

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 402

S.P. 148

In Senate, February 19, 1987

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

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator DOW of Kennebec.

Cosponsored by Representative PINES of Limestone,
Representative CARROLL of Gray, Senator GILL of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Require an Independent
Determination of the Fitness of an
Applicant to Provide Long-term
Care Services.

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6 Be it enacted by the People of the State of Maine as
7 follows:

8 Sec. 1. 22 MRSA §307, sub-§2-B, ¶B, as enacted
9 by PL 1981, c. 705, Pt. V, §25, is amended to read:

10 B. Findings, recommendations, reports, analyses,
11 summaries developed in accordance with section
12 309, subsection 7 and related documents prepared
13 by the staff of the agency shall be in final form
14 and be made available to the committee and the
15 affected persons parties at least 5 business days
16 prior to its hearings. The department shall make

1 its preliminary staff report available to the
2 committee and affected persons parties at least 5
3 business days prior to a public hearing conducted
4 by the committee.

5 Sec. 2. 22 MRSA §309, sub-§7 is enacted to read:

6 7. Intermediate care facilities, skilled nursing
7 facilities and home health providers. In making a
8 determination pursuant to subsection 1, the depart-
9 ment shall review the licensing history of all appli-
10 cants applying to operate skilled nursing facilities,
11 intermediate care facilities and to provide home
12 health care services. The department shall include
13 in its analysis of the application the following ma-
14 terials:

15 A. A summary of documents held by the Department
16 of Human Services reflecting the findings of the
17 3 most recent annual surveys conducted at any
18 long-term care facility in which the applicant
19 had or has an interest, including:

20 (1) A list of all deficiencies cited, and
21 the plans of correction submitted;

22 (2) Documentation that the correction has
23 been completed; and

24 (3) All repeat deficiencies or areas in
25 which the applicant has not complied or had
26 difficulty in complying with federal or
27 state rules shall be prominently identified;

28 B. A summary of all complaints received by the
29 department relating to each facility reflecting
30 the nature of the complaint, the licensing or
31 certification rules related to the complaints and
32 the disposition of the complaints. This informa-
33 tion shall be presented in a manner which will
34 preserve the confidentiality of the complainant;
35 and

36 C. A summary of all adverse licensing action and
37 all civil or criminal actions taken by the de-
38 partment against the applicant.

1 If the applicant has an interest in long-term care
2 facilities outside of the State, the applicant shall
3 provide to the department a copy of the statement of
4 deficiencies generated by recent state surveys for
5 each facility which the applicant operates. The de-
6 partment shall make an unconditional finding as to
7 the fitness of the applicant.

8 STATEMENT OF FACT

9 The certificate of need review process provides
10 that a certificate shall be issued whenever 4 specific
11 determinations have been made. The first among
12 the determinations is that the "applicant is fit,
13 willing and able to provide the proposed services at
14 the proper standard of care." The remaining determi-
15 nations relate to fiscal feasibility, public need for
16 services and consistency with state planning goals.

17 Under current procedures, a disproportionate
18 share of resources has been devoted to the fiscal and
19 state planning concerns. Little attention has been
20 paid to a review of the applicant's track record in
21 complying with licensing and certification require-
22 ments in facilities which the applicant currently op-
23 erates. In fact, the certificate of need rules cur-
24 rently include no standard process for reaching an
25 independent determination as to fitness.

26 The proposed legislation will require that, in
27 the instance of an application by the owner of one or
28 more facilities, the certificate of need review in-
29 clude the licensing history of facilities currently
30 operated by the applicant. This review will include
31 the annual survey reports, complaint records and
32 records of adverse licensing actions taken by the de-
33 partment against the operator. In the event that the
34 Department of Human Services has taken action against
35 the applicant in civil or criminal court, the action
36 would also be included in the certificate of need re-
37 view.

38 In addition, the proposed legislation will effect
39 the current Department of Human Services practice of
40 granting conditional certificate of need approval.

1 There is little justification for granting approval
2 to an operator whose record in providing care to
3 frail older people is marginal. The bill specifically
4 provides that, in so far as the single issue of
5 fitness is concerned, certificate of need approval
6 must be unconditional.

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