

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 875, L.D. 2207)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 2401

8 S.P. 959

In Senate, April 13, 1986

9 Reported by Senator Gill of Cumberland from the Committee on Human  
10 Resources and printed under Joint Rule 2. Original bill sponsored by Senator  
11 Gauvreau of Androscoggin. Cosponsored by Representative Melendy of  
Rockland.

JOY J. O'BRIEN, Secretary of the Senate

12  
13 STATE OF MAINE  
14

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

18 AN ACT to Protect the Public Health and  
19 Safety of Residents in Boarding Care  
20 Facilities.  
21

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

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25 by PL 1979, c. 540, §1, is repealed and the following  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

27 (c) No owner, proprietor, administrator, employ-  
28 ee or other person with a substantial financial in-  
29 terest in a facility or institution which is licensed  
30 under Title 22, sections 1817 and 7801, may act as  
31 guardian of an incapacitated person who is a resi-  
32 dent, as defined in Title 22, section 7901-A.

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

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

9 Sec. 3. 22 MRSA §3273, sub-§1, ¶B, as reenacted  
10 by PL 1985, c. 506, Pt. B, §18-A, is amended to read:

11 B. For an individual who resides in an adult  
12 foster home, or boarding home, having a contract  
13 with the department for the provision of services  
14 to eligible residents, or nursing home, as de-  
15 fined in section 1812-A, in addition to the bene-  
16 fits provided herein under paragraphs A and C,  
17 provide sufficient income to allow the individual  
18 for personal needs an amount equal to at least  
19 \$30 a month, plus an amount sufficient to meet  
20 the monthly per resident payment rate as estab-  
21 lished by the department of the adult foster home  
22 or boarding home in which the individual resides;  
23 and

24 Sec. 4. 22 MRSA §7801, as repealed and replaced  
25 by PL 1983, c. 386, §1, is amended to read:

26 §7801. License or approval required

27 1. License required. No Except as provided in  
28 subsection 3, no person, firm, corporation or associ-  
29 ation may operate any of the following without hav-  
30 ing, subject to this subtitle and to the rules  
31 promulgated by the department under this subtitle, a  
32 written license therefor from the department:

- 33 A. A boarding ~~home~~ care facility;
- 34 B. A drug treatment center;
- 35 C. A children's home;
- 36 D. A child placing agency;
- 37 E. A day care facility; or

1 F. A nursery school.

2 2. Approval. No person, firm, corporation or as-  
3 sociation which operates an adult foster care facili-  
4 ty may be entitled to reimbursement from state funds  
5 without having, subject to this subtitle and to the  
6 rules promulgated by the department under this subti-  
7 tle, a written approval therefor from the department.

8 3. Adult foster homes. An adult foster home pro-  
9 viding care to no more than 2 residents is not re-  
10 quired to obtain a license under subsection 1, unless  
11 the license is required for the adult foster home to  
12 receive payment from available state funds.

13 4. Boarding homes. Notwithstanding section  
14 7901-A, a boarding home licensed for 3 or 4 residents  
15 prior to the effective date of this subsection may  
16 continue to be licensed as a boarding home or may ap-  
17 ply for a license as an adult foster home, provided  
18 that it meets all the requirements for that license  
19 other than number of residents.

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 less than 5 resi-  
29 dents.

30 2. Boarding care. "Boarding care" means care  
31 which is greater than that necessarily attendant upon  
32 mere eating and lodging services, but which is less  
33 than that attendant upon nursing home care or hospi-  
34 tal care. "Boarding care" may include personal su-  
35 per vision, protection from environmental hazards, di-  
36 et care, care concerning grooming, hand and foot  
37 care, skin care, mouth and teeth care, shampooing,  
38 bathing, assistance in ambulation, supervision and

1 assistance in the administration of medications,  
2 diversional or motivational activities, and stimula-  
3 tion of, or assistance in, activities of daily living  
4 or physical exercise.

5 3. Boarding care facility. "Boarding care fa-  
6 ility" means a house or other place classified as  
7 either an adult foster home or a boarding home which,  
8 for consideration, is maintained wholly or partly for  
9 the purposes of providing residents with boarding  
10 care as defined in subsection 2. A "boarding care  
11 facility" does not include a licensed nursing home or  
12 certified elderly congregate housing.

13 4. Boarding home. "Boarding home" means a  
14 boarding care facility having 5 or more residents and  
15 those facilities of less than 5 certified by the de-  
16 partment as being eligible for cost reimbursement  
17 pursuant to section 7906.

18 5. Mobile nonambulatory. "Mobile nonambu-  
19 latory," as applied to a resident of a boarding care  
20 facility, means being able to transfer independently,  
21 but unable to walk or unable to transfer without as-  
22 sistance, but able to move from place to place with  
23 the use of a device, such as a walker, crutches,  
24 wheelchair or wheeled platform, as certified by a  
25 physician or psychologist.

26 6. Physician. "Physician" means any person who  
27 is licensed in this State to practice medicine or os-  
28 teopathy and who has had specialized training or at  
29 least one year of experience in treating persons with  
30 conditions similar to the conditions of the resident  
31 being certified pursuant to section 7904-A.

32 7. Psychologist. "Psychologist" means any per-  
33 son who is licensed in this State as a psychologist  
34 or psychological examiner and who has had specialized  
35 training or at least one year of experience in pro-  
36 viding services to persons with conditions similar to  
37 the conditions of the resident being certified pursu-  
38 ant to section 7904-A.

39 8. Resident. "Resident" means any aged, blind,  
40 mentally ill, mentally retarded or other person 18  
41 years of age or older who is not related by blood or

1 marriage to the owner or person in charge of the  
2 boarding care facility in which the resident lives.

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

5       1. Rules promulgated. The commissioner shall  
6 promulgate rules for boarding care facilities, which  
7 shall include but need not be limited to rules per-  
8 taining to administration, staffing, the number of  
9 residents, the quality of care, the quality of treat-  
10 ment, if applicable, the health and safety of staff  
11 and residents, the rights of residents, community re-  
12 lations, the administration of medication and licens-  
13 ing procedures. There shall be separate rules  
14 promulgated for boarding homes and foster homes.

15 In establishing the rules for the administration of  
16 medication, the commissioner shall consider, among  
17 other factors, the general health of the persons  
18 likely to receive medication, the number of persons  
19 served by the facility and the number of persons em-  
20 ployed by the facility. In the rules for the adminis-  
21 tration of medication established for boarding ~~care~~  
22 ~~facilities with 15 or more residents~~ homes, the De-  
23 partment of Human Services shall require unlicensed  
24 personnel to have successfully completed a program of  
25 training and instruction approved by the department  
26 for the administration of medication which is not  
27 limited to in-service training.

28       Sec. 8. 22 MRSA §7903, as enacted by PL 1975, c.  
29 719, §6, is amended to read:

30 §7903. Fees for licenses

31       The department shall charge an annual fee of \$25  
32 ~~for regular licenses~~ for boarding ~~care facilities~~  
33 homes having a capacity of 6 or less residents and  
34 \$50 ~~for regular licenses~~ for boarding ~~care facilities~~  
35 homes having a capacity of more than 6 residents.

36       In addition, the department shall charge a fee of  
37 \$25 ~~for temporary or conditional licenses~~ for board-  
38 ~~ing care facilities~~ having a capacity of 6 or less  
39 residents and \$50 ~~for such licenses~~ for boarding ~~care~~  
40 ~~facilities~~ having a capacity of more than 6 resi-  
41 ~~dents.~~

1        There shall be no license fee for adult foster  
2 homes.

3        Sec. 9. 22 MRSA §7904, as amended by PL 1981, c.  
4 196, §§2 and 3, is repealed.

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

6 §7904-A. Fire safety inspection

7        1. Inspection required. No license may be is-  
8 sued by the department to a boarding care facility  
9 until the department has received from the State Fire  
10 Marshal a written statement signed by one of the of-  
11 officials designated under Title 25, section 2360, 2391  
12 or 2392, to make fire safety inspections. This  
13 statement, which shall indicate that the boarding  
14 care facility has complied with applicable fire safe-  
15 ty provisions referred to in Title 25, section 2452,  
16 shall be furnished annually by the State Fire Marshal  
17 to the department.

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

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

28        A. Any building of 2 or more stories shall be  
29 equipped with an approved automatic sprinkler  
30 system, unless the building is of fire resistive  
31 or protected noncombustible construction as de-  
32 finied in the current edition of the National Fire  
33 Protection Association's Standard Types of Build-  
34 ing Construction.

35        4. Requirements for facilities with more than 6  
36 but fewer than 17 beds. Any boarding care facility  
37 which has a capacity of more than 6 but fewer than 17  
38 beds shall comply with the Life Safety Code, chapter  
39 21, the residential board and care occupancies sec-

1 tion for small facilities, adopted by the State Fire  
2 Marshal. In addition, the following requirements  
3 must be met.

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

11 B. Automatic emergency lights shall be provided  
12 in such number and location as required by the  
13 State Fire Marshal.

14 5. Requirements for boarding homes with 6 or  
15 fewer beds. The department may permit any boarding  
16 home having 6 or fewer ambulatory residents to comply  
17 with the one-family and 2-family dwelling require-  
18 ments of the Life Safety Code adopted by the State  
19 Fire Marshall provided the residents are certified  
20 annually by a physician or a psychologist as ambula-  
21 tory and capable of following directions and taking  
22 appropriate action for self-preservation under emer-  
23 gency conditions.

24 6. Adult foster homes with one to 4 ambulatory  
25 residents. Adult foster homes having one to 4 ambu-  
26 latory residents shall comply with the one-family and  
27 2-family dwelling requirements of the Life Safety  
28 Code adopted by the State Fire Marshal.

29 7. Local regulations. Any local regulations  
30 which affect the life-safety requirements of any  
31 boarding care facility and which are more stringent  
32 than those referred to in this section shall take  
33 precedence.

34 Sec. 11. 22 MRSA §7905, sub-§1, as enacted by PL  
35 1975, c. 719, §6, is amended to read:

36 1. Permission to manage personal funds. No oper-  
37 ator or agent of any boarding care facility shall  
38 manage, hold or deposit in a financial institution  
39 the personal funds of any resident of the facility,  
40 unless the operator or agent has received written  
41 permission therefor from:



1 A. The resident, if the resident is not mentally  
2 retarded and has no guardian, trustee or conser-  
3 vator;

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

6 C. The department, if a guardian, trustee or  
7 conservator exists, but cannot be reached, or, in  
8 the case of a mentally retarded resident, if such  
9 resident has no guardian, trustee or conservator.

10 Whenever the department gives written permission to  
11 an operator or agent to manage, hold or deposit the  
12 personal funds of any mentally retarded residents,  
13 the department may request the Bureau of Mental Re-  
14 tardation, Department of Mental Health and  
15 ~~Corrections~~ Mental Retardation, to develop, insofar  
16 as resources are available, an appropriate plan for  
17 the management of these funds.

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

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

21 §7906-A. Reimbursements to small boarding homes for  
22 mentally retarded persons

23 No rule of the department may be adopted or en-  
24 forced which would have the effect of denying, solely  
25 by reason of size, to any boarding home which was li-  
26 censed prior to the effective date of this section  
27 and has a capacity of 6 or less residents and serves  
28 only mentally retarded persons or persons with relat-  
29 ed conditions, the opportunity to receive from the  
30 department reimbursements based on the reasonable  
31 costs of operating the facility. In no case may the  
32 maximum allowable costs be less than the ceilings set  
33 for boarding homes with a capacity of more than 6.

34 Sec. 14. 22 MRSA §7908, as enacted by PL 1979,  
35 c. 725, §2, is repealed.

36 Sec. 15. 22 MRSA §§7911 to 7913 are enacted to  
37 read:

1 §7911. Nonambulatory and mobile nonambulatory resi-  
2 dents; temporarily disabled

3 Residents of boarding care facilities who become  
4 nonambulatory or mobile nonambulatory may remain in  
5 the facility provided that:

6 1. Reason for condition is temporary. The reason  
7 for their nonambulatory or mobile nonambulatory con-  
8 dition is temporary, such as in the case of short-  
9 term illness; and

10 2. Physician approved. Their attending physi-  
11 cians have approved the appropriateness of the resi-  
12 dents' continued stay in the boarding care facility.

13 §7912. Nonambulatory and mobile nonambulatory resi-  
14 dents; permanently disabled

15 Except as provided in section 7911, a boarding  
16 care facility may not accept residents who are  
17 nonambulatory or mobile nonambulatory except as fol-  
18 lows:

19 1. General requirements. The Department of Hu-  
20 man Services may permit mobile nonambulatory resi-  
21 dents to reside in a boarding care facility which has  
22 8 or fewer beds if the following conditions are met.

23 A. The facility conforms to the residential  
24 board and care occupancy section for small facil-  
25 ities of the Life Safety Code, chapter 21, as  
26 adopted by the State Fire Marshal.

27 B. No more than 2 of the beds in the facility  
28 may be for mobile nonambulatory residents.

29 C. All mobile nonambulatory residents shall be  
30 housed on the first floor of the facility with  
31 direct egress to a common corridor with 2 exits  
32 leading directly to the exterior of the facility.

33 D. Facilities of 7 and 8 beds shall be ramped to  
34 grade at both exits referred to in paragraph B.  
35 Facilities of 6 or fewer beds shall be ramped to  
36 grade at one exit.

1 E. There shall be at least one staff person  
2 available on the premises of the facility when  
3 any resident is present.

4 F. If a facility of 7 or 8 beds is of new con-  
5 struction, any doorway in the path of egress for  
6 a mobile nonambulatory resident shall be at least  
7 36 inches in width. If the facility is of exist-  
8 ing construction, any doorway in the path of  
9 egress for a mobile nonambulatory resident shall  
10 be at least 34 inches in width.

11 G. If a facility of 7 or 8 beds has mobile  
12 nonambulatory residents who are mentally ill or  
13 mentally retarded or who have related conditions,  
14 the facility shall be certified by the Department  
15 of Mental Health and Mental Retardation as being  
16 able to ensure the safety of and provide services  
17 to such residents. If the facility has mobile  
18 nonambulatory residents who are elderly, physi-  
19 cally disabled or adult protective services' cli-  
20 ents, or have conditions not related to mental  
21 illness or mental retardation, the facility shall  
22 be certified by the Department of Human Services  
23 as being able to ensure the safety of and provide  
24 services to such residents.

25 2. Home and community based waiver program.  
26 Boarding care facilities which provide residential  
27 habilitation services through the Home and Community  
28 Based Waiver Program for persons who are mentally re-  
29 tarded may admit residents who are nonambulatory or  
30 mobile nonambulatory, if:

31 A. The structure meets all of the requirements  
32 of the fire code for institutional occupancy; and

33 B. A physician certifies that the nonambulatory  
34 resident does not require nursing care. This  
35 certification is required at least annually.

36 §7913. Conflict of intent prohibited

37 No physician or psychologist who certifies or  
38 recertifies a resident may be in the regular employ  
39 of or may have a financial interest in the boarding  
40 care facility in which the resident resides.

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

3           2. Facility. "Facility" means any boarding ~~care~~  
4 ~~facility~~ home subject to licensure pursuant to chap-  
5 ters 1663 and 1665 and any skilled nursing or inter-  
6 mediate care facility or unit subject to licensure  
7 pursuant to chapter 405.

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

10           §2452. Exits

11           The Commissioner of Public Safety shall adopt and  
12 may amend, after notice and public hearing, reason-  
13 able rules ~~and regulations~~ governing the safety to  
14 life from fire in all buildings or other structures  
15 within his jurisdiction. ~~Such regulations~~ These  
16 rules shall not apply to ~~boarding or lodging homes~~  
17 ~~having 6 or less boarders or lodgers~~ or to nursing  
18 homes having 3 or less patients. Automatic sprinkler  
19 systems shall not be required in ~~boarding homes hav-~~  
20 ~~ing 6 or less boarders or lodgers~~ and existing non-  
21 commercial places of assembly. Noncommercial places  
22 of assembly shall include those facilities used for  
23 such purposes as deliberation, worship, entertain-  
24 ment, amusement or awaiting transportation which have  
25 a capacity of 100 to 300 persons.

26           1. Effective date. The regulations, and amend-  
27 ments thereto, become effective when reviewed for  
28 form and legality by the Office of the Attorney Gen-  
29 eral and a certified copy of them has been approved  
30 in writing by the Commissioner of Public Safety and  
31 filed with the Secretary of State.

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

37           3. Violation. Any person who violates a regula-  
38 tion issued by the commissioner under this section  
39 shall be punished by a fine of not more than \$100 or  
40 by imprisonment for not more than 90 days, or by  
41 both.

1 Existing ~~boarding homes or other existing~~ build-  
2 ings licensed pursuant to Title 22, subtitle 6, hav-  
3 ing more than 6 boarders, with the exception of  
4 boarding care facilities, shall comply with any rules  
5 and regulations for residential-custodial care facil-  
6 ities required by the State Fire Marshal's Office,  
7 except that such existing facilities of not more than  
8 2 stories in height shall not be required to be fire  
9 resistive, protected or unprotected noncombustible,  
10 protected wood frame or heavy timber construction.  
11 Such existing facilities must be protected by a com-  
12 plete approved automatic sprinkler system and meet  
13 all other requirements of residential-custodial care  
14 facilities as required by the State Fire Marshal's  
15 Office.

16 Existing boarding care facilities licensed pursu-  
17 ant to Title 22, subtitle 6, shall comply with the  
18 applicable fire safety requirements of the Life Safe-  
19 ty Code adopted by the State Fire Marshal pursuant to  
20 Title 22, section 7904-A.

21 STATEMENT OF FACT

22 This new draft amends the boarding care facili-  
23 ties' laws to accomplish the following.

24 1. It introduces the term "boarding care facili-  
25 ty" to include a boarding home, which has 5 or more  
26 residents, and an adult foster home, which has 4 or  
27 less residents. The minimum size of a boarding home  
28 is amended from 3 residents to 5 residents.

29 2. Section 1 amends the law to prohibit owners,  
30 operators and employees from becoming guardians for  
31 residents in boarding care facilities unless they are  
32 relatives. Prior law was worded to prohibit the fa-  
33 cility from acting as guardian, but not the person-  
34 nel. The original bill would have allowed these per-  
35 sonnel to act as guardians with court approval.

36 3. Section 2 prohibits employees of boarding  
37 care facilities from becoming conservators of the es-  
38 tates of residents.

1           4. Section 3 defines more clearly the source of  
2 funds for state assisted residents to pay boarding  
3 care facilities.

4           5. Section 4 changes the terminology in the li-  
5 censing law to be consistent with this bill and  
6 clearly defines when a license is required for an  
7 adult foster home. It also allows those facilities  
8 with 3 or 4 residents, currently classified as board-  
9 ing homes and who will be reclassified as adult foster  
10 homes under the amended resident requirements, to  
11 retain their classification as boarding homes even  
12 though the number of residents there would have re-  
13 quired reclassification.

14           6. Sections 5 and 6 repeal and replace the cur-  
15 rent definition section of the law. it establishes  
16 the definition of boarding care facility and amends  
17 the resident requirement which distinguishes boarding  
18 homes from adult foster homes as previously men-  
19 tioned. In addition, some technical changes have  
20 been made and several substantive provisions of cur-  
21 rent law have been removed from the definition and  
22 placed in a new section.

23           7. Section 7 requires certification of personnel  
24 who administer medications in any size boarding home.  
25 Prior law only required certification in homes with  
26 15 or more residents.

27           8. Section 8 changes the terminology to be con-  
28 sistent with the new definitions.

29           9. Sections 9 and 10 amend the fire safety re-  
30 quirements for boarding care facilities to reflect  
31 changes in the Life Safety Code adopted by the State  
32 Fire Marshal.

33           10. Sections 11, 12, 13, 15 and 16 amend current  
34 language to conform to the changes in this bill.

35           11. Section 15 enacts 3 new sections of law to  
36 reallocate the substantive sections of the defini-  
37 tions which were deleted in section 6. In addition  
38 to reallocating current law, this section also in-  
39 cludes 2 new provisions. One would allow a resident  
40 who becomes temporarily nonambulatory or mobile

1 nonambulatory to remain in the boarding care facility  
2 as long as the person's attending physician found it  
3 appropriate as in the Maine Revised Statutes, Title  
4 22, section 7911. The 2nd addition is for the Home  
5 and Community Based Waiver Program and allows excep-  
6 tions to the prohibition on mobile nonambulatory and  
7 nonambulatory residents in boarding care facilities  
8 provided the building meets certain fire standards  
9 and a physician certifies that nursing care is not  
10 necessary. The remainder of the provisions in these  
11 3 new sections is merely a reallocation of existing  
12 law.

13 12. Section 17 deletes the fire safety rule for  
14 boarding homes in the Maine Revised Statutes, Title  
15 22.

16

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