

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1462

S.P. 485

In Senate, May 8, 1987

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

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator LUDWIG of Aroostook.

Cosponsored by Representative BOTT of Orono, Senator
BERUBE of Androscoggin, Representative REED of Falmouth.

STATE OF MAINE

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

**AN ACT to Enhance the Quality of Care in
Long-term Care Facilities through
Consultation, Education and
Intermediate Sanctions.**

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

Sec. 1. 22 MRSA §1821, as amended by PL 1967, c.
231, §6, is repealed.

Sec. 2. 22 MRSA c. 1666-B is enacted to read:

CHAPTER 1666-B

INTERMEDIATE SANCTIONS FOR VIOLATIONS OF

STATE LICENSING REGULATIONS

1 §7941. Policy

2 It is the purpose of this chapter to authorize
3 the Department of Human Services to promulgate rules
4 for intermediate sanctions upon long-term care facili-
5 ties for violations of state licensing rules. This
6 authority is in addition to other remedies available
7 by law and will act as an alternative to taking ac-
8 tion to suspend, revoke or deny a license or applica-
9 tion for relicensure in the facilities.

10 §7942. Definitions

11 As used in this chapter, unless the context indi-
12 cates otherwise, the following terms have the follow-
13 ing meanings.

14 1. Department. "Department" means the Depart-
15 ment of Human Services.

16 2. Long-term care facility. "Long-term care fa-
17 ility" means any boarding care facility licensed
18 pursuant to chapters 1663 and 1665, and any skilled
19 nursing or intermediate care facility or unit li-
20 censed pursuant to chapter 405.

21 3. Principles of reimbursement. "Principles of
22 reimbursement" means the rules developed pursuant to
23 section 42.

24 4. Resident. "Resident" means any person who
25 lives in and receives services or care in a long-term
26 care facility.

27 5. State licensing rules. "State licensing
28 rules" means the rules governing the licensing and
29 functioning of skilled nursing and intermediate care
30 facilities and the rules governing licensing and op-
31 eration of boarding care facilities.

32 §7943. Identification of violations

33 1. Notice of deficiencies. If, after inspection
34 of a long-term care facility, the department deter-
35 mines that the licensee does not comply with applica-
36 ble laws and rules, a written statement citing the
37 deficiencies shall be sent to the licensee who shall

1 respond with a plan of correction. For purposes of
2 this section, a violation is any deficiency which re-
3 remains uncorrected after the deadline in the
4 licensee's plan of correction, as submitted to and
5 approved by the department. Failure to comply with
6 an approved plan of correction constitutes a viola-
7 tion of this chapter.

8 2. License required. Any person, partnership,
9 association or corporation, including county, local
10 or governmental units, establishing, managing or op-
11 erating any long-term care facility as defined in
12 this chapter without first obtaining a license shall
13 be considered in violation of this chapter and shall
14 be subject to sanctions as provided in this chapter
15 or other remedies under the law.

16 3. Interference or false information. Any at-
17 tempt by an applicant for a license or an agent for
18 an applicant or by a licensee, or anyone acting in
19 behalf of a licensee, to impede or interfere with the
20 enforcement of laws or rules applicable to long-term
21 care facilities or the giving of false information
22 shall be considered a violation of this chapter.

23 §7944. Intermediate sanctions

24 The department shall develop rules to provide for
25 the following intermediate sanctions to be imposed
26 when violations of this chapter are identified by the
27 department and the sanctions are determined necessary
28 and appropriate to protect the residents of long-term
29 care facilities in this State.

30 1. Cessation of new admissions. The department
31 may direct a facility to stop all new admissions un-
32 til such time as it is determined that corrective ac-
33 tion has been taken and the department determines the
34 facility is no longer in violation.

35 2. Reduction of payment. The department may re-
36 duce the payment for care and services for Medicaid
37 or state assisted clients through provisions for fis-
38 cal sanctions adopted as amended rules of the princi-
39 ples of reimbursement.

1 3. Modification of license. The department may
2 modify or amend a facility's annual license during
3 the term of an annual license to impose conditions to
4 be met, and a temporary, conditional or provisional
5 license issued in accordance with section 1817 or
6 7802 may be replaced with a full license for the re-
7 mainder of a license year when it is found that the
8 violations have been corrected.

9 4. Schedule of fines. The department shall es-
10 tablish a schedule of fines by rule according to the
11 nature of the violation. The income from the fines
12 shall be placed in a special revenue account to be
13 used if needed and available when a receiver is ap-
14 pointed under authority of chapter 1666-A, for con-
15 sultation to improve the quality of care in long-term
16 care facilities or to conduct special workshops and
17 training programs for staff of long-term care facili-
18 ties.

19 5. Right to action. Residents or their respon-
20 sible parties shall be afforded the right to bring a
21 private action against a long-term care facility for
22 violations directly affecting their care or rights as
23 residents.

24 §7945. Rules

25 The department shall adopt rules for intermediate
26 sanctions in conformity with the Maine Administrative
27 Procedure Act, Title 5, chapter 375.

28 Sec. 3. Appropriation. The following funds are
29 appropriated from the General Fund to carry out the
30 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
31		
32	<u>HUMAN SERVICES, DEPART-</u>	
33	<u>MENT OF</u>	
34	Bureau of Medical Ser-	
35	vices	
36	Positions	(2)
37	Personal Services	\$44,874
38	All Other	3,600
		(2)
		\$59,586
		2,000

1			
2	Total	<u>\$48,474</u>	<u>\$61,586</u>
3	Provides funds for		
4	the state share of		
5	one Health Ser-		
6	vices Consultant		
7	(R.N.) and for one		
8	Assistant Attorney		
9	General to be ful-		
10	ly state funded to		
11	investigate and		
12	substantiate vio-		
13	lations, prepare		
14	recommendations		
15	for sanctions,		
16	conduct follow-up		
17	and to provide		
18	consultation and		
19	education to long-		
20	term care facility		
21	staff. The fiscal		
22	year costs are		
23	based on 9 months		
24	of anticipated op-		
25	eration.		

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STATEMENT OF FACT

2 The only resources the Department of Human Ser-
3 vices has for addressing ongoing violations of li-
4 censing regulations is to issue conditional licenses,
5 which have not consistently been an effective tool to
6 bring about change or to petition for receivership
7 under extreme circumstances. The threat of losing
8 the license if the conditions of the license are not
9 met is unrealistic because of the great distress and
10 the potential harm to residents and families. Inter-
11 mediate sanctions, such as stopping all admissions,
12 imposing fiscal sanctions and fines would provide real-
13 istic incentives to comply with regulations. The
14 income generated from fines would be placed in a spe-
15 cial revenue account to be used for consultation to
16 improve the quality of care in long-term care facili-
17 ties, to conduct special workshops and training pro-
18 grams for staff of long-term care facilities and if
19 needed when a receiver is initially appointed under
20 authority of the Maine Revised Statutes, Title 22,
21 chapter 1666-A.

22 Now, federal regulations prohibit state surveyors
23 from providing technical assistance and consultation
24 to nursing homes experiencing problems. This makes
25 surveying a policing function only. State-funded po-
26 sitions are needed to conduct provider consultation,
27 technical assistance and educational workshops for
28 long-term care facility staff and to substantiate vi-
29 olations, make recommendations for intermediate sanc-
30 tions and to follow up in facilities. None of these
31 activities qualify for federal match and therefore
32 one of the positions requested is to be totally state
33 funded. Federal funding for one position is availa-
34 ble for the substantiation of violations in
35 Medicaid-certified facilities in order to apply in-
36 termediate sanctions under this bill and federal reg-
37 ulations which became effective in November 1986.

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