

# MAINE STATE LEGISLATURE

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New Draft of H. P. 1089, L. D. 1466  
SECOND REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1927**

H. P. 1816

House of Representatives, February 11, 1980

Reported by Mr. Brenerman from the Committee on Health and Institutional Services and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk of the House

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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**AN ACT to Provide for Licensing and Regulation of Adult Foster Homes.**

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

Sec. 1. 22 MRSA § 7701, as enacted by PL 1975, c. 719, § 6, is repealed.

Sec. 2. 22 MRSA § 7701-A is enacted to read:

§ 7701-A. Definitions

As used in this subtitle, unless the context indicates otherwise, the following terms have the following meanings.

1. Children. "Children" means 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 section 8101, 8201 or 8301.

2. Commissioner. "Commissioner" means the Commissioner of Human Services or his designee.

3. Department. "Department" means the Department of Human Services.

4. Facility. "Facility" means any of the places defined in section 7951, subsection 5, and section 8001, 8101, 8201 or 8301.

Sec. 3. 22 MRSA § 7801, as enacted by PL 1975, c. 719, § 6, is repealed and the following enacted in its place:

§ 7801. License required; term of license

1. License required. No person, firm, corporation or association may operate a facility without a license issued under this subtitle and the applicable rules.

2. Term of license. The term of a license is:

A. Two years for any regular license, subject to paragraph D;

B. One year or less for any conditional license;

C. Ninety days or less for any temporary license; or

D. One year for any license issued under chapter 1667 and for any initial license other than a temporary or conditional license.

Sec. 4. 22 MRSA c. 1665, as enacted by PL 1975, c. 719, § 6, and as amended, is repealed.

Sec. 5. 22 MRSA c. 1666 is enacted to read:

**CHAPTER 1666**

**BOARDING CARE FACILITIES**

§ 7951. Definitions

As used in this subtitle, unless the context indicates otherwise, the following terms have the following meanings.

1. Administrator. "Administrator" means a person in primary charge of the general administration of a facility, whether or not he has an ownership interest or shares his duties and functions with others.

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

3. Boarding care. "Boarding care" means a personal care, supervision and social services for mentally retarded persons, dependents, aged, blind or disabled persons, or any other persons who are ambulatory and do not need hospital or nursing home care.

4. Boarding care facility. "Boarding care facility" means a residence operated for the purpose of providing boarding care to 3 or more residents.

5. Facility. "Facility" means a boarding care facility or an adult foster care facility. "Facility" does not mean a part, ward or unit of a hospital or nursing home, unless it is licensed under this chapter.

6. Mentally retarded. "Mentally retarded" means a condition characterized by intellectual functioning that is significantly below average during the developmental period and by behavior that is demonstrably defective.

7. Resident. "Resident" means a person 18 years of age or older who is not

related by blood or marriage to the administrator of the facility in which he resides.

**§ 7952. Rules; license fees**

1. **Rules.** Pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, the department may adopt rules necessary to carry out the purposes of this chapter, including, but not limited to, rules relating to audits, boarding care for the mentally retarded, prior approval of capital expenditures, reasonable license fees and reimbursement.

2. **License fees.** After the expiration of an initial license other than a temporary or conditional license, no facility with 4 or fewer residents may be required to pay more than \$25 in license fees in any 2-year period in which it is continuously licensed.

**§ 7953. Notice upon voluntary closing**

A facility shall notify its residents and the persons, institutions or agencies primarily responsible for their welfare at least 30 days in advance of a voluntary closing.

**§ 7954. Provider agreements**

1. **Contents.** The department shall require provider agreements with every boarding care facility under which the facility agrees to:

A. Maintain complete and accurate records sufficient to disclose to the department the nature and extent of boarding care provided to its residents;

B. Allow the department reasonable access to the medical records of its residents for licensing and inspection purposes; and

C. Furnish the department with complete and accurate information upon timely request regarding:

(1) The identity of each person having direct or indirect ownership of 10% or more of the facility;

(2) The identity of each officer and director of the corporation if the facility is organized as a corporation, or the identity of each partner if the facility is organized as a partnership;

(3) The identity of the owners of any entity which sells or leases or arranges for the sale or lease to the facility of property or services specified by the department, and the nature of any significant business transactions occurring between that entity and the facility in the 5 years preceding the request; and

(4) The costs for which the facility claims or has received reimbursement from the department.

2. **Exception.** Any facility which does not claim and has not received

reimbursement from the department shall not be required to agree to subsection 1, paragraph C.

**§ 7955. Reimbursement**

1. **Rules.** The department shall adopt rules for reimbursement of any facility that is reimbursed on a reasonable cost or reasonable cost-related basis. The rules shall include reimbursement rates and the methods for establishing them, and methods for determining reasonable costs. The rules may reasonably classify facilities according to the number of residents and the number of mentally retarded residents and may establish different maximum and minimum rates for different classes of facilities.

2. **Capital expenditures.**

A. No facility may receive reimbursement for a capital expenditure unless it first gives the department timely written notice of its intention to incur the expense and receives the department's approval. For purposes of this paragraph, capital expenditure means an expenditure not properly charged as an expense of operation or maintenance which:

- (1) Including the cost of studies, survey, designs, plans, working drawings and specifications, exceeds \$15,000;
- (2) Increases the size of the facility; or
- (3) Substantially changes the services of the facility.

A facility may appeal the department's denial of approval under the Maine Administrative Procedure Act, Title 5, chapter 375.

B. If a facility is reimbursed on a per capita, fixed fee or any other basis other than reasonable cost or reasonable cost-related basis, and if the facility incurs a nonreimbursable capital expense, its reimbursement rate may be reduced by a percentage determined by dividing the sum of the facility's costs, less the nonreimbursable capital expense, by the sum of the facility's costs, as if the facility were reimbursed on a reasonable cost or reasonable cost-related basis.

C. If a facility acquires property by lease or similar arrangement, and if the property would have been considered a nonreimbursable capital expense had it been purchased:

- (1) In determining reasonable cost, an amount shall be deducted from rental expenses which is reasonably equal to the amount of capital expense that would have been considered nonreimbursable had the property been purchased; and
- (2) In calculating the return on equity capital, the amount of any deposit under the lease or similar arrangement shall be deducted from the return.

D. If a facility acquires property by gift or exchange, and if the property would

have been considered a capital expense had it been purchased, the property shall be considered a capital expense for the purpose of exclusion.

3. **Reservations.** The department may reimburse a facility for reservation purposes during a resident's temporary absence.

4. **Payment in full.** No facility may be reimbursed by the department unless it accepts the reimbursement as payment in full for the boarding care provided.

5. **Suspension.** The department may suspend reimbursement to any facility which fails or refuses to comply with section 7954, or which fails or refuses to repay or to make satisfactory arrangements to repay overpayments.

No suspension of reimbursement under this section is effective unless the facility receives written notice from the department at least 30 days in advance. A facility may appeal a suspension under the Maine Administrative Procedure Act, Title 5, chapter 375, and reimbursement shall not be suspended while any appeal is pending.

6. **Small boarding care facilities for the mentally retarded.** With respect to any boarding care facility for 6 or fewer residents who are mentally retarded or who have related conditions, the department may not deny reimbursement on a reasonable cost basis to any facility solely by reason of its size; nor may the department establish maximum reimbursement rates for these facilities that are lower than those established for boarding care facilities with more than 6 residents.

7. **Minimum reimbursement rates.** Subject to subsection 6, the department shall reimburse all boarding care facilities at a rate of at least \$275 per month and all adult foster care facilities at a rate of at least \$225 per month.

#### § 7956. 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. 6. 22 MRSA § 8101, first ¶, as enacted by PL 1975, c. 719, § 6, is amended to read:

As used in this subtitle, the term "children's home" ~~shall mean~~ means 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~~ 18 years.

Sec. 7. 22 MRSA § 8201, as enacted by PL 1975, c. 179, § 6, is amended to read:

#### § 8201. Definition of child placing agency

As used in this subtitle, the term "child placing agency" ~~shall mean~~ means a

facility which advertises itself or holds itself out as finding homes for or otherwise placing children under the age of ~~16~~ 18 years.

**Sec. 8. 22 MRSA § 8301, first ¶**, as enacted by PL 1975, c. 719, § 6, is amended to read:

As used in this subtitle, the term "day care facility" ~~shall mean~~ **means** 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 for 3 or more children under the age of ~~16~~ 18 years.

**Sec. 9. Transition provision.** For the purposes of this Act, and 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.

**Sec. 10. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

|                                      | <b>1980-81</b> |
|--------------------------------------|----------------|
| <b>HUMAN SERVICES, DEPARTMENT OF</b> |                |
| Positions                            | (2)            |
| Personal Services                    | \$30,126       |
| All Other                            | 6,000          |
| Capital Expenditures                 | 1,000          |
|                                      | \$37,126       |

**STATEMENT OF FACT**

The purpose of this bill is primarily 2-fold:

1. To give the Department of Human Services the comprehensive statutory authority necessary for proper administration of its rapidly growing boarding care program; and
2. To require licensing and regulation of adult foster care facilities, which, in contrast to boarding homes, provide a somewhat lower level of care to a smaller number of individuals in a home-like setting.

With respect to boarding homes, the bill generally provides the State with more complete legal authority to do what it has already been doing for some time. The authority is essential if the State is to continue development of its much-needed

boarding care program. With respect to adult foster care facilities, the bill basically recognizes in statute the existence of the adult foster care program, which has been operating to date without clear legislative authority.

Specifically, this bill requires licensing of both types of facilities and authorizes rulemaking. Among other things, it also raises the number of residents permitted in an adult foster care facility from 2 to 4. It permits the department to adopt separate rules for boarding homes for the mentally retarded. It requires advance notice to residents and guardian in the event of voluntary closings. It requires boarding homes to execute provider agreements with the department. Finally, it requires the department's prior approval of large capital expenditures which are state-reimbursed.