

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1330
6

7 H.P. 923

House of Representatives, April 16, 1985

8 Referred to the Committee on Human Resources. Sent up for
9 concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Priest of Brunswick.

11 Cosponsored by Representative Rolde of York, Representative Paradis of
Augusta and Senator Berube of Androscoggin.

12 STATE OF MAINE
13

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

17 AN ACT Relating to Investigations of Child
18 Abuse in Institutions Licensed by the
19 State.
20

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

23 Sec. 1. 22 MRSA §7703, sub-§4, ¶¶F and G, as en-
24 acted by PL 1983, c. 691, §2, are amended to read:

25 F. The Protection and Advocacy Agency for the
26 Developmentally Disabled in Maine in connection
27 with investigations conducted in accordance with
28 chapter 961. The determination of what informa-
29 tion and records are relevant to the investiga-
30 tion shall be made by agreement between the de-
31 partment and the agency; and

32 G. The Commissioner of Educational and Cultural
33 Services, when the information concerns teachers
34 and other professional personnel issued certifi-
35 cates under Title 20-A-_i

1 Sec. 2. 22 MRSA §7703, sub-§4, ¶¶H and I are en-
2 acted to read:

3 H. An owner, operator or employee of a facility
4 licensed under section 7801 when the department
5 has completed a further investigation under sec-
6 tion 7802-A, subsection 2, of a report of a child
7 abuse or neglect in the facility by the owner,
8 operator or employee; and

9 I. The governing authority of a facility li-
10 icensed under section 7801 when the department has
11 completed a further investigation under section
12 7802-A, subsection 2, of a report of child abuse
13 or neglect in the facility by an owner, operator
14 or employee of the facility.

15 Sec. 3. 22 MRSA §7802, sub-§5, as amended by PL
16 1983, c. 602, §4, is further amended to read:

17 5. Appeals. Any person aggrieved by the depart-
18 ment's decision to take any of the following actions,
19 may request an administrative hearing, as provided by
20 the Maine Administrative Procedure Act, Title 5,
21 chapter 375:

22 A. Issue a conditional license or approval;

23 B. Amend or modify a license or approval;

24 C. Void a conditional license or approval;

25 D. Refuse to issue or renew a full license or
26 approval; ~~or~~

27 E. Refuse to issue a provisional license or ap-
28 proval; or

29 F. Take any of the actions described in section
30 7802-A, subsection 2, paragraph C, subparagraphs
31 (3) and (4).

32 If a request for a hearing under this subsection is
33 based on the department's decision to take an action
34 upon completion of an investigation under section
35 7802-A, the hearing shall be completed and a decision
36 rendered within 45 days from the date of request for

1 a hearing.

2 Sec. 4. 22 MRSA §7802-A is enacted to read:

3 §7802-A. Child abuse or neglect investigations

4 When the department is conducting an investiga-
5 tion of a report of child abuse or neglect in a fa-
6 ility licensed under section 7801, the following
7 procedures shall apply.

8 1. Preliminary investigation. Within 10 days
9 after receiving a report of suspected abuse or ne-
10 glect, the department shall complete a preliminary
11 investigation to determine whether further investiga-
12 tion is warranted. If the department concludes upon
13 completion of the preliminary investigation that
14 abuse or neglect did not occur, the department shall
15 so inform the governing authority of the facility and
16 shall cease investigatory activities. If the depart-
17 ment concludes upon completion of the preliminary in-
18 vestigation that further investigation is warranted,
19 the department shall so inform the governing authori-
20 ty of the facility and shall require the suspension
21 from employment or association with the facility of
22 any persons suspected of perpetrating the abuse or
23 neglect.

24 The governing authority of a facility and all indi-
25 vidual members of the governing authority that sus-
26 pend a person from employment or association with the
27 facility at the request of the department under this
28 subsection are immune from any civil or criminal lia-
29 bility for the suspension.

30 2. Further investigation. Within 30 days after
31 completion of the preliminary investigation under
32 subsection 1, the department shall issue a written
33 report on its further investigation to the persons
34 described in section 7703, subsection 4, paragraphs H
35 and I. The report shall contain:

36 A. A recital of the specific instances of sus-
37 pected abuse or neglect, descriptions of the type
38 of abuse or neglect alleged and times, dates and
39 places when and where the abuse or neglect is al-
40 leged to have occurred;

1 B. The department's findings as to whether the
2 suspected instances of abuse or neglect deline-
3 ated under paragraph A occurred;

4 C. The department's recommendations concerning
5 further action to be taken by the department
6 based on the findings delineated under paragraph
7 B, including, but not limited to:

8 (1) Submission of the department's records
9 of its investigation to the Attorney General
10 for review;

11 (2) Issuance of a conditional license, a
12 request for an emergency suspension or a re-
13 quest for the suspension or revocation of a
14 license under section 7802, subsection 3;

15 (3) A requirement that the governing au-
16 thority of the facility take any action, in-
17 cluding, but not limited to, suspending or
18 discharging an employee; and

19 (4) The removal of any departmental funding
20 from the facility; and

21 D. A statement as to whether or not the depart-
22 ment has referred the report of abuse or neglect
23 and the records of its investigation to law en-
24 forcement officials for investigation or possible
25 prosecution.

26 STATEMENT OF FACT

27 The purpose of this bill is to specify procedures
28 to be followed by the Department of Human Services in
29 investigating suspected child abuse or neglect in a
30 facility licensed by the department. The bill estab-
31 lishes a timetable for these investigations to assure
32 that they proceed expeditiously.

33 Sections 1 and 2 of the bill amend current law
34 concerning mandatory disclosure of records of the de-
35 partment dealing with child protection. This bill
36 adds 2 new categories of persons to whom the depart-

1 ment must disclose certain information. The informa-
2 tion to be disclosed is relevant information concern-
3 ing an investigation of suspected child abuse or ne-
4 glect in a licensed facility. The persons to whom
5 this information must be disclosed upon completion of
6 the department's investigation are:

7 1. The alleged perpetrator of the abuse or ne-
8 glect in the facility; and

9 2. The governing authority of the facility.

10 Section 3 of the bill adds provisions to current
11 law to assure that all actions taken by the depart-
12 ment upon completion of an investigation of child
13 abuse or neglect in a licensed facility are subject
14 to independent review.

15 Under current law, the department must file a
16 complaint with the Administrative Court if the de-
17 partment seeks to suspend or revoke the license of a
18 facility. Also under current law, if the department
19 issues a conditional license, amends or modifies a
20 license, voids a conditional license, refuses to is-
21 sue a license or refuses to issue a provisional li-
22 cense, any aggrieved person may request a hearing un-
23 der the Maine Administrative Procedure Act, Title 5,
24 chapter 375. Thus, the department's decision to take
25 any of these actions based on its investigation of
26 child abuse or neglect in a licensed facility is al-
27 ready subject to these hearing provisions. Review of
28 the administrative hearing officer's decision under
29 the Act may be had in Superior Court.

30 This bill adds a new category to these provisions
31 for administrative hearing. Any person aggrieved by
32 the department's action requiring a licensed facility
33 to take any action, or removing funding from the fa-
34 cility, based on its recommendations upon completion
35 of its investigation of child abuse or neglect in a
36 licensed facility will be able to request a hearing.
37 Thus, for example, an employee who is discharged by
38 the facility as required by the department after its
39 investigation of suspected abuse or neglect will be
40 able to request an independent review of the matter.
41 Similarly, the facility itself will be able to re-
42 quest a hearing on the requested action or funding
43 removal.

1 Section 4 of the bill creates investigatory pro-
2 cedures for the department in cases involving sus-
3 pected child abuse or neglect in licensed facilities.
4 The bill requires:

5 1. A preliminary investigation by the department
6 of the report of child abuse or neglect in a licensed
7 facility to determine if further investigation is
8 needed. If further investigation is needed, the de-
9 partment may require the facility to suspend alleged
10 perpetrators from employment to assure child protec-
11 tion during the investigation. The governing author-
12 ity will determine whether the person is to be sus-
13 pended with or without pay. The governing authority
14 will be immune from liability for any suspensions re-
15 quired by the department during the investigatory
16 phase.

17 2. The presentation of a written final report by
18 the department upon completion of its investigation.
19 The report to the facility's governing authority and
20 the alleged perpetrator or perpetrators shall contain
21 specifics concerning the alleged instances of abuse
22 or neglect, the department's findings, the depart-
23 ment's recommendations concerning further action and
24 an indication of whether the report of abuse or ne-
25 glect has been referred to law enforcement officials.

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