

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1410

8 H.P. 978

House of Representatives, April 25, 1985

9 Submitted by the Department of Business, Occupational and Professional
10 Regulation pursuant to Joint Rule 24.

11 On motion of Representative Brannigan of Portland, referred to the
Commission on Business and Commerce. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Racine of Biddeford.

12 Cosponsored by Representative Murray of Bangor, Senator Bustin of
Kennebec and Representative Armstrong of Wilton.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Place the State Board of Licensure
19 of Administrators of Medical Care
20 Facilities other than Hospitals Within
21 the Department of Business,
22 Occupational and Professional
23 Regulation.
24

25 Emergency preamble. Whereas, Acts of the Legis-
26 lature do not become effective until 90 days after
27 adjournment unless enacted as emergencies; and

28 Whereas, the 90-day period may take until the
29 fall of 1985; and

30 Whereas, the Board of Licensure of Administrators
31 of Medical Care Facilities other than Hospitals re-
32 quires administrative and clerical support, which is
33 presently unavailable, in order to fulfill its obli-
34 gations to the citizens of the State; and

1 Whereas, the board, the Department of Human Ser-
2 vices, the Department of Business, Occupational and
3 Professional Regulation and the constituent groups
4 affected by the board agree that this legislation is
5 essential to the proper functioning of the board; and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

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

14 Sec. 1. 5 MRSA §12004, subsection 1, ¶A, subpar-
15 agraph (22), as amended by PL 1983, c. 862, §§17, 18
16 and 19, is repealed and the following enacted in its
17 place:

18 (22) Nursing Home \$30/day 32 MRSA §63-A
19 Administrators
20 Licensing Board

21 Sec. 2. 10 MRSA §8001, as amended by PL 1983, c.
22 746 and c. 758, §1, is repealed and the following
23 enacted in its place:

24 §8001. Department; agencies within department

25 There is created and established the Department
26 of Business, Occupational and Professional Regula-
27 tion, in this chapter referred to as the "depart-
28 ment," to regulate financial institutions, insurance
29 companies, commercial sports, grantors of consumer
30 credit and to license and regulate professions and
31 occupations. The department shall be composed of the
32 following bureaus, boards and commissions:

33 Banking, Bureau of;

34 Consumer Credit Protection, Bureau of;

35 Insurance, Bureau of;

1 Athletic Commission, Maine;
2 Penobscot Bay and River Pilotage Commission;
3 Real Estate Commission;
4 Running Horse Racing Commission, State;
5 Arborist Examining Board;
6 Auctioneers Advisory Board;
7 Commercial Driver Education, Board of;
8 Electricians' Examining Board;
9 Foresters, State Board of Registration for Pro-
10 essional;
11 Funeral Service, State Board of;
12 Geologists and Soil Scientists, State Board of
13 Certification for;
14 Hearing Aid Dealers and Fitters, Board of;
15 Manufactured Housing Board;
16 Nursing Home Administrators Licensing Board;
17 Occupational Therapy Practice, Board of;
18 Oil and Solid Fuel Board;
19 Physical Therapy, Board of Examiners in;
20 Plumbers' Examining Board;
21 Psychologists, State Board of Examiners of;
22 Social Worker Registration, State Board of;
23 Speech Pathology and Audiology, Board of Examin-
24 ers on; and
25 Substance Abuse Counselors, Board of Registration
26 of.

1 Sec. 3. 32 MRSA §61, as enacted by PL 1969, c.
2 350, is amended to read:

3 §61. Requirement for license

4 No medical care facility other than a hospital
5 ~~shall~~ may operate ~~after June 30, 1970,~~ except under
6 the supervision of a licensed administrator and no
7 person ~~shall~~ may be an administrator of a medical
8 care facility other than a hospital ~~after June 30,~~
9 ~~1970,~~ unless he is the holder of a current adminis-
10 trator's license or a temporary permit issued pursu-
11 ant to this chapter.

12 Sec. 4. 32 MRSA §62, as enacted by PL 1969, c.
13 350, is amended to read:

14 §62. Definitions

15 1. Administrator. "Administrator" means an indi-
16 vidual who is charged with and has responsibility for
17 the general administration of a facility other than a
18 hospital whether or not such individual has an owner-
19 ship interest in such home and whether or not his
20 functions and duties are shared with one or more oth-
21 er individuals.

22 2. Board. "Board" means the State Board of Li-
23 cence of Administrators of Medical Care Facilities
24 other than Hospitals Nursing Home Administrators Li-
25 icensing Board.

26 2-A. Commissioner. "Commissioner" means the
27 Commissioner of Business, Occupational and Profes-
28 sional Regulation.

29 2-B. Department. "Department" means the Depart-
30 ment of Business, Occupational and Professional Regu-
31 lation.

32 3. Medical care facility other than hospitals.
33 "Medical care facility other than hospitals" means
34 any facility providing therein, in addition to lodg-
35 ing and board, medical care or nursing supervision to
36 sick, invalid, infirm, disabled or convalescent per-
37 sons ~~in addition to lodging and board.~~

1 Sec. 5. 32 MRSA §63, as amended by PL 1983, c.
2 812, §§188 and 189, is repealed.

3 Sec. 6. 32 MRSA §§63-A, 63-B, 65 and 66 are en-
4 acted to read:

5 §63-A. Board established; membership and organiza-
6 tion

7 1. Membership. The Nursing Home Administrators
8 Licensing Board, as established by Title 5, section
9 12004, subsection 1, paragraph A, subparagraph (22),
10 shall consist of 7 members appointed by the Governor.
11 The members shall be citizens of the United States
12 and residents of this State. One member shall be a
13 physician licensed to practice medicine or osteopathy
14 with not less than 5 years of active practice within
15 the State. One member shall be a hospital adminis-
16 trator with not less than 5 years of active practice
17 in the State as a hospital administrator. One member
18 shall be a registered nurse with not less than 5
19 years of active practice in nursing homes in the
20 State. One member shall be a representative of the
21 public. Three members shall be administrators of
22 nursing homes with not less than 5 years of active
23 experience in the State.

24 2. Terms. Appointments shall be for 3-year
25 terms, except that the terms of no more than 3 mem-
26 bers shall expire in any calendar year and appoint-
27 ments for terms of less than 3 years may be made in
28 order to comply with this limitation. No person may
29 be eligible to serve more than 3 consecutive full
30 terms, provided that for this purpose only a period
31 actually served which exceeds 1/2 of the 3-year term
32 shall be deemed a full term. Upon expiration of a
33 member's term, he shall serve until his successor is
34 appointed and qualified. The successor's term shall
35 be for 3 years from the date of expiration, regard-
36 less of the date of appointment. Any vacancy occur-
37 ring prior to the expiration of the specified term
38 shall be filled by appointment for the unexpired
39 term. A member may be removed by the Governor for
40 cause.

41 3. Meetings; chairman; quorum. The board shall
42 meet at least once a year to conduct its business and

1 to elect a chairman. Additional meetings shall be
2 held as necessary to conduct the business of the
3 board, and may be convened at the call of the chair-
4 man or of a majority of the board members. Four mem-
5 bers of the board shall constitute a quorum for all
6 purposes.

7 4. Compensation. Members of the board shall be
8 compensated according to the provisions of Title 5,
9 chapter 379.

10 5. Employees. With the advice of the board, the
11 commissioner may appoint, subject to the Personnel
12 Law, such employees as may be necessary to carry out
13 this chapter. Any person so employed shall be lo-
14 cated in the department and under the administrative
15 and supervisory direction of the commissioner.

16 6. Fees. All fees received by the board shall
17 be paid to the Treasurer of State to be used for car-
18 rying out this chapter. Any balance of these fees
19 shall not lapse, but shall be carried forward as a
20 continuing account to be expended for the same pur-
21 poses in the following fiscal years.

22 7. Reports; budget. Not later than August 1st
23 of each year, the board shall submit to the commis-
24 sioner a report of its transactions of the preceding
25 fiscal year ending June 30th, and shall transmit to
26 him a complete statement of all receipts and expendi-
27 tures of the board, attested by affidavit of its
28 chairman. The board shall submit to the commissioner
29 its budgetary requirements in the same manner as is
30 provided in Title 5, section 1665.

31 §63-B. Board powers and duties

32 The board shall have the powers and duties set
33 forth in this section.

34 1. Board to administer and enforce. The board
35 shall administer and enforce this chapter, evaluate
36 the qualifications of and supervise the examination
37 of applicants for licensure under this chapter and it
38 shall investigate written allegations of violations
39 of or noncompliance with this chapter. The board
40 shall keep such records and minutes as are necessary
41 to the ordinary dispatch of its functions.

1 2. Rules. The board may, in accordance with the
2 Maine Administrative Procedure Act, Title 5, chapter
3 375, subchapter II, adopt rules commensurate with the
4 authority vested in it by this chapter, including,
5 but not limited to, standards for courses of study
6 for administrators, requirements for the training,
7 experience and qualifications for the licensure of
8 administrators, continuing educational requirements,
9 standards and procedures for examination for the li-
10 cence of administrators, standards and procedures
11 for the issuance, revocation and suspension of li-
12 censes of administrators and for the investigation of
13 written charges and complaints filed with the board,
14 and establishment of licensure fees.

15 3. Temporary licenses. The board may by rule
16 determine conditions and procedures by which it may
17 issue temporary licenses. Temporary licenses may be
18 issued for periods of up to one year. In no event
19 may the total length of multiple temporary licenses
20 extend beyond one year.

21 4. Examinations. The board shall conduct writ-
22 ten examinations for licensure one or more times each
23 year, at such times and places as it may determine.

24 5. Application, examination and license
25 fees. An application and an examination fee may be
26 established by the board in amounts which are reason-
27 able and necessary for their respective purposes.
28 The board shall establish a license fee, temporary
29 license fee and annual license renewal fee. The
30 board may, by rule, provide for the waiver of part of
31 the fee for an initial license if it is issued for
32 less than 1/2 year.

33 6. Hearings. Hearings may be conducted by the
34 board to assist with investigations, to determine
35 whether grounds exist for suspension, revocation or
36 denial of a license, or as otherwise deemed necessary
37 to the fulfillment of its responsibilities under this
38 chapter. The board shall not refuse to renew a li-
39 cence for any reason other than failure to pay a re-
40 quired fee, unless it has afforded the licensee an
41 opportunity for an adjudicatory hearing. The board
42 shall hold an adjudicatory hearing at the written re-
43 quest of any person who is denied a license without a

1 hearing for any reason other than failure to pay a
2 required fee, provided that the request for hearing
3 is received by the board within 30 days of the appli-
4 cant's receipt of written notice of the denial of his
5 application, the reason for the denial and his right
6 to request a hearing. Hearings shall be conducted in
7 conformity with the Maine Administrative Procedure
8 Act, Title 5, chapter 375, subchapter IV, to the ex-
9 tent applicable. The board may subpoena witnesses,
10 records and documents in any hearing it conducts.

11 7. Contracts. The board may enter into con-
12 tracts to carry out its responsibilities under this
13 chapter.

14 8. Exception. Nothing in this chapter or the
15 rules under this chapter may be construed to require
16 an applicant for a license as a nursing home adminis-
17 trator who is certified by a recognized church or re-
18 ligious denomination which teaches reliance on spiri-
19 tual means alone for healing as having been approved
20 to administer institutions certified by that church
21 or denomination for the care and treatment of the
22 sick in accordance with its teachings to demonstrate
23 proficiency in any medical techniques or to meet any
24 medical educational qualifications or medical stan-
25 dards not in accord with the remedial care and treat-
26 ment provided in those institutions. Any person li-
27 icensed under this exception may act as an administra-
28 tor only in those institutions described in this sub-
29 section.

30 §65. License renewal

31 All licenses issued under this chapter, except
32 temporary licenses, expire annually on a date estab-
33 lished by the commissioner and become invalid if not
34 renewed. Every person licensed under this chapter
35 shall, on or before the expiration date, pay a fee
36 for renewal of license to the board. The board shall
37 notify every person licensed under this chapter of
38 the date of expiration of his license and the amount
39 of fee required for its renewal for a one-year peri-
40 od. The notice shall be mailed to the person's last
41 known address at least 30 days in advance of the ex-
42 piration of the license. Renewals are contingent
43 upon evidence of participation in continuing profes-

1 sional education. A license may be renewed up to 90
2 days after the date of its expiration upon payment of
3 a late fee of \$10 in addition to the renewal fee.
4 Any person who submits an application for renewal
5 more than 90 days after the license expiration date
6 shall be subject to all requirements governing new
7 applicants under this chapter, except that the board
8 may in its discretion, giving due consideration to
9 the protection of the public, waive examination if
10 that renewal application is made within 2 years from
11 the date of the expiration.

12 §66. Enforcement

13 The State may bring an action in Superior Court
14 to enjoin any person from violating this chapter, re-
15 gardless of whether proceedings have been or may be
16 instituted in the Administrative Court or whether
17 criminal proceedings have been or may be instituted.

18 Sec. 7. Transition clause. All appointments
19 made by the Governor to the State Board of Licensure
20 of Administrators of Medical Care Facilities other
21 than Hospitals prior to the effective date of this
22 Act shall continue in effect on the effective date of
23 this Act. All current rules of the board shall re-
24 main in force and effect until rescinded, amended, or
25 otherwise changed by the board, except those which
26 are contrary to the provisions of this Act. All
27 funds and all equipment and supplies acquired with
28 board funds shall be transferred to the Department of
29 Business, Occupational and Professional Regulation.

30 Emergency clause. In view of the emergency cited
31 in the preamble, this Act shall take effect when ap-
32 proved.

33 STATEMENT OF FACT

34 The primary intent of the bill is to place the
35 State Board of Licensure of Administrators of Medical
36 Care Facilities other than Hospitals within the De-
37 partment of Business, Occupational and Professional
38 Regulation in order to provide the board with the ad-
39 ministrative and clerical services it requires to

1 carry out its responsibilities effectively and effi-
2 ciently. In addition, the bill accomplishes the fol-
3 lowing:

4 1. Shortens the name of the board from the Board
5 of Licensure of Administrators of Medical Care Facil-
6 ities other than Hospitals to the Nursing Home Admin-
7 istrators Licensing Board;

8 2. Eliminates superfluous language in the
9 present law and improves the syntax of other sec-
10 tions;

11 3. Reduces the board from 8 to 7 members and es-
12 tablishes its quorum at 4;

13 4. Conforms the length and number of terms of
14 members to laws of similar departmental boards;

15 5. Repeals section 63 which has been found to be
16 in conflict with federal law regarding licensure of
17 nonhospital medical care facilities' administrators;

18 6. Contains a clause which permits members and
19 rules of the board to remain in effect during the
20 transition period; and

21 7. Makes no substantive changes in purpose,
22 scope, authority or responsibility of the board.

23

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