

MAINE STATE LEGISLATURE

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R. O. S.

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L.D. 1462

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(Filing No. S -479)

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STATE OF MAINE

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SENATE

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113TH LEGISLATURE

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SECOND REGULAR SESSION

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

11 Amend the Bill by striking out all of the title
12 and inserting in its place the following:

13 'AN ACT Concerning Long-Term Care Facilities and the
14 Means by Which a High Level of Quality of Care Can be
15 Maintained.'

16 Further amend the Bill by striking out everything
17 after the enacting clause and inserting in its place
18 the following:

19 'Sec. 1. 22 MRSA §47, as amended by PL 1973, c.
20 521, §3, is further amended to read:

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

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

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

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14 c. 231, §6, is repealed.

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

17 §7702. Violation; penalty

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

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

26 CHAPTER 1666-B
27 INTERMEDIATE SANCTIONS AND INCENTIVES FOR
28 IMPROVING THE QUALITY OF CARE IN
29 LONG-TERM CARE FACILITIES

30 §7941. Policy and definitions

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

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1 will also provide an alternative to taking action to
2 close facilities which may cause great distress to the
3 residents of those facilities.

4 §7942. Definitions

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

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

10 2. Directed plan of correction. "Directed plan
11 of correction" means a plan of correction issued by
12 the department which directs a long-term care facility
13 to correct any deficiency in its compliance with state
14 licensing rules and describing how and when the
15 correction must be made.

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

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

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

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

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

1 facilities for the mentally retarded and boarding care
2 facilities.

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

7 §7943. Violations

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

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

20 3. Correction of deficiencies. It shall be a
21 violation of this chapter to:

22 A. Fail to submit a plan of correction within 10
23 working days after receipt of a statement of
24 deficiencies; or

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

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

35 A. Failure to comply with state licensing laws or
36 rules where such a failure poses an immediate
37 threat of death or substantial probability of
38 serious mental or physical harm to a resident.

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1 Each failure to comply with any law or rule may be
2 considered a separate violation of this section; or

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 subsection, a repeated deficiency
7 is one that the department finds to exist in a
8 long-term care facility during a current survey or
9 investigation that has also been cited in a
10 statement of deficiencies of that facility within
11 the past 2 years. Each repeated deficiency may be
12 considered a separate violation of this section.

13 5. Appeal. Any licensee aggrieved by a decision
14 of the department may seek review under the Maine
15 Administrative Procedure Act, Title 5, chapter 375,
16 subchapter VII.

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

25 §7944. Intermediate sanctions

26 1. Sanctions. The department is authorized to
27 impose one of the following sanctions in the order of
28 priority as listed when a violation of this chapter
29 occurs and the department determines that a sanction
30 is necessary and appropriate to ensure compliance with
31 state licensing rules or to protect the residents of
32 long-term care facilities or the general public:

33 A. The department may direct a long-term care
34 facility to correct any deficiencies in a manner
35 and within a time frame that the department
36 determines appropriate to ensure compliance with
37 state licensing rules or to protect the residents
38 of the long-term care facility. If the directed
39 plan involves an action which is affected by
40 market situations, either economic or labor, the
41 department shall assist the long-term care

1 facility in meeting its directed plan of
2 correction;

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

17 C. If there are sufficient beds in the region to
18 handle the additional burden the long-term care
19 facility may be directed to stop all new
20 admissions regardless of payment source or to
21 admit only those residents the department approves
22 until such time as it is determined that
23 corrective action has been taken.

24 2. Schedule of penalties. The department shall
25 establish a schedule of penalties according to the
26 nature of the violation. In establishing the
27 schedule, the department shall consider, among other
28 factors, the immediacy and probability of physical or
29 mental harm to residents caused by a particular type
30 of violation and whether the facility in question has
31 repeated deficiencies or a substantial number of
32 deficiencies. Nothing in this chapter may limit the
33 authority of the department to adjust the
34 reimbursement due facilities for residents as stated
35 in the departmental regulations governing
36 reimbursement.

37 §7945. Incentives for high-quality care

38 By January 1, 1989, the department shall establish
39 programs to reward long-term care facilities that
40 provide the highest quality care to residents,
41 including, but not limited to, programs of public
42 recognition.

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1 §7946. Enforcement and appeal

2 1. Procedure. The department may impose any
3 sanction in conformity with the Maine Administrative
4 Procedure Act, Title 5, chapter 375, or it may file a
5 complaint with the Superior Court requesting the
6 imposition of any sanction authorized by this chapter.

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

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

31 4. Use of penalty money. Money received by the
32 department in the form of penalties shall be placed in
33 a fund to be applied to the protection of the health
34 or property of residents of long-term care facilities
35 that the department finds deficient, including payment
36 for the cost of relocation of residents to other
37 facilities, maintenance of operation of a facility
38 pending correction of deficiencies or closure and
39 reimbursement of residents for personal funds lost.

40 A. In the event that there is a surplus of money
41 in the fund which is more than sufficient to be

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1 applied to the purposes set forth in this
2 subsection, as determined by the department, money
3 in this fund may be used for "recognition grants"
4 to be awarded to facilities that present programs
5 that lead to an enhancement of the quality of care
6 or the general well-being of the residents.

7 5. No limitation on right of action. Nothing in
8 this chapter limits the right of a resident to bring
9 an action arising out of events which constitute a
10 violation of this chapter.

11 §7947. Rules

12 The department shall adopt rules for intermediate
13 sanctions in conformity with the Maine Administrative
14 Procedure Act, Title 5, chapter 375, subchapter II.'

15 STATEMENT OF FACT

16 This amendment provides a procedure by which
17 violations of licensing regulations for long-term care
18 facilities are addressed. The procedure establishes
19 remedial action priorities. The department will first
20 apply a directed plan of correction. In this case,
21 the Department of Human Services directs the facility
22 to make the necessary corrections within a specified
23 period of time.

24 If the facility fails to make the corrections
25 required by the department, the department may impose
26 a penalty in the form of fines. A maximum fine of
27 \$5,000 may be imposed for each statement of deficiency
28 issued to a skilled nursing or intermediate care
29 facility. A maximum fine of \$3,000 may be imposed for
30 each statement of deficiency issued to a boarding
31 facility. The next action that can be pursued is a
32 prohibition against new admissions to a facility in
33 violation of licensing rules.

34 By January 1, 1989, the department shall establish
35 programs to reward long-term care facilities that
36 provide the highest quality care to residents.

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