

MAINE STATE LEGISLATURE

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L.D. 1462
(Filing No. S-478)

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STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT " A " to S.P. 485, L.D. 1462,
Bill, "AN ACT to Enhance the Quality of Care in
Long-term Care Facilities through Consultation,
Education and Intermediate Sanctions."

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Amend the bill by striking out all of the title
and inserting in its place the following:

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'AN ACT to Improve the Quality of Care in Long-Term
Care Facilities by Establishing Intermediate Sanctions
and Incentives for High Quality Care.'

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Further amend the bill by striking out everything
after the enacting clause and inserting in its place
the following:

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'Sec. 1. 22 MRSA §47, as amended by PL 1973, c.
521, §3, is further amended to read:

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§47. Penalties and jurisdiction; certificate of
commissioner as evidence

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Whoever hinders, obstructs or interferes with any
officer, inspector or duly authorized agent of the
department while in the performance of his duties
shall be punished by a fine of not less than \$5 nor
more than \$50, or by imprisonment for not less than 10
days nor more than 30 days. Any person who violates
any order, rule or regulation of the department made

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1 for the protection of life or health under law shall
2 be punished by a fine of not less than \$20 nor more
3 than \$200, for each offense unless otherwise provided
4 in section 42 this Title. Whoever violates any
5 provision of this Title or willfully fails, neglects
6 or refuses to perform any of the duties imposed upon
7 him by this Title shall be punished by a fine of not
8 more than \$500 or by imprisonment for not more than 6
9 months, unless specific penalties are elsewhere
10 provided for. Any certificate of the commissioner in
11 regard to the records of the department shall be
12 admissible in evidence in all prosecutions under this
13 Title.

14 Sec. 2. 22 MRSA §1821, as amended by PL 1967,
15 c. 231, §6, is repealed.

16 Sec. 3. 22 MRSA §7702, as amended by PL 1987,
17 c. 389, §1, is further amended to read:

18 §7702. Violation; penalty

19 Whoever violates any provision of this subtitle,
20 except section 7801, subsection 1, paragraph A, shall
21 be punished by a fine of not more than \$500 or by
22 imprisonment for not more than 11 months, or by both,
23 except that anyone violating sections 7703, 8305 and
24 8603 shall be punished only by a fine of not more than
25 \$500.

26 Sec. 4. 22 MRSA c. 1666-B is enacted to read:

27 CHAPTER 1666-B

28 INTERMEDIATE SANCTIONS AND INCENTIVES FOR IMPROVING
29 THE QUALITY OF CARE IN LONG-TERM CARE FACILITIES

30 §7941. Policy

31 It is the purpose of this chapter to authorize the
32 Department of Human Services to impose intermediate
33 sanctions in order to improve the quality of care in
34 long-term care facilities and to establish programs to
35 reward long-term care facilities that provide the
36 highest quality care. These intermediate sanctions
37 will also provide an alternative to taking action to

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1 close facilities, which may cause great distress to
2 the residents of those facilities.

3 \$7942. Definitions

4 As used in this chapter, unless the context
5 indicates otherwise, the following terms have the
6 following meanings.

7 1. Department. "Department" means the Department
8 of Human Services.

9 2. Directed plan of correction. "Directed plan
10 of correction" means a plan of correction issued by
11 the department which directs a long-term care facility
12 how to correct a deficiency or deficiencies of state
13 licensing rules and when the correction must be made.

14 3. Long-term care facility. "Long-term care
15 facility" means any boarding care facility subject to
16 licensure pursuant to chapters 1663 and 1665, and any
17 skilled nursing or intermediate care facility or unit
18 subject to licensure pursuant to chapter 405, with the
19 exception of adult foster homes.

20 4. Person. "Person" means any natural person,
21 partnership, association or corporation or other
22 entity, including any county, local or governmental
23 unit.

24 5. Plan of correction. "Plan of correction"
25 means a document executed by a long-term care facility
26 in response to a statement of deficiencies issued by
27 the department. A plan of correction shall describe
28 with specificity how and when deficiencies of state
29 licensing rules will be corrected.

30 6. Resident. "Resident" means any person who
31 lives in and receives services or care in a long-term
32 care facility.

33 7. State licensing rules. "State licensing
34 rules" refers to the department's rules governing the
35 licensing and functioning of skilled nursing and
36 intermediate care facilities, intermediate care
37 facilities for the mentally retarded and boarding care
38 facilities.

1 8. Statement of deficiencies. "Statement of
2 deficiencies" means a document issued by the
3 department which describes a long-term care facility's
4 deficiencies in complying with state licensing rules.

5 §7943. Violations

6 1. License required. It shall be a violation of
7 this chapter for any person to manage or operate any
8 long-term care facility as defined in this chapter or
9 adult foster home as defined in section 7901-A without
10 first obtaining a license therefor.

11 2. Interference or false information. It shall
12 be a violation of this chapter for any person to
13 impede or interfere with the enforcement of laws or
14 rules governing the licensing of long-term care
15 facilities, or for any person to give any false
16 information in connection with the enforcement of laws
17 or rules.

18 3. Correction of deficiencies. It shall be a
19 violation of this chapter to:

20 A. Fail to submit a plan of correction within 10
21 working days after receipt of a statement of
22 deficiencies; and

23 B. Fail to take timely corrective action in
24 accordance with a plan of correction or a directed
25 plan of correction. Each failure to correct any
26 deficiency may be considered a separate violation
27 of this section.

28 4. Protection of residents. Notwithstanding
29 subsection 3, the following conduct is deemed to be a
30 violation of this chapter without regard to whether a
31 plan of correction or directed plan of correction is
32 followed by a facility:

33 A. Failure to comply with state licensing laws or
34 rules when this failure poses an immediate threat
35 of death or substantial probability of serious
36 mental or physical harm to a resident. Each
37 failure to comply with any law or rule may be

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1 considered a separate violation of this section;
2 and

3 B. The occurrence of a repeated deficiency that
4 poses a substantial risk to residents' health or
5 safety or infringes upon residents' rights. For
6 purposes of this section, a repeated deficiency is
7 one that is found to exist in a long-term care
8 facility during a current survey or investigation
9 that has also been cited in a statement of
10 deficiencies of that facility within the past 2
11 years. Each repeated deficiency may be considered
12 a separate violation of this section.

13 5. Compliance with federal requirements. It
14 shall be a violation of this chapter for any long-term
15 care facility subject to the provisions of United
16 States Code, Title 42, Section 1919 to fail to comply
17 with the requirements of Section 1919, Subsections
18 (b), (c) or (d). Each failure to comply with a
19 requirement of United States Code, Title 42, Section
20 1919, Subsections (b), (c) or (d) may be considered a
21 separate violation of this section.

22 §7944. Intermediate sanctions

23 1. Authorization. The department is authorized
24 to impose one or more of the following sanctions when
25 a violation of this chapter occurs and the department
26 determines that a sanction is necessary and
27 appropriate to ensure compliance with state licensing
28 rules or to protect the residents of long-term care
29 facilities or the general public.

30 A. The long-term care facility may be directed to
31 stop all new admissions regardless of payment
32 source or to admit only those residents the
33 department approves until such time as it is
34 determined that corrective action has been taken.

35 B. The department may direct a long-term care
36 facility to correct any deficiencies in a manner
37 and within a time frame that the department
38 determines is appropriate to ensure compliance
39 with state licensing rules or to protect the
40 residents of the long-term care facility.

1 C. The department may impose a penalty upon a
2 long-term care facility. In no event may any
3 penalty or combination of penalties imposed on a
4 facility be greater than a sum equal to \$5 times
5 the total number of residents residing in the
6 facility per violation, up to a maximum of \$5,000
7 for each instance in which the department issues a
8 statement of deficiency to a skilled nursing or
9 intermediate care facility; or \$3 times the total
10 number of residents residing in the facility per
11 violation, up to a maximum of \$3,000 in each
12 instance in which the department issues a
13 statement of deficiency to any boarding care
14 facility.

15 2. Schedule of penalties. The department shall
16 establish a schedule of penalties according to the
17 nature of the violation. In establishing the
18 schedule, the department shall consider, among other
19 factors, the immediacy and probability of physical or
20 mental harm to residents caused by a particular type
21 of violation and whether the facility in question has
22 repeated deficiencies or a substantial number of
23 deficiencies.

24 3. Reimbursement. Nothing in this chapter may
25 limit the authority of the department to adjust the
26 reimbursement due facilities for residents as stated
27 in the departmental regulations governing
28 reimbursement.

29 §7945. Incentives for high quality care

30 By January 1, 1989, the department shall establish
31 programs to reward long-term care facilities that
32 provide the highest quality care to residents,
33 including, but not limited to, programs of public
34 recognition.

35 §7946. Enforcement and appeal

36 1. Procedure. The department may impose any
37 sanction in conformity with the Maine Administrative
38 Procedure Act, Title 5, chapter 375, subchapter IV,
39 providing the long-term care facility the opportunity

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1 for an administrative hearing, or file a complaint
2 with the Superior Court requesting the imposition of
3 any sanction authorized by this chapter.

4 2. Collection of penalties; interest. Long-term
5 care facilities that are fined pursuant to this
6 chapter are required to pay the department the amount
7 of the penalties. Penalties may be collected by the
8 department by the offset of any reimbursement due the
9 facility, or by any other method authorized by law.
10 An appeal of the department's decision to penalize a
11 long-term care facility shall stay the collection of
12 any penalties. Interest will accrue on penalties that
13 remain unpaid after any appeal period has passed at
14 the rate described in Title 14, section 1602-A,
15 subject to subsection 3.

16 3. Reduction or delay of penalties. The
17 department may reduce the amount or delay the payment
18 of a penalty when a facility is able to show that
19 payment of the total amount due would result in
20 inadequate funds to provide necessary services to
21 residents. In making this determination, the
22 department may consider, among other factors, the
23 amount of any savings as calculated pursuant to the
24 principles of reimbursement, overall profits or cash
25 reserves and any extraordinary expenses experienced by
26 the facility, as well as the necessity of providing an
27 incentive to correct violations of this chapter.

28 4. Income from penalties. Any income from
29 penalties shall be placed in a special revenue account
30 and be used if needed and available when a receiver is
31 appointed pursuant to section 7933, or for other costs
32 associated with the protection of health or property
33 of residents of long-term care facilities which are
34 fined or sanctioned pursuant to this chapter.

35 5. No limitation on right of action. Nothing in
36 this chapter may limit the right of a resident to
37 bring an action arising out of events which constitute
38 a violation of this chapter.

39 §7947. Rules

40 The department shall adopt rules for intermediate
41 sanctions in conformity with the Maine Administrative
42 Procedure Act, Title 5, chapter 375, subchapter II.

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FISCAL NOTE

This bill authorizes the Department of Human Services to impose financial penalties on long-term care facilities to be used if needed to cover costs associated with the protection of property of residents in facilities which are fined. The fines would be deposited in a special revenue account. The amount of the projected fines cannot be estimated at this time. The cost of incentive programs would be absorbed within existing resources.'

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STATEMENT OF FACT

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At the present time, the only intermediate mechanism the department has for addressing ongoing violations of licensing regulations is to issue a conditional or temporary license, which is not always an effective tool to bring about change. In fact, conditional or temporary licenses only delay determinations regarding license revocations, making such revocations the only real sanction available to the department. The unavailability of other appropriate placements or services and the potential harm to residents caused by transfer makes the imposition of the stronger sanction of license revocation impracticable and thus not an adequate deterrent against the provision of poor quality care. Intermediate sanctions would provide realistic incentives to comply with regulations. The income from such fines would be placed in a special revenue account to be used if needed and available when a receiver is appointed under authority of the Maine Revised Statutes, Title 22, chapter 1666-A, or for other costs which are associated with the protection of health and property of residents of long-term care facilities which are fined or sanctioned pursuant to this chapter. In addition to authorizing intermediate sanctions, this amendment also includes authorization for the development of incentive programs that would reward long-term care facilities that provide the highest quality care to their residents.

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