

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1032

6
7 H.P. 791

House of Representatives, March 4, 1983

8 Submitted by the Department of Human Services pursuant to Joint Rule
9 24.

10 On Motion of Representative Nelson of Portland, referred to the
Committee on Health and Institutional Services. Sent up for concurrence and
ordered printed.

Presented by Representative Hayden of Durham. EDWIN H. PERT, Clerk

11 Cosponsors: Representative Kelleher of Bangor and Representative
Mitchell of Vassalboro.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Amend the Statutes Governing the
18 Licensing, Approval and Registration of Adult
19 and Child Care Programs.
20

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

23 Sec. 1. 22 MRSa §7801, as enacted by PL 1975, c.
24 719, §6, is repealed and the following enacted in its
25 place:

26 §7801. License, approval or registration required

27 1. License required. No person, firm, corpora-
28 tion or association may operate any of the following
29 without having, subject to this subtitle and to the
30 rules promulgated by the department under this sub-
31 title, a written license therefor from the depart-
32 ment:

1 A. A boarding home facility;

2 B. A drug treatment center;

3 C. A children's home;

4 D. A child placing agency;

5 E. A day care facility; or

6 F. A nursery school.

7 2. Approval. No person, firm, corporation or
8 association which operates an adult foster care
9 facility may be entitled to reimbursement from state
10 funds without having, subject to this subtitle and to
11 the rules promulgated by the department under this
12 subtitle, a written approval therefor from the
13 department.

14 3. Registration required. No person, firm, cor-
15 poration or association may operate a home day care
16 facility without having, subject to this subtitle and
17 to the rules promulgated by the department under this
18 subtitle, a written license therefor from the depart-
19 ment.

20 Sec. 2. 22 MRSA §7802, as amended by PL 1977, c.
21 694, §374, is repealed and the following enacted in
22 its place:

23 §7802. Issuance of license, approval or registration

24 1. Types of licenses, approvals or registra-
25 tion. The department shall issue the following types
26 of licenses.

27 A. A provisional license or approval shall be
28 issued by the department to an applicant who:

29 (1) Has not previously operated the facil-
30 ity for which the application is made;

31 (2) Is licensed or approved but has not
32 operated during the term of that license or
33 approval;

1 (3) Complies with all applicable laws and
2 rules, except those which can only be com-
3 plied with once clients are served by the
4 applicant; and

5 (4) Demonstrates the ability to comply with
6 all applicable laws and rules by the end of
7 the provisional license or approval term.

8 B. The department shall issue a full license,
9 approval or registration to an applicant who com-
10 plies with all applicable laws and rules.

11 C. A conditional license or approval may be
12 issued by the department when the individual or
13 agency fails to comply with applicable law and
14 rules and, in the judgment of the commissioner,
15 the best interest of the public would be so
16 served by issuing a conditional license or
17 approval. The conditional license or approval
18 shall specify when and what corrections must be
19 made during the term of the conditional license
20 or approval.

21 2. Term of license, approval or registration;
22 compliance visits.

23 A. The provisional license or approval shall be
24 issued for a minimum period of 3 months or a
25 longer period, as deemed appropriate by the
26 department, not to exceed 12 consecutive months.

27 B. The terms of full licenses, approvals and
28 registrations shall be as follows:

29 (1) Except as provided in subparagraph (2),
30 the term of all full licenses and approvals
31 issued pursuant to this chapter shall be for
32 one year.

33 (2) The term of a home day care registra-
34 tion and residential child care facility li-
35 cence shall be for 2 years.

36 C. The conditional license shall be issued for a
37 specific period, not to exceed one year, or the
38 remaining period of the previous full license,

1 whichever the department determines appropriate
2 based on the laws and rules violated.

3 D. Regardless of the term of the license,
4 approval or registration, the department shall
5 monitor for continued compliance with applicable
6 laws and rules on at least an annual basis.

7 3. Failure to comply with applicable laws and
8 rules.

9 A. When an applicant fails to comply with appli-
10 cable law and rules, the department may refuse to
11 issue or renew the license, approval or registra-
12 tion.

13 B. If, at the expiration of a full or provi-
14 sional license or approval, or during the term of
15 a full license or approval, the facility fails to
16 comply with applicable law and rules and, in the
17 judgment of the commissioner, the best interest
18 of the public would be served, the department may
19 issue a conditional license or approval, or
20 change a full license or approval to a condi-
21 tional license or approval. Failure by the con-
22 ditional licensee to meet the conditions speci-
23 fied by the department shall permit the depart-
24 ment to void the conditional license or approval
25 or refuse to issue a full license or approval.
26 The conditional license or approval shall be void
27 when the department has delivered in hand or by
28 certified mail a written notice to the licensee
29 or, if the licensee cannot be reached for service
30 in hand or by certified mail, has left written
31 notice thereof at the agency or facility. For
32 the purposes of this subsection the term "licen-
33 see" means the person, firm, corporation or asso-
34 ciation to whom a conditional license or approval
35 has been issued.

36 C. Whenever, upon investigation, conditions are
37 found which, in the opinion of the department,
38 immediately endanger the health or safety of per-
39 sons living in or attending a facility, the
40 department may request the Administrative Court
41 for an emergency suspension pursuant to Title 4,
42 section 1153.

1 D. Any license, approval or registration issued
2 under this subtitle may be suspended or revoked
3 for violation of applicable law and rules, com-
4 mitting, permitting, aiding or abetting any ille-
5 gal practices in the operation of the facility or
6 conduct or practices detrimental to the welfare
7 of persons living in or attending the facility.

8 When the department believes that a license,
9 approval or registration should be suspended or
10 revoked, it shall file a complaint with the
11 Administrative Court as provided in the Maine
12 Administrative Procedure Act, Title 5, chapter
13 375.

14 4. Subsequent application for a full license,
15 approval or registration. Subsequent to any of the
16 following actions, a subsequent application for a
17 full license, approval or registration may be consid-
18 ered by the department when the deficiencies identi-
19 fied by the department have been corrected:

20 A. Issuance of a conditional license or
21 approval;

22 B. Refusal to issue or renew a full license,
23 approval or registration;

24 C. Revocation or suspension of a full license,
25 approval or registration; or

26 D. Refusal to issue a provisional license or
27 approval.

28 5. Appeals. Any person aggrieved by the depart-
29 ment's decision to take any of the following actions,
30 may request an administrative hearing, as provided by
31 the Maine Administrative Procedure Act, Title 5,
32 chapter 375:

33 A. Issue a conditional license;

34 B. Amend or modify a license;

35 C. Void a conditional license;

36 D. Refuse to issue or renew a full license,
37 approval or registration; or

