

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2282

H. P. 2142

House of Representatives, March 3, 1976

Reported by Mr. Goodwin for the majority of the Committee on Health and Institutional Services Pursuant to H. P. 1724 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

(Filed under Joint Rule 3, pursuant to H. P. 1724)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Persons Residing in Community Residential Facilities.

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

Sec. 1. 22 MRSA § 5, as last amended by PL 1975, c. 623, § 25, is repealed.

Sec. 2. 22 MRSA § 5-A, as enacted by PL 1973, c. 164, § 2, and as last amended by PL 1975, c. 623, § 26, is repealed.

Sec. 3. 22 MRSA §§ 1824 and 1825 are enacted to read:

§ 1824. Accounting procedures

The operator of any skilled nursing or intermediate care facility licensed pursuant to this chapter, which receives from the department reimbursements based on the reasonable costs of operating such facility, shall submit annually to the department an audited financial statement prepared by a certified public accountant who has been approved by the department. The cost of this audited statement shall be included as part of the reasonable costs of operating the facility.

§ 1825. Management of personal funds of clients residing in skilled nursing and intermediate care facilities

The operator, or his agent, of any skilled nursing or intermediate care facility licensed pursuant to this chapter who manages, holds or deposits, or who is asked or seeks to manage, hold or deposit the personal funds of any client residing in such facility, shall be subject to all the provisions included in section 1872.

Sec. 4. 22 MRSA c. 405-A is enacted to read:

CHAPTER 405-A

LICENSING OF COMMUNITY FACILITIES

§ 1861. License required; term of license

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

A. Any boarding care facility for the aged, blind, mentally retarded, mentally ill or other person 16 years of age or over

B. Any facility for drug users without having in full force, subject to the rules and regulations of the department, a written license therefor from the department.

2. Term of license. The term of such license shall be for one year.

§ 1862. Definitions

The following terms, as used in this chapter, shall have the following meanings unless the context indicates otherwise.

1. Boarding care facility. The term "boarding care facility" shall mean a house or other place, having more than 2 boarders not related by blood or marriage to the proprietor, which is maintained by any person, firm, corporation or association partly or wholly for the purpose of boarding and caring for any of the persons enumerated in section 1861, subsection 1, paragraph A.

2. Facility for drug users. The term "facility for drug users" shall mean a residential facility, not otherwise licensed as a medical care facility, for the care, treatment or rehabilitation of drug users, including alcohol users.

§ 1863. Rules and regulations

1. Rules and regulations promulgated. The department shall promulgate rules and regulations for boarding care facilities and facilities for drug users, which may include but not be limited to rules and regulations pertaining to administration; staffing; the number of residents; the quality of treatment programs, if applicable; the health and safety of staff and residents or clients; community relations and licensing procedures.

2. Public hearings and review. The department shall hold a public hearing after the promulgation of new regulations or any change in existing regulations. These regulations shall become effective only after a public review period of 60 days following the public hearing.

§ 1864. Fee for license

The annual fee for a license issued pursuant to this chapter shall be \$25 for a boarding care facility having a capacity of 6 or less boarders, \$50 for a boarding care facility having a capacity of more than 6 boarders and \$50 for a facility for drug users.

§ 1865. Issuance of licenses

1. Failure of facility to meet requirements. When any boarding care facility or facility for drug users, upon inspection by the department, shall be found not to meet all requirements of this chapter and departmental regulations issued hereunder, the department may:

A. Refuse to issue a license;

B. Issue a temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department shall be made by the facility for compliance with this chapter and departmental regulations hereunder, if in the judgment of the commissioner the best interest of the public will be so served; or

C. Issue a conditional license setting forth conditions which must be met by the facility to the satisfaction of the department.

2. Conditional license. Failure to meet the conditions specified by the department pursuant to subsection 1, paragraph C, by any boarding care facility or facility for drug users, shall immediately void the conditional license of such facility.

No conditional license shall be considered void until the department has delivered in hand a written notice thereof to the conditional licensee, or, if such licensee cannot be reached for personal service, has left notice thereof at the licensed premises.

Any conditional licensee shall have the right to file a statement or complaint with the Administrative Court Judge as provided in Title 5, chapters 301 to 307. The voidance of a conditional license shall be stayed pending an appeal to the Administrative Court Judge, unless, in the opinion of the Administrative Court Judge, a stay would immediately endanger the health or safety of persons living in the facility to such an extent as to create an emergency. Any appeal of the loss of a conditional license must be filed within 10 days of receipt of notice of voidance of the conditional license.

3. Fee for temporary or conditional license. The fee for a temporary or conditional license shall be \$5 for a boarding care facility having 4 or less boarders, \$10 for a boarding care facility having more than 4 boarders and \$50 for a facility for drug users.

4. New application for regular license. A new application for a regular license may be considered by the department if and when the conditions set forth by the department at the time of issuance of a temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department.

§ 1866. License suspended or revoked

1. License suspended or revoked for just cause. Any license issued pursuant to this chapter may be suspended or revoked for just cause. When the department believes that a license should be suspended or revoked, it shall file a statement or complaint with the Administrative Court Judge designated in Title 5, chapters 301 to 307.

2. **Emergency suspension.** Whenever, on inspection by the department, conditions are found to exist which violate this chapter and departmental regulations issued hereunder and, which, in the opinion of the commissioner, immediately endanger the health or safety of persons living in boarding care facilities or facilities for drug users to such an extent as to create an emergency, the department by its duly authorized agents may suspend any license issued pursuant to this chapter until such time as the department determines that the emergency no longer exists or until a decision is rendered by the Administrative Court Judge.

The department shall give written notice of such emergency suspension by delivering notice in hand to the licensee. If the licensee cannot be reached for personal service, the notice may be left at the licensed premises.

§ 1867. Person aggrieved by refusal of department to issue a license

Any person aggrieved by the refusal of the department to issue a license pursuant to this chapter or departmental regulations issued hereunder may file a statement or complaint with the Administrative Court Judge designated in Title 5, chapters 301 to 307.

§ 1868. Fire safety inspections

No license shall be issued pursuant to this chapter until the applicant has furnished the department with a written statement, signed by the Commissioner of Public Safety or the proper municipal official designated in Title 25, chapters 313 to 321 to make fire safety inspections, that the home and premises comply with Title 25, chapters 313 to 321 relating to fire safety. Said written statement shall be furnished annually thereafter.

The department shall establish and pay reasonable fees to the municipal official or the Commissioner of Public Safety for each such inspection.

§ 1869. Inspection and investigation by the department

The department shall inspect and investigate as frequently as it deems necessary the conditions and management of all facilities licensed pursuant to this chapter, which derive their support wholly or in part from state, county or municipal appropriations or funds.

§ 1870. Violation; penalty

Whoever violates this chapter shall be punished by a fine of not more than \$500 or by imprisonment for not more than 60 days.

§ 1871. Accounting procedures

The operator of any boarding care facility licensed pursuant to this chapter, which receives from the department reimbursements based on the reasonable costs of operating such facility, shall submit annually to the department an audited financial statement prepared by a certified public accountant who has been approved by the department. The cost of this audited statement shall be included as part of the reasonable costs of operating the facility.

§ 1872. Management of personal funds of clients residing in boarding care facilities

1. Permission to manage personal funds. The operator, or his agent, of any boarding care facility licensed pursuant to this chapter shall not manage, hold or deposit in a financial institution the personal funds of any client residing in the facility, unless the operator or his agent has received from the client, insofar as possible, and from the guardian, trustee or conservator of the client permission to manage, hold or deposit these funds.

If a client, other than a mentally retarded client, has no guardian or conservator, or if the guardian, trustee or conservator is not available to grant this permission, then the department may allow the operator or his agent to manage, hold or deposit the client's personal funds. In any such situation involving a mentally retarded client, the Bureau of Mental Retardation, Department of Mental Health and Corrections, may allow the operator or his agent to manage, hold or deposit the personal funds of the retarded client.

2. Itemized accounting for personal funds. Any operator or his agent who has received permission pursuant to subsection 1 and who manages or holds any personal funds for any client residing in the facility shall maintain an account for these funds, which shall include for each client a separate, itemized accounting for the use of the client's personal funds.

3. Depositing personal funds in financial institutions. Any operator or his agent, who has received permission pursuant to subsection 1, may deposit the personal funds of any client residing in the facility in a personal demand deposit account, a savings deposit account or a NOW account in a financial institution as defined in Title 9-B, section 131.

Upon consent, insofar as possible, of any client, except for any mentally retarded client, and the guardian, trustee or conservator of the client, the department may require any operator, or his agent, of a boarding care facility to deposit in the name of the client in a financial institution a portion of the personal funds of the client. Upon the consent, insofar as possible, of any mentally retarded client and the guardian, trustee or conservator of the retarded client, the Bureau of Mental Retardation, Department of Mental Health and Corrections, may require any such operator or his agent to make such a deposit.

4. Use of personal funds limited. Under no circumstances shall any operator or his agent of a boarding care facility use the personal funds of any client for the operating costs of the facility or for services or items which are reimbursable on a reasonable cost basis.

§ 1873. Fire Safety requirements for boarding care facilities for mentally retarded persons

The department shall license any boarding care facility which has a capacity of 15 beds or less and which is maintained or operated for mentally retarded persons or persons with related conditions, if such facility meets the residential occupancy requirements in the Lodging or Rooming Houses section of

the most recent Life Safety Code of the National Fire Protection Association; provided that all the residents in each such facility are currently certified by a physician or psychologist as:

1. Ambulatory. Ambulatory; and
2. Self-preservation. Capable of following directions and taking appropriate action for self-preservation under emergency conditions.

For the purposes of this section, a physician is any person who is licensed in the 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 has received at least a master's degree in psychology from an accredited program, who is licensed as a psychologist in this State and who has had specialized training or at least one year of experience in treating mentally retarded persons.

§ 1874. Reimbursement to small, nonprofit boarding care facilities for mentally retarded persons

No standards, rules or regulations of the department shall be adopted or enforced which would have the effect of denying to any boarding care facility, which is a small group home for mentally retarded persons, the opportunity to receive from the department reimbursement based on the reasonable costs of operating such a boarding home.

For the purposes of this section, a small group home shall be defined as a private, nonprofit boarding home having fewer than 7 beds for individuals with a disability attributable to mental retardation or with a handicapping condition found to be closely related to mental retardation.

STATEMENT OF FACT

This Act is based on the findings of the Committee on Health and Institutional Services with respect to H. P. 1724, a study of mental retardation services in Maine. This Act has several purposes.

Sections 1 to 4 of this Act make the following technical changes:

1. Title 22, sections 5 and 5-A, which pertain to the licensing of boarding homes and facilities for drug and alcohol users, are combined into a new chapter 405-A in Title 22 entitled "Licensing of Community Residential Facilities" and

2. Chapter 405-A, sections 1861 through 1870, reorganize and clarify the provisions formerly contained in sections 5 and 5-A. No significant substantive changes are involved.

In addition, section 4 of this Act enacts 4 new sections, which have the following purposes:

1. Section 1871 requires that the operator of any boarding home, which receives from the Department of Human Services reasonable cost of reimbursements, must submit to the Department annually an audited financial statement prepared by a certified public accountant.

2. Sections 1872 provides safeguards for the personal funds of clients residing in boarding homes.

3. Section 1873 allows mentally retarded persons, who are certified as ambulatory and capable of protecting themselves under emergency conditions, to live in boarding homes which meet fire and safety requirements which are less restrictive than the current fire and safety requirements.

4. Section 1874 allows small, nonprofit group homes for mentally retarded persons to receive payments from the Department of Human Services on a reasonable cost basis.

Section 3 of this Act enacts 2 new sections which have the following purposes:

1. Section 1824 requires that the operator of any skilled nursing or intermediate care facility, which receives from the Department of Human Services reasonable cost reimbursements, must submit to the department, annually, an audited financial statement prepared by a certified public accountant and

2. Section 1825 provides safeguards for the personal funds of clients who reside in these facilities.