

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-938)
109TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 1816, L.D. 1927, Bill,
"AN ACT to Provide for Licensing and Regulation of Adult Foster
Homes."

Amend the bill by striking out everything after the enacting
clause and inserting in its place the following:

'Sec. 1. 22 MRSA §7901, sub-§3 is enacted to read:

3. Adult foster care facility. "Adult foster care facility"
means a residence, other than a boarding care facility, operated
for the purpose of providing boarding care to 4 or fewer residents.

Sec. 2. 22 MRSA §§7908 and 7909 are enacted to read:

§7908. Approval by department; rules

1. Approval required. No adult foster care facility may
be eligible to receive state reimbursement without first being
approved by the Department of Human Services.

2. Limitations on rules. Pursuant to the Maine Administra-
tive Procedure Act, Title 5, chapter 375, the commissioner may
adopt reasonable rules to carry out the purposes of this section.
Any such rules shall be limited to rules concerning approval
procedures, provider qualifications, resident health, safety and
welfare, physical accommodations and sanitation, and recordkeeping.

§7909. Exemption

Nothing in this chapter or rules adopted pursuant to this chapter may be construed to subject the patients, residents, employees, administrator or owners of any facility, which is conducted by and for the adherents of a recognized church or religious denomination who rely upon treatment by spiritual means through prayer alone for healing, to any medical supervisions, regulation or control in connection with the operation of that facility.

Sec. 3. Transition provision. For the purposes of this Act, an adult foster care facility or boarding care facility which was approved or licensed on the day before the effective date of this Act shall continue to be licensed after the effective date of this Act until its regular, temporary or conditional license expires. After the expiration of that license, any facility shall comply with this Act and the rules adopted hereunder.

Statement of Fact

The Pineland suit, de-institutionalization policies, and the expanding needs of the handicapped together demand continuation of a sound program of community-based residential facilities for the mentally retarded, the mentally ill and other dependent adults.

The Department of Human Services, in partial response to this need, already operates an adult foster care program. The Department merely "approves" adult foster homes that receive state reimbursement. Unfortunately, clear statutory authority for this program is absent. According to a recent opinion of the Attorney General, the validity of the Department's rules for approval of state-reimbursed adult foster homes is doubtful. This is a very critical problem because it threatens the State's ability to safeguard residents' health, safety and care, and also jeopardizes federal matching funds. In fact, if the rules for approval of state-reimbursed adult foster homes were successfully challenged in court, we would be in danger of losing at least \$150,000 in federal funds per year. This would obviously put tremendous pressure on the State to make up for the loss and would threaten a major source of payment for many adult foster homes.

This amendment merely places in statute the authority to approve adult foster homes seeking state reimbursement. It also restricts the Department's rule-making authority to specific areas related to health, safety, care and sanitation.