

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1550

6
7 S.P. 527

In Senate, May 3, 1983

8 Referred to the Committee on Health and Institutional Services. Sent
9 down for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsors: Senator Gill of Cumberland, Representative Nelson of
11 Portland and Representative Diamond of Bangor.

12 STATE OF MAINE
13

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

17 AN ACT to License Home Health Care Services.
18

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

21 22 MRSA c. 165 is enacted to read:

22 CHAPTER 165

23 HOME HEALTH SERVICES

24 §801. Purpose and intent

25 The Legislature finds that licensure of all agen-
26 cies and organizations providing home health services
27 is necessary and it is the purpose of this chapter to
28 protect the public and assure that home health ser-
29 vices are provided under standards of safety, effi-
30 ciency and quality.

1 It is the intent of this chapter to set forth the
2 statutory authorization for home health care licen-
3 sure, including the standards, start-up procedures
4 and means by which licensure is established.

5 §802. Definitions

6 As used in this chapter, the following terms have
7 the following meanings.

8 1. Commissioner. "Commissioner" means the Com-
9 missioner of Human Services.

10 2. Department. "Department" means the Depart-
11 ment of Human Services.

12 3. Entity. "Entity" means and shall be inter-
13 preted to include individuals, partnerships, associa-
14 tions, corporations or other legal entities.

15 4. Health care needs. "Health care needs" means
16 medical needs that arise from acute, chronic or ter-
17 минаl illness, long-term or permanent limitations due
18 to chronic illness and disability, or frailty due to
19 extremes of age.

20 5. Home health care entity. "Home health care
21 entity" means any entity, or subdivision thereof,
22 whether public or private, proprietary or not for
23 profit, which is engaged in providing, contracting for
24 or coordinating, assessing and monitoring home health
25 service.

26 6. Home health services. "Home health services"
27 means acute, restorative, rehabilitative, mainte-
28 nance, preventive or health promotion services pro-
29 vided in order to meet the health care needs of indi-
30 viduals in their homes.

31 §803. License required

32 Effective July 1, 1984, no home health care
33 entity may provide home health services without hav-
34 ing, subject to this chapter and to the rules promul-
35 gated by the department under this chapter, a written
36 license therefor from the department.

1 §804. Licensure procedures

2 1. Types of licenses. The department shall
3 issue the following types of licenses, as follows.

4 A. A provisional license shall be issued by the
5 department to an applicant who:

6 (1) Has not previously operated as a home
7 health care provider;

8 (2) Is licensed but has not operated during
9 the term of that license;

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

14 (4) Demonstrates the ability to comply with
15 all applicable laws and rules by the end of
16 the provisional license term.

17 B. The department shall issue a full license to
18 an applicant who complies with all applicable
19 laws and rules.

20 C. A conditional license may be issued by the
21 department, when the provider fails to comply
22 with applicable laws and rules, and in the judg-
23 ment of the commissioner, the best interest of
24 the public would be so served by issuing a condi-
25 tional license. The conditional license shall
26 specify when and what corrections shall be made
27 during the term of the conditional license.

28 D. The commissioner may grant a full, provi-
29 sional or conditional license under this chapter
30 to those entities otherwise regulated by the
31 State Government or the Federal Government, if he
32 determines that those regulations meet the pur-
33 pose and intent of this chapter.

34 2. Licenses not assignable or transferable. No
35 license may be assignable or transferable. A license
36 shall be immediately void if ownership or control of
37 the provider changes.

1 3. Term of license; compliance visits. Licenses
2 shall be issued for the following terms.

3 A. The provisional license shall be issued for a
4 minimum period of 3 months or a longer period, as
5 deemed appropriate by the department, not to
6 exceed 12 consecutive months.

7 B. A full license shall be issued for the fol-
8 lowing terms.

9 (1) Except as provided in subparagraph (2),
10 the term of all full licenses shall be for
11 one year.

12 (2) The department shall, during the 2-year
13 period commencing July 1, 1984, stagger the
14 terms of full licenses issued under this
15 chapter so that the expiration dates of
16 those licenses allow for distributing the
17 work of relicensure evenly throughout subse-
18 quent years.

19 C. The conditional license shall be issued for a
20 specific period, not to exceed one year, or the
21 remaining period of the previous full license,
22 whichever the department determines appropriate
23 based on the laws and rules violated.

24 D. Regardless of the term of the license, the
25 department shall monitor for continued compliance
26 with applicable laws and rules on at least an
27 annual basis.

28 4. Failure to comply with applicable laws and
29 rules. The following shall apply for failure to com-
30 ply with applicable laws and rules.

31 A. When an applicant fails to comply with appli-
32 cable laws and rules, the department may refuse
33 to issue or renew the license.

34 B. If, at expiration of a full or provisional
35 license, or during the term of a full license,
36 the facility fails to comply with applicable laws
37 and rules and, in the judgment of the commis-
38 sioner, the best interest of the public will be

1 so served, the department may issue a conditional
2 license or change a full license to a conditional
3 license. Failure by the conditional licensee to
4 meet the conditions specified by the department
5 shall permit the department to void the condi-
6 tional license or refuse to issue a full license.
7 The conditional license shall be void when the
8 department has delivered in hand or by certified
9 mail a written notice to the licensee or, if the
10 licensee cannot be reached for service in hand or
11 by certified mail, has left written notice
12 thereof at the provider's principal place of
13 business.

14 C. Any license issued under this chapter may be
15 suspended or revoked for violation of applicable
16 laws and rules committing, permitting, aiding or
17 abetting any illegal practices in the operation
18 of the provider of conduct or practices detrimen-
19 tal to the welfare of persons to whom home health
20 care services are provided. When the department
21 believes that a license shall be suspended or
22 revoked, it shall file a complaint with the
23 Administrative Court in accordance with Title 4,
24 section 1153 or the Maine Administrative Proce-
25 dure Act, Title 5, chapter 375.

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

- 31 A. Issue a conditional license;
32 B. Amend or modify a license;
33 C. Void a conditional license;
34 D. Refuse to issue or renew a full license; or
35 E. Refuse to issue a provisional license.

36 §805. Standards

37 Standards shall be developed as follows.

1 1. Standards for licensing of all home health
2 care entities. The commissioner shall develop,
3 within 6 months of the date of enactment of this
4 chapter, standards for the licensing of all home
5 health care entities.

6 2. Variation in standards. Licensing standards
7 may vary according to the varying means and methods
8 of providing home health care services, but shall be
9 consistent with the purpose and intent of this chap-
10 ter.

11 3. Areas to be addressed. Home health care
12 licensing standards shall address the following
13 areas:

14 A. General requirements;

15 B. Qualifications for professional personnel;

16 C. Qualifications for nonprofessional personnel;

17 D. Treatment and services and their coordina-
18 tion;

19 E. Supervision of professional and
20 nonprofession-
21 al personnel;

22 F. Organizational structure, including lines of
23 authority;

24 G. Clinic records;

25 H. Business records; and

26 I. Other aspects of home health care services
27 that may be necessary to protect the public.

28 4. Review of standards. All standards shall be
29 subject to review by the joint standing committee of
30 the Legislature having jurisdiction over health and
31 institutional services.

32 §806. Fees

1 Each application for a license under this chapter
2 shall be accompanied by the fee established by the
3 department. No such fee may be refunded. The
4 department shall establish such fees on the basis of
5 a sliding fee scale reflecting variations in size and
6 scope of operations, but in no event may the fee
7 exceed \$250. All fees received by the department
8 under this chapter shall be paid into the State
9 Treasury to the credit of the department for the pur-
10 pose of reducing the costs of carrying out this chap-
11 ter.

12 §807. Exclusions

13 The following are exempt from the provisions of
14 this chapter:

15 1. Hospice organizations; volunteer ser-
16 VICES. Hospice organizations in which services are
17 provided substantially by volunteers;

18 2. Families, friends and neighbors. Families,
19 friends and neighbors acting as individuals;

20 3. Sole practitioners. Sole practitioners
21 otherwise licensed by the State;

22 4. Physicians. Services provided directly by
23 physicians;

24 5. Chore services. Chore services;

25 6. Pharmacy or medical supply company. Any
26 pharmacy or medical supply company which furnishes no
27 home health services to persons in their homes except
28 supplies;

29 7. Persons contracting or arranging home health
30 services. Anyone contracting or arranging for home
31 health services provided by home health care entities
32 licensed under this chapter;

33 8. Division of Public Health Nursing. Division
34 of Public Health Nursing of the State;

35 9. Facilities licensed pursuant to chapter
36 405. Hospitals, intermediate care facilities,

1 skilled nursing facilities or other facilities li-
2 censed pursuant to chapter 405 when the services are
3 provided to clients residing in those facilities; and

4 10. Licensed boarding-care facili-
5 ties. Boarding-
6 care facilities licensed pursuant to chapters
7 1663 and 1665 when the services are provided to
8 clients residing in those facilities.

9 §808. Right of entry and inspection

10 The department and any duly designated officer or
11 employee thereof shall have the right to enter upon
12 and into the premises of any home health care
13 provider who has applied for a license or who is li-
14 censed pursuant to this chapter at any reasonable
15 time and, upon demand, have the right to inspect and
16 copy books, accounts, papers, records and other docu-
17 ments in order to determine the state of compliance
18 with this chapter and any rules in force pursuant
19 thereto. The right of entry and inspection shall
20 extend to any premises and documents of providers
21 whom the department has reason to believe are provid-
22 ing home health services without a license, but no
23 such entry or inspection may be unreasonable or made
24 without the permission of the owner or person in
25 charge thereof, unless a warrant is first obtained
26 from the District Court authorizing that entry or
27 inspection.

28 §809. Home Care Council

29 1. Established. There is established a Home
30 Care Council to advise, assist and consult with the
31 Governor, Legislature, department and commissioner
32 regarding home care services.

33 2. Members. The Home Care Council shall consist
34 of 16 persons; 2 each representing nonprofit home
35 health agencies, proprietary home health agencies,
36 homemaker agencies, hospice organizations, area agen-
37 cies on aging, insurance companies which cover home
38 health care and consumers of home health care; one
39 representative of the Maine Community Health Associa-
40 tion, one Senator and one Representative. The com-
41 missioner shall serve ex officio on the council. One

1 representative of the Long Term Care Task Force of
2 the department shall also serve ex officio.

3 3. Chairman. The council shall choose a chair-
4 man from among its members.

5 4. Terms. Members of the council shall serve
6 2-year terms.

7 5. Expenses. Members of the council shall be
8 reimbursed their expenses. That reimbursement will
9 come from license fees paid under this chapter.

10 6. Duties. The council shall:

11 A. Hold regular meetings with the commissioner
12 and meet periodically with the Governor and the
13 joint standing committee of the Legislature hav-
14 ing jurisdiction over health and institutional
15 services;

16 B. Annually report to the Legislature on the
17 status of home health care services in the State;

18 C. Make such recommendations as necessary relat-
19 ing to home health care services; and

20 D. Monitor a continuum of care, including acute,
21 restorative, rehabilitative, maintenance, preven-
22 tive and health promotion services to assure
23 public protection and quality.

24 STATEMENT OF FACT

25 Maine is one of the few states without any provi-
26 sion for licensing agencies providing home health
27 care. In recent years, there has been a great
28 proliferation of agencies in this field, many dealing
29 with the frail elderly.

30 These services are delivered behind closed doors
31 in a person's home, yet the State has no means to
32 control these services as it can nursing homes,
33 boarding homes, day-care centers, hospitals, etc. A
34 great many of the people served by home health orga-
35 nizations are persons over 75 years of age and at
36 risk of institutionalization.

1 This bill is enabling legislation establishing
2 home health licensing in Maine. It sets up a flex-
3 ible licensing structure, recognizing that some agen-
4 cies are full-time home health care providers and
5 other agencies have just a small subunit. It allows
6 the Department of Human Services to establish licens-
7 ing standards that reflect the type of agency provid-
8 ing home health care, while still adhering to the
9 need for public protection where health care is given
10 at home. Sole practitioners, already licensed by the
11 State, are exempt, as are chore services, hospices,
12 families, friends, neighbors and physician services.

13 This bill also sets up a Home Care Council to
14 work with the State and providers on policies and
15 regulations relating to home care. Home care is now
16 funded by many state, federal and private sources, is
17 regulated through several different state bureaus and
18 is performed by a wide range of providers. The Home
19 Care Council will help focus, coordinate and plan for
20 safe, effective and efficient home care policies and
21 services in Maine.

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