

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 2207

7 S.P. 875

In Senate, March 18, 1986

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

10 Reference to the Committee on Human Resources suggested and ordered  
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Gauvreau of Androscoggin.

11 Cosponsored by Representative Melendy of Rockland.

12 STATE OF MAINE  
13

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

17 AN ACT to Protect the Public Health and  
18 Safety of Residents in Boarding Care  
19 Facilities.  
20

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

23 Sec. 1. 18-A MRSA §5-311, sub-§(c), as enacted  
24 by PL 1979, c. 540, §1, is repealed and the following  
25 enacted in its place:

26 (c) No owner, proprietor, administrator, employ-  
27 ee or other person with a substantial financial in-  
28 terest in a facility or institution which is licensed  
29 under Title 22, sections 1817 and 7801, with the ex-  
30 ception of adult foster homes, may act as guardian of  
31 an incapacitated person who is a resident. An owner,  
32 proprietor, administrator, employee or other person  
33 with a substantial financial interest in an adult  
34 foster home may be appointed as guardian of a resi-  
35 dent under this Code if the court, based on a study  
36 conducted by the Department of Human Services and

1 other information available, determines him to be a  
2 suitable guardian who will best represent the inter-  
3 est of the resident.

4 Sec. 2. 18-A MRSA §5-410, sub-§(c), as enacted  
5 by PL 1979, c. 690, §20, is amended to read:

6 (c) A facility or institution licensed under Ti-  
7 tle 22, ~~section~~ sections 1817 and 7801, or an owner,  
8 proprietor, administrator, employee or other person  
9 with substantial financial interest in the facility  
10 or institution, may not act as conservator of the es-  
11 tate of a resident of that facility or institution,  
12 unless he is entitled to appointment under subsection  
13 (a), ~~paragraphs~~ paragraph (3), (4), (5) or (6).

14 Sec. 3. 22 MRSA §7801, sub-§1, ¶A, as repealed  
15 and replaced by PL 1983, c. 386, §1, is amended to  
16 read:

17 A. A boarding ~~home~~ care facility;

18 Sec. 4. 22 MRSA §7801, sub-§2, as repealed and  
19 replaced by PL 1983, c. 386, §1, is repealed.

20 Sec. 5. 22 MRSA §7901, as amended by PL 1981, c.  
21 260, §2, is repealed.

22 Sec. 6. 22 MRSA §7901-A is enacted to read:

23 §7901-A. Definitions

24 As used in this subtitle, unless the context oth-  
25 erwise indicates, the following terms have the fol-  
26 lowing meanings.

27 1. Adult foster home. "Adult foster home" means  
28 a boarding care facility having 3 or 4 residents.  
29 Persons providing boarding care to one or 2 residents  
30 are not required to be licensed as an adult foster  
31 home unless it is required to receive payment from  
32 available state funds. No adult foster home may ac-  
33 cept more than 2 residents who are mobile  
34 nonabulatory.

35 2. Boarding care. "Boarding care" means care  
36 which is greater than that necessarily attendant upon

1 mere eating and lodging services, but which is less  
2 than that attendant upon nursing home care or hospital  
3 care. "Boarding care" includes, but is not limited  
4 to, personal supervision, protection from environmental  
5 hazards, diet care, care concerning grooming,  
6 hand and foot care, skin care, mouth and teeth  
7 care, shampooing, bathing, assistance in abulation,  
8 supervision and assistance in the administration of  
9 medications, diversional or motivational activities,  
10 and stimulation of, or assistance in, activities of  
11 daily living or physical exercise.

12 3. Boarding care facility. "Boarding care facility"  
13 means a house or other place classified as  
14 either an adult foster home or a boarding home which,  
15 for consideration, is maintained wholly or partly for  
16 the purposes of providing residents with boarding  
17 care as defined in subsection 2. A "boarding care  
18 facility" does not include a licensed nursing home.  
19 A boarding care facility shall not accept residents  
20 who are nonambulatory.

21 4. Boarding home. "Boarding home" means a  
22 boarding care facility having 5 or more residents and  
23 those facilities of less than 5 certified by the department  
24 as being eligible for cost reimbursement pursuant to  
25 section 7906. Boarding homes licensed for 3 to 4  
26 residents prior to the effective date of this section  
27 shall not be denied a boarding home license solely on  
28 the basis of the number of beds.

29 5. Mobile nonambulatory. "Mobile nonambulatory,"  
30 as applied to a resident of a boarding care facility,  
31 means being unable to walk without assistance, but able  
32 to move from place to place with the use of a device,  
33 such as a walker, crutches, wheelchair or wheeled  
34 platform, as certified by a physician or psychologist.  
35

36 6. Physician. "Physician" means any person who  
37 is licensed in this State to practice medicine or osteopathy  
38 and who has had specialized training or at least one year  
39 of experience in treating persons with conditions similar  
40 to the conditions of the resident being certified pursuant  
41 to section 7904-A. No physician who certifies or recertifies  
42 a resident may be in the regular employ of or may have a  
43 financial in-

1 terest in the boarding care facility in which the  
2 resident resides.

3 7. Psychologist. "Psychologist" means any per-  
4 son who is licensed in this State as a psychologist  
5 or psychological examiner and who has had specialized  
6 training or at least one year of experience in pro-  
7 viding services to persons with conditions similar to  
8 the conditions of the resident being certified pursu-  
9 ant to section 7904-A. No psychologist who certifies  
10 a resident may be in the regular employ of or may  
11 have a financial interest in the boarding care facil-  
12 ity in which the resident resides.

13 8. Resident. "Resident" means any aged, blind,  
14 mentally ill, mentally retarded or other person 18  
15 years of age or older who is not related by blood or  
16 marriage to the owner or person in charge of the  
17 boarding care facility in which the resident lives.  
18 Any person who is certified by a physician or psy-  
19 chologist as being nonambulatory shall not be a resi-  
20 dent of a boarding care facility.

21 Sec. 7. 22 MRSA §7902, sub-§1, as amended by PL  
22 1977, c. 497, §4, is further amended to read:

23 1. Rules promulgated. The commissioner shall  
24 promulgate rules for boarding care facilities, which  
25 shall include but need not be limited to, rules per-  
26 taining to administration, staffing, the number of  
27 residents, the quality of care, the quality of treat-  
28 ment, if applicable, the health and safety of staff  
29 and residents, the rights of residents, community re-  
30 lations, the administration of medication and licens-  
31 ing procedures. There shall be separate rules promul-  
32 gated for boarding homes and foster homes.

33 In establishing the rules for the administration of  
34 medication, the commissioner shall consider, among  
35 other factors, the general health of the persons  
36 likely to receive medication, the number of persons  
37 served by the facility and the number of persons em-  
38 ployed by the facility. In the rules for the adminis-  
39 tration of medication established for boarding care  
40 facilities with 15 or more residents homes, the De-  
41 partment of Human Services shall require unlicensed  
42 personnel to have successfully completed a program of

1 training and instruction approved by the department  
2 for the administration of medication which is not  
3 limited to in-service training.

4       Sec. 8. 22 MRSA §7903, as enacted by PL 1975, c.  
5 719, §6, is amended to read:

6       §7903. Fees for licenses

7       The department shall charge an annual fee of \$25  
8 ~~for regular licenses~~ for boarding care facilities  
9 homes having a capacity of 6 or less residents and  
10 ~~\$50 for regular licenses~~ for boarding care facilities  
11 homes having a capacity of more than 6 residents.

12       In addition, the department shall charge a fee of  
13 ~~\$25 for temporary or conditional licenses~~ for board-  
14 ~~ing care facilities~~ having a capacity of 6 or less  
15 ~~residents and \$50 for such licenses~~ for boarding care  
16 ~~facilities~~ having a capacity of more than 6 resi-  
17 ~~dents.~~

18       There shall be no license fee for adult foster  
19 homes.

20       Sec. 9. 22 MRSA §7904, as amended by PL 1981, c.  
21 196, §§2 and 3, is repealed.

22       Sec. 10. 22 MRSA §7904-A is enacted to read:

23       §7904-A. Fire safety inspection

24       1. Inspection required. No license may be is-  
25 sued by the department to a boarding care facility  
26 until the department has received from the State Fire  
27 Marshal a written statement signed by one of the of-  
28 icials designated under Title 25, section 2360, 2391  
29 or 2392, to make fire safety inspections. This  
30 statement, which shall indicate that the boarding  
31 care facility has complied with applicable fire safe-  
32 ty provisions referred to in Title 25, section 2452,  
33 shall be furnished annually by the State Fire Marshal  
34 to the department.

35       2. Fees. The department shall establish and pay  
36 reasonable fees to the State Fire Marshal or municip-  
37 al official for each such inspection.

1           3. Requirements for facilities with 17 or more  
2 beds. Any boarding care facility which has a capaci-  
3 ty of 17 or more beds shall comply with the Life  
4 Safety Code, chapter 21, the residential board and  
5 care occupancies section for large facilities,  
6 adopted by the State Fire Marshal. In addition, the  
7 following requirement must be met.

8           A. Any building of 2 or more stories shall be  
9 equipped with an approved automatic sprinkler  
10 system, unless the building is of fire resistive  
11 or protected noncombustible construction as de-  
12 fin ed in the current edition of the National Fire  
13 Protection Association's Standard Types of Build-  
14 ing Construction.

15           4. Requirements for facilities with more than 6  
16 but fewer than 17 beds. Any boarding care facility  
17 which has a capacity of more than 6 but fewer than 17  
18 beds shall comply with the Life Safety Code, chapter  
19 21, the residential board and care occupancies sec-  
20 tion for small facilities, adopted by the State Fire  
21 Marshal. In addition, the following requirements  
22 must be met.

23           A. Any building of 2 or more stories shall be  
24 equipped with an approved automatic sprinkler  
25 system, unless the building is of fire resistive  
26 or protected noncombustible construction as de-  
27 fin ed in the current edition of the National Fire  
28 Protection Association's Standard Types of Build-  
29 ing Construction.

30           B. Automatic emergency lights shall be provided  
31 in such number and location as required by the  
32 State Fire Marshal.

33           5. Requirements for boarding homes with 6 or  
34 fewer beds. The department may permit any boarding  
35 home having 6 or fewer ambulatory residents to comply  
36 with the one-family and 2-family dwelling require-  
37 ments of the Life Safety Code adopted by the State  
38 Fire Marshall provided the residents are certified  
39 annually by a physician or a psychologist as ambula-  
40 tory and capable of following directions and taking  
41 appropriate action for self-preservation under emer-  
42 gency conditions.

1           6. Adult foster homes with one to 4 ambulatory  
2 residents. Adult foster homes having one to 4 ambu-  
3 latory residents shall comply with the one-family and  
4 2-family dwelling requirements of the Life Safety  
5 Code adopted by the State Fire Marshal.

6           7. Requirements affecting mobile nonambulatory  
7 residents in boarding homes and adult foster homes.  
8 The Department of Human Services may permit a board-  
9 ing care facility which has 8 or fewer beds and which  
10 has or intends to have residents who are mobile  
11 nonambulatory to comply with the Life Safety Code,  
12 chapter 21, the residential board and care occupan-  
13 cies section for small facilities, adopted by the  
14 State Fire Marshal, provided that the following con-  
15 ditions are met.

16           A. No more than 2 of the beds in the facility  
17 may be for mobile nonambulatory residents.

18           B. All mobile nonambulatory residents shall be  
19 housed on the first floor of the facility with  
20 direct egress to a common corridor with 2 exits  
21 leading directly to the exterior of the facility.

22           C. Facilities of 7 and 8 beds shall be ramped to  
23 grade at both exits referred to in paragraph B.  
24 Facilities of 6 or fewer beds shall be ramped to  
25 grade at one exit.

26           D. There shall be at least one staff person  
27 available on the premises of the facility when  
28 any resident is present.

29           E. If a facility of 7 or 8 beds is of new con-  
30 struction, any doorway in the path of egress for  
31 a mobile nonambulatory resident shall be at least  
32 36 inches in width. If the facility is of exist-  
33 ing construction, any doorway in the path of  
34 egress for a mobile nonambulatory resident shall  
35 be at least 34 inches in width.

36           F. If a facility of 7 or 8 beds has mobile  
37 nonambulatory residents who are mentally ill or  
38 mentally retarded or who have related conditions,  
39 the facility shall be certified by the Department  
40 of Mental Health and Mental Retardation as being



1           able to ensure the safety of and provide services  
2           to such residents. If the facility has mobile  
3           nonambulatory residents who are elderly, physi-  
4           cally disabled or adult protective services' cli-  
5           ents, or have conditions not related to mental  
6           illness or mental retardation, the facility shall  
7           be certified by the Department of Human Services  
8           as being able to ensure the safety of and provide  
9           services to such residents.

10           8. Local regulations. Any local regulations  
11           which affect the life-safety requirements of any  
12           boarding care facility and which are more stringent  
13           than those referred to in this section shall take  
14           precedence.

15           Sec. 11. 22 MRSA §7905, as enacted by PL 1975,  
16           c. 719, §6, is amended to read:

17           §7905. Personal funds of residents

18           1. Permission to manage personal funds. No oper-  
19           ator or agent of any boarding ~~care facility~~ home  
20           shall manage, hold or deposit in a financial institu-  
21           tion the personal funds of any resident of the facil-  
22           ity, unless the operator or agent has received writ-  
23           ten permission therefor from:

24           A. The resident, if the resident is not mentally  
25           retarded and has no guardian, trustee or conser-  
26           vator;

27           B. The resident's guardian, trustee or conserva-  
28           tor, if such person exists and can be reached; or

29           C. The department, if a guardian, trustee or  
30           conservator exists, but cannot be reached, or, in  
31           the case of a mentally retarded resident, if such  
32           resident has no guardian, trustee or conservator.

33           Whenever the department gives written permission to  
34           an operator or agent to manage, hold or deposit the  
35           personal funds of any mentally retarded residents,  
36           the department may request the Bureau of Mental Re-  
37           tardation, Department of Mental Health and  
38           ~~Corrections~~ Mental Retardation, to develop, insofar  
39           as resources are available, an appropriate plan for  
40           the management of these funds.

1           2. Itemized accounting. Any operator or agent  
2 who, after receiving written permission pursuant to  
3 subsection 1, manages or holds the personal funds of  
4 any resident, shall maintain an account for these  
5 funds, which shall include for each resident a sepa-  
6 rate, itemized accounting for the use of the  
7 resident's personal funds, with supporting documenta-  
8 tion for every expenditure in excess of \$2.

9           3. Depositing personal funds. The department may  
10 require an operator or agent of a boarding ~~care~~  
11 ~~facility~~ home to deposit in a financial institution  
12 the personal funds of a resident, if:

13           A. The resident has a guardian, trustee or con-  
14 servator who cannot be reached; or,

15           B. In the case of a mentally retarded resident,  
16 the resident has no guardian, trustee or conser-  
17 vator.

18           4. Use of personal funds by operator prohibited.  
19 Under no circumstances ~~shall~~ may any operator or  
20 agent of a boarding ~~care facility~~ home use the per-  
21 sonal funds of any resident for the operating costs  
22 of the facility or for services or items which are  
23 reimbursable on a reasonable cost basis. The personal  
24 funds of any resident shall not be commingled with  
25 the business funds of the facility or with the per-  
26 sonal funds or accounts of the owner, any member of  
27 the owner's family or any employee of the facility.

28           Sec. 12. 22 MRSA §7906, as enacted by PL 1975,  
29 c. 719, §6, is repealed.

30           Sec. 13. 22 MRSA §7906-A is enacted to read:

31           §7906-A. Reimbursements to small boarding homes for  
32           mentally retarded persons

33           No rule of the department may be adopted or en-  
34 forced which would have the effect of denying, solely  
35 by reason of size, to any boarding home which was li-  
36 icensed prior to the effective date of this section  
37 and has a capacity of 6 or less residents and serves  
38 only mentally retarded persons or persons with relat-  
39 ed conditions, the opportunity to receive from the

1 department reimbursements based on the reasonable  
2 costs of operating the facility. In no case may the  
3 maximum allowable costs be less than the ceilings set  
4 for boarding homes with a capacity of more than 6.

5 Sec. 14. 22 MRSA §7907, as enacted by PL 1977,  
6 c. 708, §1, is repealed and the following enacted in  
7 its place:

8 §7907. Boarding care payments

9 The department shall authorize certain boarding  
10 homes and adult foster homes with 6 or fewer beds to  
11 receive a flat rate of payment from state assisted  
12 residents. Subject to the availability of funds,  
13 sufficient funds shall be allocated by the department  
14 to enable state assisted residents to pay the flat  
15 rate.

16 Sec. 15. 22 MRSA §7908, as enacted by PL 1979,  
17 c. 725, §2, is repealed.

18 Sec. 16. 22 MRSA §7932, sub-§2, as enacted by PL  
19 1983, c. 454, is amended to read:

20 2. Facility. "Facility" means any boarding ~~care~~  
21 ~~facility~~ home subject to licensure pursuant to chap-  
22 ters 1663 and 1665 and any skilled nursing or inter-  
23 mediate care facility or unit subject to licensure  
24 pursuant to chapter 405.

25 Sec. 17. 25 MRSA §2452, as amended by PL 1979,  
26 c. 59, §§1 and 2, is further amended to read:

27 §2452. Exits

28 The Commissioner of Public Safety shall adopt and  
29 may amend, after notice and public hearing, reason-  
30 able rules ~~and regulations~~ governing the safety to  
31 life from fire in all buildings or other structures  
32 within his jurisdiction. ~~Such regulations~~ These  
33 rules shall not apply to ~~boarding or lodging homes~~  
34 ~~having 6 or less boarders or lodgers~~ or to nursing  
35 homes having 3 or less patients. Automatic sprinkler  
36 systems shall not be required in ~~boarding homes hav-~~  
37 ~~ing 6 or less boarders or lodgers~~ and existing non-  
38 commercial places of assembly. Noncommercial places

1 of assembly shall include those facilities used for  
2 such purposes as deliberation, worship, entertain-  
3 ment, amusement or awaiting transportation which have  
4 a capacity of 100 to 300 persons.

5 1. Effective date. The regulations, and amend-  
6 ments thereto, become effective when reviewed for  
7 form and legality by the Office of the Attorney Gen-  
8 eral and a certified copy of them has been approved  
9 in writing by the Commissioner of Public Safety and  
10 filed with the Secretary of State.

11 2. Rights declared. Any person aggrieved by a  
12 regulation or by an act of the commissioner in en-  
13 forcing it may have his rights declared by bringing  
14 an action for declaratory judgment under Title 14,  
15 chapter 707, naming the commissioner as defendant.

16 3. Violation. Any person who violates a regula-  
17 tion issued by the commissioner under this section  
18 shall be punished by a fine of not more than \$100 or  
19 by imprisonment for not more than 90 days, or by  
20 both.

21 Existing ~~boarding homes or other existing~~ build-  
22 ings licensed pursuant to Title 22, subtitle 6, hav-  
23 ing more than 6 boarders, with the exception of board-  
24 ing care facilities, shall comply with any rules ~~and~~  
25 ~~regulations~~ for residential-custodial care facilities  
26 required by the State Fire Marshal's Office, except  
27 that such existing facilities of not more than 2  
28 stories in height shall not be required to be fire  
29 resistive, protected or unprotected noncombustible,  
30 protected wood frame or heavy timber construction.  
31 Such existing facilities must be protected by a com-  
32 plete approved automatic sprinkler system and meet  
33 all other requirements of residential-custodial care  
34 facilities as required by the State Fire Marshal's  
35 Office.

36 Existing boarding care facilities licensed pursu-  
37 ant to Title 22, subtitle 6, shall comply with the  
38 applicable fire safety requirements of the Life Safe-  
39 ty Code adopted by the State Fire Marshal pursuant to  
40 Title 22, section 7904-A.

1 STATEMENT OF FACT

2 The purposes of this bill are as follows.

3 The term "boarding care facility" is used  
4 throughout the bill to include both boarding homes  
5 and adult foster homes.

6 Section 1. This section permits adult foster  
7 home operators to become guardians of residents if  
8 the department determines suitability of the individ-  
9 ual.

10 Section 2. This section prohibits employees of  
11 boarding care facilities from becoming conservators  
12 of the estates of residents.

13 Section 4. This section is repealed to keep  
14 terms consistent.

15 Sections 3, 5 and 6. "Boarding care facility" is  
16 defined. Nonambulatory residents shall not be admit-  
17 ted. The definition of "boarding care" is added. The  
18 minimum size of a boarding home is changed from 3  
19 beds to 5 to eliminate the overlap with adult foster  
20 homes. These sections also define the circumstances  
21 requiring adult foster home licensure.

22 Section 7. The present requirement of certifica-  
23 tion of unlicensed personnel who administer  
24 medications in boarding homes of 15 or more beds is  
25 changed to requiring certification of personnel who  
26 administer medications in any size boarding home.

27 Section 8. Wording is made consistent with the  
28 definition of boarding homes and adult foster homes.

29 Sections 9 and 10. Fire safety requirements for  
30 boarding care facilities are amended to reflect  
31 changes in the Life Safety Code adopted by the State  
32 Fire Marshal.

33 Sections 11, 12, 13 and 16. Wording is made con-  
34 sistent with definitions.

1           Section 14.   The source of funds for state as-  
2           sisted residents to pay authorized boarding care fa-  
3           cilities is defined.

4           Section 15.   This section is repealed to make  
5           terms consistent and to eliminate redundancy.

6           Section 17.   Fire safety regulations for boarding  
7           homes in the Maine Revised Statutes, Title 25, are  
8           deleted. Reference is made to their inclusion in Ti-  
9           tle 22, section 7904-A.

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