

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 269

H. P. 232

House of Representatives, January 15, 1981

Submitted by the Department of Human Services pursuant to Joint Rule 24.

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

EDWIN H. PERT, Clerk

Presented by Mrs. Mitchell of Vassalboro.

Cosponsor: Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Require Interagency Licensing of Residential Facilities and Programs for Children.

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

Sec. 1. 20 MRSA § 3125, sub-§ 7, as enacted by PL 1977, c. 564, § 87-B, is amended by inserting at the end the following new sentence:

The commissioner shall approve all programs for exceptional children within residential child care facilities as defined in Title 22, section 8101, subsection 4, for the usual public year or for a year-round basis or for such other period as he determines appropriate. Licensure of these programs shall be done in accordance with Title 22, section 8104.

Sec. 2. 22 MRSA § 7901, sub-§ 2, as enacted by PL 1975, c. 719, § 6, is amended to read:

2. Resident. The word "resident," as used in this subtitle, shall mean any aged, blind, mentally ill, mentally retarded or other person ~~16~~ 18 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.

Sec. 3. 22 MRSA § 8005, first sentence, as enacted by PL 1975, c. 719, § 6, is amended to read:

No facility, except as provided for in section 8101, subsection 2, licensed as a drug treatment center shall be required to be licensed as a boarding care facility or a children's home.

Sec. 4. 22 MRSA §§ 8101 and 8102, as enacted by PL 1975, c. 719, § 6 and as amended, are repealed and the following enacted in their place:

§ 8101. Definitions

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

1. Children's home. "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18, by anyone other than a relative by blood, marriage or adoption. "Children's home" does not include:

- A. A facility established primarily to provide medical care;
- B. A children's camp established solely for recreational and educational purposes; or
- C. A school established solely for educational purposes except as provided in subsection 2.

2. Emergency shelter. "Emergency shelter" means a children's home which operates to receive children 24 hours a day and which limits placement to 30 consecutive days or less. Emergency shelter shall not mean family foster home or specialized children's home and, if a service of a residential child care facility, shall be restricted to a designated physical area of the facility.

3. Family foster home. "Family foster home" means a children's home that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. In order to keep siblings together, this definition shall not prohibit the placement of more than the allowed number.

4. Residential child care facility. "Residential child care facility" means any children's home which provides board and care for one or more children on a regular, 24-hour a day, residential basis. A residential child care facility shall not mean family foster home, specialized children's home or an emergency shelter facility. The term may include, but is not limited to:

- A. A residential care facility under Title 20, section 3125, subsection 5;
- B. An approved treatment facility under section 7103, subsection 4;
- C. A drug treatment center under section 8001;
- D. A community residence under Title 34, section 2105; and

E. A residential facility under Title 34, section 2142, subsection 8.

5. **Specialized children's home.** "Specialized children's home" means a children's home where care is provided to no more than 4 moderately to severely handicapped children by a caretaker who is specifically educated and trained to provide for the particular needs of each child placed. The total number of children in a specialized children's home may not exceed 4, including the caretaker's legal children under 16 years of age, with no more than 2 children under the age of 2.

§ 8102. Rules

1. **Rules.** The department shall adopt rules for children's homes. The rules shall be designed to protect the health, safety, well-being and development of children and shall include, but not be limited to:

- A. The number and qualifications of staff;
- B. Rights and responsibilities of parents, children and staff;
- C. The nature, provision, documentation and management of programs of care or treatment; and
- D. The physical environment.

Sec. 5. 22 MRSA §§ 8104 and 8105 are enacted to read:

§ 8104. Interagency licensing

1. **Interagency licensing method.** The Commissioners of the Departments of Educational and Cultural Services, Human Services and Mental Health and Corrections, or their designees, shall jointly establish a method for interagency licensing of residential child care facilities subject wholly or partly to licensing by at least 2 of the departments. The method shall provide for the following:

- A. Development of common licensing rules;
- B. Periodic review of licensing rules;
- C. Delegation of departmental responsibilities; and
- D. Determination of licensing fees.

2. **Licensing authority.** For the purposes of this section, the Department of Human Services shall have licensing authority for residential child care facilities. This authority shall not relieve any agency of responsibility for the proper and efficient management of evaluation of programs funded by that agency.

3. **Common licensing rules.** Common licensing rules developed under this section shall eliminate varying, duplicative and conflicting rules and procedures. Common licensing rules shall also assure, as far as practicable, that:

- A. Licensing is accomplished expeditiously;
- B. Applicants have to deal with as few agency representatives as possible;

C. Consideration is given to special circumstances made known by an applicant which make the timing of licensing investigation unreasonable;

D. Applicants are promptly informed of licensing decisions and of the cause for any delay or denial;

E. Applicants do not have to obtain information from another agency if the licensing agency can obtain the information more conveniently; and

F. Rules are applied uniformly.

§ 8105. Transitional provision

1. Rules. Any rule in effect immediately prior to the effective date of this Act shall remain in effect until it is amended.

2. Licenses. Any license in effect immediately prior to the effective date of this Act shall remain in effect unless it is revoked, suspended or made conditional, or until it expires, or until a new license is issued.

Sec. 6. 34 MRSA § 2052-A, as amended by PL 1973, c. 303, § 3, is further amended by inserting before the last paragraph the following new paragraph:

The commissioner shall approve all programs for the provision of mental health services as defined in Title 22, section 8101, subsection 4. Licensure of these programs shall be done in accordance with Title 22, section 8104.

STATEMENT OF FACT

It is the purpose of this bill to establish a means whereby the required licensing of residential programs for children by each of the respective Departments of Human Services, Mental Health and Corrections and Educational and Cultural Services can be coordinated. It is the intent of the bill that these facilities can be licensed by a common set of rules and in accordance with common policies and procedures. It would allow for an orderly transition.

This bill will not create another administrative framework or level of bureaucracy, but will strengthen the present system by eliminating existing duplications, enhancing communication and simplifying and clarifying the licensing jurisdiction and responsibility. It will approve the quality of services to children while enabling the State to make maximum use of its resources.