

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 338

H. P. 270

House of Representatives, February 9, 1977

Referred to the Committee on Health and Institutional Services. Sent up for concurrence and 2,000 copies ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Gill of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to Health Care Facilities.

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

Sec. 1. 22 MRSA c. 405, as amended, is repealed.

Sec. 2. 22 MRSA c. 405-A is enacted to read:

CHAPTER 405-A

LICENSING OF HEALTH CARE FACILITIES

§ 1851. Definitions

The following words and phrases, unless the context clearly indicates otherwise, shall have the following meanings.

1. Facility. "Facility" shall mean any health care facility.
2. Health care facility. "Health care facility" shall mean any hospital, skilled nursing facility, intermediate care facility or other related facility which provides for the accommodation of persons who are ill, injured, aged or infirmed and require either medical services, nursing care, convalescent care or other extended care prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State.
3. Hospital. "Hospital" shall mean a facility offering inpatient care and services for observation, diagnosis and active treatment of an individual with a medical, surgical, obstetrical, rehabilitative or psychiatric condition requiring direction or supervision of a physician and which may or may not offer similar services to outpatients and emergency services.

4. Intermediate care facility. "Intermediate care facility" shall mean a facility which provides nursing services and other related services for residents who do not require the degree of care which a hospital or skilled nursing facility is designed to provide.

5. Skilled nursing facility. "Skilled nursing facility" shall mean a facility which provides skilled nursing services or rehabilitation services with licensed nurses on duty 24 hours a day under the direction of a full-time registered professional nurse to residents who require those services but do not require the degree of care which a hospital is designed to provide.

§ 1852. License required; term of license; level of care

1. License required. No person, firm, corporation, association, county or municipal government shall operate a health care facility without having, subject to this chapter and the rules and regulations promulgated by the Department of Human Services under this chapter, a written license therefor from the department.

2. Term of license. The term of any license issued under this chapter, other than a temporary license, shall be for one year, provided the department may issue licenses for less than one year to achieve an even monthly distribution of workload.

3. Level of care. A license shall specify the level or levels of care which a health care facility is authorized to provide.

§ 1853. 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.

§ 1854. Suspension or revocation of license

1. License suspended or revoked. Any license issued under this chapter may be suspended or revoked for violation of applicable law or rules and regulations; 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.

2. Emergency suspension. Whenever, on inspection by the department, conditions are found which violate applicable law or rules and regulations 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 reinstating the license is rendered by the Administrative Court.

§ 1855. Right of entry

1. **Access to facilities.** The department shall have the right of entry to any facility licensed under this chapter at any time in order to determine the state of compliance by the facility with applicable laws or rules and regulations. Further, the department shall have the right of entry to inspect any facility which the department knows or believes is being operated without a license, but only with the permission of the owner or person in charge or with a search warrant or inspection 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 or rules and regulations.

2. **Access to records.** The department shall have access to books, records and other documents maintained by a health care facility to the extent necessary to carry out the purpose of this chapter and the rules and regulations promulgated under this chapter. The department shall respect the confidentiality of a patient's clinical record and shall not divulge or disclose the contents of the records in a manner which identifies an individual except under court order. The department has the right to copy health care facility records as required to document findings.

§ 1856. Rules and regulations

1. **Rules and regulations promulgated.** The commissioner shall promulgate rules and regulations for health care facilities, which shall include, but not be limited to, rules and regulations pertaining to administration, staffing, the number of beds, records, medications, the level or levels of care, the quality of care and treatment, the health and safety of staff, patients or residents, the management of property and personal affairs of patients or residents, and social services and activities provided for patients or residents.

2. **Public hearing.** The commissioner shall hold a public hearing prior to adopting rules and regulations. Notice of the public hearing shall be published at least 30 days before the hearing in a newspaper or newspapers of general circulation adequate to provide reasonable notice to the public affected thereby and a 2nd notice shall be published in the same newspaper or newspapers no more than 15 days before the hearing.

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.

§ 1857. Fees for license

Each application for a license shall be accompanied by a fee of \$50 for facilities of less than 50 beds in size, \$100 for facilities of 51 to 100 beds in size and \$200 for facilities larger than 100 beds in size. The fee for a conditional or a temporary license shall be the same as for a regular license. No fee shall be refunded.

§ 1858. Fire safety

1. **Inspection required.** No license shall be issued by the department to a health 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 health 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 inspection.

§ 1859. Personal funds of residents

1. Permission to manage personal funds. No operator or agent of any intermediate care facility or skilled nursing 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 residents, the department may request the Bureau of Mental Retardation, Department of Mental Health and Corrections, to develop, insofar as resources are available, an appropriate plan for the management of these funds.

2. Itemized accounting. Any operator or agent of an intermediate care facility or skilled nursing facility 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 an intermediate care facility or skilled nursing 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 an intermediate care facility or a skilled nursing facility use the personal funds of any resident for the operating costs of the facility or for services or items which are reimbursable by any 3rd party payor. The personal funds of any resident shall not 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.

§ 1860. Notice when facility voluntarily closed

Any person operating a facility licensed under this chapter shall give at least 30 days' advance notice of the voluntary closing of such facility to the patients or residents therein and to those persons, governmental units or institutions who are primarily responsible for the welfare of those patients or residents who are being cared for by that facility.

§ 1861. Treatment of minors

Any hospital licensed under this chapter which provides services to a minor in connection with the treatment of such minor for venereal disease or abuse of drugs is under no obligation to attain the consent of that minor's parent or guardian or to inform that parent or guardian of the provision of those services so long as those services have been provided at the direction of a licensed, certified or registered person who is authorized by law to provide such services without obtaining the consent of the minor's parent or guardian.

§ 1862. Violation; penalty

Whoever violates any provision of 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.

Sec. 3. Rules and regulations to remain in effect. Rules and regulations promulgated pursuant to this Title, chapter 405, shall remain in full force and effect until the time that the commissioner may promulgate new rules and regulations or amend or repeal existing rules and regulations pursuant to this Title, chapter 405-A.

STATEMENT OF FACT

The purpose of this bill is to replace the present licensing statute for hospitals and nursing homes. It is modeled after the licensing statute for community-based facilities for children and adults which was enacted during the last session of the Legislature.