

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1455

H. P. 1230

House of Representatives, March 24, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Prescott of Hampden.

Cosponsors: Representative Hanson of Kennebunkport, Senator Brown of Washington and Senator Perkins of Hancock.

STATE OF MAINE

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

AN ACT to Establish Rights for Residents of Nursing, Boarding and Foster Homes.

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

Sec. 1. 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 chapter shall mean means any aged, blind, mentally ill, mentally retarded or other person 16 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. 2. 22 MRSA c. 1666 is enacted to read:

CHAPTER 1666

RESIDENTS' RIGHTS ACT OF 1981

§ 7921. Intent; least restrictive setting

1. Intent. It is the intent of the Legislature to articulate rights of all residents of long-term care facilities in this State and to ensure individual dignity, liberty,

pursuit of happiness and the protection of the civil and legal rights of all residents. Each resident has and may exercise all the rights enjoyed by citizens of this State and of the United States and the rights enumerated in this chapter without restraints, interference, coercion, discrimination or reprisal in any form or manner whatsoever, unless some of these rights have been suspended as a result of court guardianship proceedings. Each resident has the right to be treated at all times with courtesy and respect and full recognition of his dignity and individuality.

It is the further intent of the Legislature that adequate and appropriate medical treatment and care and other necessary services shall be available for all residents of long-term care facilities and shall be provided without regard to age, race, national origin, religion, color, sex, handicap or source of payment.

2. **Least restrictive setting.** The Legislature finds that the rights of residents can be protected best under a system of care which operates according to the principle of the least restrictive setting and which has the following goals:

- A. The development of services which provide reasonable alternatives to institutional care;
- B. The provision of habilitation, rehabilitation, education and other training to residents for the purpose of strengthening their abilities to lead independent and productive lives; and
- C. Outward mobility from long-term care facilities.

§ 7922. Definitions

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

1. **Abuse or neglect.** "Abuse or neglect" means a threat to a resident's health or welfare by:

- A. Physical or mental injury or impairment;
- B. Sexual abuse or exploitation;
- C. Deprivation of essential needs; or
- D. Failure to provide adequate personal or medical care, supervision, maintenance or protection, which failure results in physical or mental injury to a resident.

2. **Administrator.** "Administrator" means the person responsible for the overall care of residents and management of a long-term care facility.

3. **Authorized representative.** "Authorized representative" means any person, other than those prohibited by law or regulation, who has been designated in writing by a competent and informed resident or by a court with jurisdiction to act on the resident's behalf to the extent indicated in writing.

4. **Long-term care facility.** "Long-term care facility" means any boarding care facility licensed pursuant to chapters 1663 and 1665, any skilled nursing or intermediate care facility or unit licensed pursuant to chapter 405 and any adult foster home certified by the Department of Human Services.

5. **Medicaid.** "Medicaid" means the United States Social Security Act, Title XIX, as now or hereafter amended, and federal and state rules promulgated thereunder.

6. **Medicare.** "Medicare" means the United States Social Security Act, Title XVIII, as now or hereafter amended, and federal and state rules promulgated thereunder.

7. **Physical restraint.** "Physical restraint" means any article, device or garment which interferes with the free movement of a resident, which the resident cannot remove easily, and which is used against the resident's will for the purpose of controlling his behavior to avoid harm to himself or others. Bedrails, soft ties or straps, trays and other safety devices which are used in protective situations or to achieve proper body position and balance and proper circulation, and which allow for change of position and mobility, are not considered restraints. Totally enclosed cribs, barred or locked enclosures or bedrails, soft ties or straps which prevent any movement are considered restraints.

8. **Resident.** "Resident" means any elderly, physically or mentally disabled person 16 years of age or older who lives in a long-term care facility.

§ 7923. **Rights and basic protections of residents of long-term care facilities**

1. **Humane care.** Each resident has the right to be treated with respect and dignity and to receive human care.

2. **Environment.** Each resident has the right to a healthful and safe environment.

3. **Medical information and care.**

A. Each resident may obtain from the long-term care facility in which he resides the name and specialty of any physician or other person responsible for his care or coordination of his care.

B. Each resident may seek services of any physician, including physicians who are not on the staff of the long-term facility in which he resides.

C. Each resident, unless there is a documented medical contraindication, may obtain from the attending physician or other health care professional complete and current information concerning his medical diagnosis, treatment and prognosis, communicated in terms the resident can reasonably be expected to understand.

D. Each resident of skilled nursing and intermediate care facilities may participate, to the greatest extent possible, in the development of his annual

individual plan of care. This plan shall be reviewed by the physician at least quarterly, or in accordance with applicable state or federal laws and rules. Each resident of skilled nursing and intermediate care facilities may refuse any element of this plan, unless the resident, by that refusal, presents a danger to himself or others in the opinion of his physician or other health care professional and that finding is documented in his medical record.

E. Each resident, unless there is a documented medical contraindication, or his authorized representative may review his medical records in the presence of a member of the staff of the facility any may have copies of all his medical records at reasonable times and at reasonable cost.

F. Each resident has the right to have a report of any significant change in his health status delivered to his authorized representative at his last known address.

4. Privacy. Each resident has the right to reasonable privacy. This right may not be limited in any way, except in the case of emergency or unless there is a documented medical contraindication. Reasonable privacy shall be provided during medical examinations and treatment and when a resident is involved in the care of personal and bodily needs. Any reasonable request for privacy shall be honored.

5. Communication and visitation. Each resident has the right to private communications and visitations.

A. A resident may communicate privately by mail and telephone. The administrator shall assure that correspondence is promptly received by the resident and promptly mailed and that telephones are accessible to residents within the facility.

B. A resident has the right to unimpeded, private visitation and association within and outside of the facility at reasonable hours. A resident may refuse or terminate any visit.

Nothing in this subsection shall be construed to permit infringement on resident's other rights to privacy.

6. Practice of religion. Each resident has the right to religious freedom and practice.

7. Personal property. Each resident may retain and use personal clothing and possessions. The number and use of personal possessions may be limited or held for safety reasons or when the number and use infringe on the rights of other residents. Any such limitations and the basis therefor shall be documented in the resident's files. Receipts for all personal possessions held shall be given to the resident or his authorized representative.

8. Personal financial affairs. Each resident may manage his personal financial affairs, unless a conservator or representative payee has been appointed

or unless the resident has been adjudicated incompetent and a guardian has been appointed. At least quarterly each long-term care facility shall give to the Department of Human Services a full accounting of all holdings on deposit with the facility and any financial transactions made on a resident's behalf, if the facility has accepted a written delegation of this responsibility in conformity with state laws and rules.

9. **Transfers.** Each resident has the right to be free from transfer, except in the following situations:

A. A resident's attending physician determines that failure to transfer the resident would threaten the health or safety of the resident or others and documents that determination in the resident's medical record;

B. A long-term care facility ceases to cooperate or participate in the program which reimburses for the resident's care;

C. The findings of a medical necessity review determine that a resident no longer requires the level of care provided at the long-term care facility; or

D. Nonpayment of fees, except, that, for a resident who resides in a facility which accepts public funds and who becomes eligible for Medicaid, the conversion from the use of private funds or Medicare to the use of Medicaid benefits does not constitute nonpayment of fees.

Each resident or his authorized representative may participate in the decisions relating to any transfer of the resident.

10. **Statement of services.** Each resident of skilled nursing, intermediate care and boarding care facilities or his authorized representative shall be provided, at the time of admission to and quarterly during his stay in the facility, with a written notice of the facility's basic daily and monthly rate, if applicable, and a written statement of the facility's services, including any extra charges for services not covered under Medicaid or Medicare or by the facility's basic daily or monthly rate. The facility shall inform a resident or his authorized representative, in writing, at least 30 days in advance of the effective date of any changes in rates or the services that these rates cover.

11. **Experimentation.** A resident may refuse to participate in experimentation in the absence of the resident's informed, voluntary, written consent. The resident shall be given appropriate protection in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatment, the potential discomforts and risks, and a right to revoke consent to participate in experimentation at any time.

12. **Medications.** Each resident may refuse medication, unless involuntary administration of medication is approved by a guardian appointed in a competency hearing and given the authority to approve medication. A resident shall be informed of the consequences of his refusal to take medication, and the

refusal shall be documented in the resident's medical record. Emergency situations characterized by a sudden, serious change in a resident's condition which creates an imminent danger to self or others shall be the only exception. In no event may administration of medication be used as punishment or for the convenience of staff. The use of all medications shall be upon the written order of a resident's physician, and shall be documented in the resident's medical records.

13. **Physical restraint.** Each resident has the right to be free from unnecessary physical restraints. Physical restraints may be employed on the order of a resident's physician and only in emergencies to protect the resident from imminent injury to himself or others. The use of physical restraints, including the reasons therefor, shall be documented in the resident's medical record. Physical restraints may not be employed as punishment, for the convenience of staff or as a substitute for habilitative or rehabilitative services. Physical restraints may only impose the least possible restrictions, consistent with their purpose.

14. **Abuse or neglect.** Each resident has the right to be free from abuse or neglect at all times.

15. **Exercise of rights.** Each resident may exercise the rights enumerated under this chapter without reprisal, including reprisal in the form of removing or preventing any appropriate available treatment.

§ 7924. Reporting of and liability for violations

1. **Alleged violations reported and investigated.** Any person who believes that this chapter or a rule promulgated under this chapter has been violated may report the alleged violation to the protection and advocacy agency designated pursuant to section 3551; the Maine Committee on Aging pursuant to section 5112, subsection 2; the Office of Advocacy pursuant to Title 34, section 1-A; and any other agency or person who the Commissioner of Human Services and the Commissioner of Mental Health and Corrections may designate.

2. **Professionals to report.** Any professional who provides health care, social services or mental health services or who administers a long-term care facility or program and who knows of or has reasonable cause to suspect that there has been any violation of this chapter shall immediately report or cause a report to be made to an agency or person referred to in subsection 1.

3. **Written report of findings.** Any agency or person investigating a situation pursuant to subsection 1 or 2 shall submit a written report of findings and results of the investigation to the administrator of the long-term care facility in which a resident's rights allegedly have been violated; to the Commissioner of or the Department of Human Services; and, if the resident is mentally ill or mentally retarded or has a related condition, to the Commissioner of Mental Health and Corrections.

4. **Liability for violation.** Any person who has intentionally violated or abused any right or privilege of residents provided for in this chapter, or by rules

promulgated in this chapter, is liable for damages as determined by law or administrative action. The intentional violation of this chapter is a Class E crime. A proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

§ 7925. Notice of rights

A copy of this chapter shall be posted in each long-term care facility. Each resident and his authorized representatives shall be promptly informed, in a manner which the resident understands, of the legal rights of residents.

§ 7926. Resident's council

1. **Established.** Each long-term care facility, except for any facility with fewer than 7 beds, shall assist residents to establish a residents' council. The administrator shall designate a member of the facility staff to coordinate the establishment of and render assistance to the council. An administrator shall not be required to assure participation in a council of a resident who has been adjudged incompetent. No employee or representative of the facility may be a member of the council. The council shall meet at least once each month with the staff coordinator who shall provide assistance to the council in preparing and disseminating a report of each meeting to residents, the administrator and staff. Records of council meetings shall be maintained in the facility.

2. **Responsibilities.** The council has, but is not limited to, the following responsibilities.

- A. To inform the administrator about the opinions and concerns of the residents;
- B. To review procedures for implementing residents' rights;
- C. To make recommendations to strengthen the facility's policies and procedures relating to residents' rights;
- D. To serve as a forum for obtaining and disseminating information, soliciting and adopting recommendations for facility programming and improvement, and early identification of and recommendations for orderly resolution of residents' problems; and
- E. To serve as a grievance committee for residents' concerns.

§ 7927. Denial of admissions

Long-term care facilities which receive public funds may not deny admission to any person solely based on source of payment.

§ 7928. Rules

The Department of Human Services may promulgate rules to carry out this chapter, including rules relating to the content of contracts between residents and long-term care facilities which receive public funds, the filing of these contracts with the department and the notice of rights pursuant to section 7925.

STATEMENT OF FACT

The Residents' Rights Act of 1981 was one of the priority recommendations of the Governor's Task Force on Long-term Care for Adults.

Residents of nursing homes, boarding homes and adult foster homes are among the most powerless and vulnerable persons in our society. By the very nature of their dependence on an institution for this food, shelter and personal care, residents have lost control over their own lives.

The thrust of this bill is not to give special treatment to residents. The purpose is to ensure basic human rights which can be eroded by misunderstanding, administrative convenience or neglect.