103. Fire safety

All procedures and other provisions included in section 7904, subsections 1 and 2, for boarding care facilities shall also apply to children's homes; except that the written statement referred to in section 7904, subsection 1, need not be furnished annually by the State Fire Marshal to the department when a children's home serves only one or two children.

CHAPTER 1671

CHILD PLACING AGENCY

§ 8201. Definition of child placing agency

As used in this subtitle, the term "child placing agency" shall mean a facility which advertises itself or holds itself out as finding homes for or otherwise placing children under the age of 16.

§ 8202. Rules

1. Rules promulgated. The department shall promulgate rules for child placing agencies which shall include, but need not be limited to, rules pertaining to the appropriateness of placement, the continued welfare of the child placed and licensing procedures.

2. Public hearing. The Commissioner shall hold a public hearing pursuant to section 7902, subsection 2, prior to adopting, amending or repealing any of these rules.

§ 8203. Additional license permitted

A licensed children's home may also be licensed as a child placing agency if the children's home complies with the law and rules applicable to child placing agencies.

CHAPTER 1673

DAY CARE FACILITIES

§ 8301. Definition of day care facility

As used in this subtitle, the term "day care facility" shall mean a house or other place in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection

2.
D

for 3 or more children under the age of 16.

The term does not include any facility operated as a nursery school, a summer camp established solely for recreational and educational purposes, or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of ^{Educational} and Cultural Services in accordance with Title 20, section 911.

§ 8302. Rules

1. Rules promulgated. The Commissioner shall promulgate rules for day care facilities which shall include but need not be limited to rules pertaining to the health and safety of the children and staff, the quality of the program provided, and licensing procedures.

2. Public hearing. The Commissioner shall hold a public hearing pursuant to section 7902, subsection 2, prior to adopting, amending or repealing any of these rules.

§ 8303. Fee for licenses

The department shall charge an annual fee of \$10 for regular licenses and a fee of \$10 for temporary ~~or~~ conditional licenses for day care facilities.

§ 8304. Fire safety

All procedures and other provisions included in section 7904, subsections 1 and 2, for boarding care facilities shall also apply to day care facilities.

Sec. 7. Transitional provision. Any rules adopted pursuant to Title 22, sections 5, 5-A and 3797 prior to the effective date of this Act, shall remain in effect until otherwise amended or repealed. 3

Statement of Fact

The primary purpose of this amendment is to combine into a new subtitle in Title 22 the licensing and other provisions relating to community-based facilities for children and adults.

L.D. 2282 contains a reorganization of the existing statutes in the area of licensing boarding homes and drug treatment centers. This amendment takes the reorganization one step further by including a clarification of the existing statute for the licensing of children's homes, adoption agencies and day care facilities.

Another purpose of this amendment is to make minor revisions in those sections of L.D. 2282 which are based on the results of H.P. 1724, the study by the Committee on Health and Institutional Services on mental retardation services.

Reported by the Committee on Health and Institutional Services.

Reproduced and distributed under the direction of the Clerk of the House.
3/29/76

(Filing No. H-1119)