

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 1873

6
7 H. P. 1880 House of Representatives, January 26, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

Referred to the Committee on Health and Institutional Services.
Sent up for concurrence and 1,600 ordered printed.

8 EDWIN H. PERT, Clerk
Presented by Representative Kelleher of Bangor.

Cosponsors: Representative Richard of Madison, Senator Gill of
Cumberland, Senator Hichens of York.

9
10 **STATE OF MAINE**
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 **AN ACT to Use Receivership Law as an**
16 **Enforcement Mechanism.**
17

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

19 22 MRSA c. 1664 is enacted to read:

20 CHAPTER 1664

21 RECEIVERSHIP

22 §7851. Policy

23 It is declared to be the policy of the State to provide
24 healthful, safe and appropriate long-term care to its citi-
25 zens and to insure that facilities which provide that care
26 do so in a manner which insures the health, safety and civil

1 rights of the residents. It is the purpose of this chapter
2 to develop a system whereby receivership law can be utilized
3 as such an enforcement mechanism.

4 Licensing procedures have not been adequate to insure
5 the health, safety and civil rights of residents when the
6 facilities are unable or unwilling to do so. It is the
7 intent of this chapter to create a mechanism which will
8 enable people to remain in the facility while arrangements
9 are made for correction of violations or an orderly trans-
10 fer. Receiverships created under this chapter will safe-
11 guard the health, safety and continuity of care to resi-
12 dents.

13 §7852. Definitions

14 For the purposes of this chapter, unless the context
15 indicates otherwise, the following terms have the following
16 meanings.

17 1. Emergency. "Emergency" means a situation, physical
18 condition or one or more practices, methods or operations
19 which presents imminent danger of death or serious physical
20 or mental harm to residents, including, but not limited to,
21 imminent or actual abandonment of an occupied facility.

22 2. Habitual violation. "Habitual violation" means a
23 violation of state or federal law which, due to its repeti-
24 tion, presents a reasonable likelihood of serious physical
25 or mental harm to residents.

26 3. Licensee. "Licensee" means any person, other than
27 a receiver appointed under section 7853, who is licensed or
28 required to be licensed to maintain a facility.

29 4. Long-term care facility. "Long-term care facility"
30 means any boarding care facility licensed pursuant to chap-
31 ters 1663 and 1665 and any skilled nursing or intermediate
32 care facility or unit licensed pursuant to chapter 405. For
33 the purposes of this chapter, "facility" means "long-term
34 care facility."

35 5. Owner. "Owner" means the holder of the title to
36 the real estate in which the facility is maintained.

37 6. Resident. "Resident" means any person who lives in
38 and receives services or care in a long-term care facility.

1 7. Substantial violation. "Substantial violation"
2 means a violation of state or federal law which presents a
3 reasonable likelihood of serious physical or mental harm to
4 residents.

5 8. Transfer trauma. "Transfer trauma" means the com-
6 bination of medical and psychological reactions to abrupt
7 physical transfer that may increase the risk of grave ill-
8 ness or death.

9 §7853. Appointment of receiver

10 1. Grounds for appointment. The following circum-
11 stances shall be grounds for the appointment of a receiver
12 to operate a long-term care facility.

13 A. The facility is operating without a license.

14 B. The department has suspended or refused to renew
15 the existing license of a facility.

16 C. The department has initiated revocation proceedings
17 or refused to renew a license, and it has been deter-
18 mined that resident welfare cannot be adequately
19 assured pending a full hearing.

20 D. A facility intends to close but has not arranged at
21 least 30 days prior to closure for the orderly transfer
22 of its residents.

23 E. An emergency exists in a facility which threatens
24 the health, security or welfare of residents.

25 F. A condition exists in a facility which is in sub-
26 stantial or habitual violation of the standards of
27 health, safety and resident care established under
28 state or federal regulations.

29 2. Who may bring action. The department, any other
30 state agency having an interest in the matter or a resident
31 or guardian of a resident, may bring an action in Superior
32 Court requesting the appointment of a receiver for the con-
33 ditions outlined in subsection 1.

34 3. Petition by owner in voluntary receivership
35 cases. In the case of a voluntary receivership, the owner
36 of any long-term care facility may petition the court for
37 the appointment of a receiver. After a hearing, the court
38 may enter a consent agreement between the owner of the

1 facility and interested parties on the appointment of a
2 receiver to take charge of the facility under conditions ac-
3 ceptable to all parties. Written notice of a petition for
4 voluntary receivership must be received by the department
5 and the Maine Committee on Aging at least 10 days prior to
6 the hearing.

7 4. Procedure for hearing. The court shall issue a
8 short order of notice and set the matter for hearing within
9 10 days after the action is filed. Notice of the hearing
10 must be given to the owner of the facility at least 5 days
11 prior to the hearing. After the hearing, the court shall
12 appoint a receiver if it finds that any one of the grounds
13 for appointment set forth is satisfied.

14 A receiver shall be appointed on an ex parte basis if it
15 appears by verified complaint or affidavit that there are
16 grounds for the appointment of a receiver and that immediate
17 appointment is necessary to prevent harm to residents.

18 5. Who may be appointed receiver. The court may
19 appoint any responsible person, except the owner, licensee
20 or administrator of the facility, to act as receiver. For
21 purposes of compiling a list, names may be submitted to the
22 court by any person authorized to bring an action for the
23 appointment of a receiver under subsection 2. If no person
24 listed is willing to serve as receiver, an order appointing
25 the Department of Attorney General receiver of the facility
26 shall be entered.

27 6. Conduct of receiver. A receiver appointed under
28 this chapter may not take any actions or assume any respon-
29 sibilities inconsistent with the policy statement under
30 section 7851.

31 7. Compensation or receiver. The court shall set a
32 reasonable compensation for the receiver and may require the
33 receiver to furnish a bond. Such expense shall be paid from
34 the revenues of the facility.

35 §7854. Powers and duties of the receiver

36 1. Powers and duties. A receiver appointed pursuant
37 to this chapter shall operate the facility essentially as an
38 owner and must exercise those powers to remedy the condi-
39 tions which constituted grounds for the receivership, to
40 protect the health, safety and welfare of the residents and
41 to preserve the assets and property of the residents and the
42 owner. The licensee shall be divested of possession and

1 control of the facility in favor of the receiver. With the
2 court's approval, the receiver shall have specific authority
3 to:

4 A. Remedy violations of federal and state regulations
5 governing the operation of the facility;

6 B. Hire, direct, manage and discharge any employees,
7 including the administrator of the facility;

8 C. Receive and expend in a reasonable and prudent man-
9 ner the revenues of the facility due during the 30-day
10 period preceding the date of appointment and becoming
11 due thereafter;

12 D. Continue the business of the home and the care of
13 the residents; and

14 E. Exercise such additional powers and perform such
15 additional duties, including regular accountings, as
16 the court deems appropriate.

17 2. Closing of facility. The receiver may not close
18 the facility without leave of the court. In ruling on the
19 issue of closure, the court shall consider:

20 A. The rights and best interests of the residents;

21 B. The availability of suitable alternative place-
22 ments;

23 C. The rights, interests and obligations of the owner
24 and licensee;

25 D. The licensure status of the facility; and

26 E. Any other factors which the court deems relevant.

27 When a facility is closed, the receiver must provide for
28 the orderly transfer of residents to prevent transfer
29 trauma.

30 3. Contingency fund. A contingency fund shall be cre-
31 ated in the department to pay for expenses of a facility in
32 receivership which exceed money collected by the receiver in
33 the course of this duties. In the event that the revenues
34 of the facility do not cover expenses necessary to remedy
35 the conditions which rendered the receivership necessary,
36 the receiver may apply to the department for financial

1 assistance. The application must first be approved by the
2 court. The department shall distribute such sums as may be
3 appropriated in accordance with the court's instructions.

4 §7855. Termination of receivership

5 1. When court may terminate receivership. The court
6 may terminate a receivership under the following conditions.

7 A. The department grants a license to operate the
8 facility to the licensee divested of possession and
9 control, provided that the court finds that violations
10 complained of no longer exist and will not occur in the
11 future.

12 B. The facility is closed and all residents have been
13 provided appropriate alternative placements.

14 2. Time limitation on receivership. If the receiver-
15 ship has not been terminated within 24 months of the
16 appointment of the receiver, the court shall, after a hear-
17 ing, order that the facility either be closed or transferred
18 to a new owner approved for licensure by the department.

19 §7856. Liability of receiver

20 No person may bring suit against a receiver appointed
21 under section 7853 without first securing leave of the
22 court. Except in cases of gross negligence or intentional
23 wrongdoing, the receiver is liable in his official capacity
24 only, and any judgment rendered shall be satisfied out of
25 receivership assets.

26 §7857. Rule-making authority to implement receivership law

27 The department may adopt regulations as necessary ,
28 pursuant to the Maine Administrative Procedure Act, Title 5,
29 chapter 375, to implement this chapter.

30 STATEMENT OF FACT

31 Maine's enforcement mechanism for the licensing of
32 long-term care facilities is inadequate. Conditional
33 licenses allow facilities with deficiencies in meeting
34 licensing standards to operate too long without improvement.
35 Revocation of a facility's license does not provide for res-
36 idents' welfare pending the date of closing.

1 Receivership is a remedy which enables a state agency
2 to take over a facility which is grossly deficient or in
3 substantial violation of the law. This bill allows proceed-
4 ings for appointment of a receiver to be brought in state
5 court where:

6 1. A facility is operating without a license;

7 2. The Department of Human Services has revoked the
8 existing license of a facility;

9 3. The department has initiated revocation proceedings
10 but has determined that resident welfare cannot be adequate-
11 ly assured pending a full hearing;

12 4. A facility intends to close but has not made
13 arrangements 30 days prior to closure for the orderly trans-
14 fer of its residents;

15 5. An emergency exists threatening the health, secur-
16 ity or welfare of residents; or

17 6. A condition exists in a facility which is in sub-
18 stantial violation of a licensing standard and adversely
19 affects the residents.

20 This bill authorizes receivership proceedings to be
21 brought by an interested state agency, a resident or his
22 guardian where an emergency condition in substantial viola-
23 tion of a licensing standard exists, or the owner of the
24 facility in the case of voluntary receivership. Hearings
25 must be conducted within 5 days of the petition for
26 receivership. Ex parte proceedings can be provided in the
27 event of an emergency.

28 The court may appoint any "responsible person," except
29 the owner, licensee or administrator of the facility, to be
30 the receiver. The receiver is allowed to operate the facil-
31 ity essentially as an owner, must protect the health, safety
32 and welfare of its residents, and can correct deficiencies.
33 When a facility is to be closed, the receiver must provide
34 for the orderly transfer of residents to mitigate "transfer
35 trauma."

36 Receivership will terminate either upon transfer of all
37 residents, the granting of a new license to the facility, or
38 after 24 months have passed. A contingency fund in the
39 Department of Human Services will be created to pay for
40 operating expenses of a facility in receivership which

1 exceed money collected by a receiver in the course of his
2 duties.

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