

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1029

H.P. 746

House of Representatives, April 4, 1989

Submitted by the Department of Mental Health and Mental Retardation pursuant to Joint Rule 24.

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PINES of Limestone.

Cosponsored by Representative MERRILL of Dover-Foxcroft, Senator PERKINS of Hancock and Senator TITCOMB of Cumberland.

STATE OF MAINE

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

An Act to Transfer the Licensing Function from the Bureau of Mental Health to the Department of Mental Health and Mental Retardation.



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

3 Sec. 1. 34-B MRSA §1203-A is enacted to read:

5 §1203-A. Licenses

7 Licenses to operate, conduct or maintain an agency or
9 facility for the provision of mental health services as defined
11 in section 3601, or for the provision of treatment as defined in
13 chapter 6, subchapter II are governed as follows.

15 1. Full license. Full licenses are governed as follows.

17 A. The commissioner shall issue a full license to an
19 applicant agency or facility that has complied with:

21 (1) All applicable laws and rules; and

23 (2) All conditions imposed by the commissioner at the
25 time of issuance of a conditional license, refusal to
27 issue or renew a full license or revocation of a full
29 license.

31 B. A full license shall be issued for a specified period of
33 time appropriate to the type of agency or facility, but not
35 to exceed 2 years.

37 C. When a full licensee fails to comply with applicable
39 laws and rules, the commissioner may:

41 (1) File a complaint with the Administrative Court to
43 have the license revoked, in accordance with the Maine
45 Administrative Procedure Act, Title 5, chapter 375; or

47 (2) Modify the full license to a conditional license
49 in accordance with subsection 2.

51 2. Conditional license. Conditional licenses are governed
as follows.

A. The commissioner may issue a conditional license to an
agency or facility reapplying for a full license, if:

(1) The applicant fails to comply with applicable laws
and rules; and

(2) In the judgment of the commissioner, the best
interests of the public would be served by issuance of
a conditional license.

B. The commissioner may modify an existing full license to
a conditional license, after affording the full licensee an

1 opportunity for hearing in conformity with the Maine
3 Administrative Procedure Act, Title 5, chapter 375, if:

5 (1) The applicant fails to comply with applicable laws
7 and rules; and

9 (2) In the judgment of the commissioner, the best
11 interests of the public would be served.

13 C. A conditional license shall be issued for a specified
15 period of time, not to exceed one year, or the remaining
17 period of the previous full license, whichever the
19 commissioner determines appropriate based on the nature of
21 the violation of laws or rules.

23 D. A conditional license shall specify the conditions
25 imposed by the commissioner and shall specify when those
27 conditions shall be complied with during the term of the
29 conditional license.

31 E. During the period of the conditional license, the
33 licensee shall comply with all conditions imposed by the
35 commissioner.

37 F. If the conditional licensee fails to comply with
39 conditions imposed by the commissioner, the commissioner may
41 initiate proceedings to revoke, suspend or refuse to renew
43 the conditional license in accordance with the Maine
45 Administrative Procedure Act, Title 5, chapter 375.

47 3. Provisional license. Provisional licenses are governed
49 as follows.

51 A. The commissioner may issue a provisional license to an
agency or facility that:

(1) Has not been previously licensed for the type of
service for which application is made;

(2) Is temporarily unable to comply with all
applicable laws and rules; and

(3) Is in compliance with specific laws and rules
determined by the commissioner as essential for the
protection of the residents or clients of the agency or
facility.

B. To obtain a provisional license, an applicant must
demonstrate the ability to comply with all applicable laws
and rules by the end of the term of the provisional license.

1 C. A provisional license shall be issued for a specified
3 period of time, which is at least 3 months but no longer
 than 12 months, as determined appropriate by the
 commissioner.

5 4. Fees. The fee for all types of licenses is \$25, except
7 for those facilities defined in Title 22, section 8101,
9 subsection 4 and licensed in accordance with Title 22, section
 8104.

11 5. Monitoring for compliance. Regardless of the term of
13 the license, the commissioner shall monitor the licensee, at
 least once a year, for continued compliance with applicable laws
 and rules.

15 6. Appeals. Any person aggrieved by a final action of the
17 commissioner under this section may obtain judicial review in
19 accordance with the Maine Administrative Procedure Act, Title 5,
 chapter 375.

21 7. Prohibited acts. Prohibited acts under this section are
 governed as follows.

23 A. An agency is guilty of unlicensed operation of a mental
25 health service facility if it operates, conducts or
27 maintains such a facility, not otherwise licensed as a
 hospital or medical care facility, without a license from
 the commissioner.

29 B. Notwithstanding Title 17-A, sections 4-A and 1301,
31 unlicensed operation of a mental health service facility is
33 punishable by a fine of not more than \$500 or by
 imprisonment for not more than 60 days.

35 Sec. 2. 34-B MRSA §3606, as repealed and replaced by PL
 1983, c. 580, §9, is repealed.

39 STATEMENT OF FACT

41 In addition to agencies or programs funded by the Department
43 of Mental Health and Mental Retardation, Bureau of Mental Health,
 the department now licenses programs funded solely by the Bureau
45 of Children with Special Needs. Because licensing works closely
 with the funding bureau on policy matters, it is important that
47 licensing standards be applicable to the entire department. This
 bill relocates the licensing language from the Maine Revised
49 Statutes, Title 34-B, section 3606 within the laws relating to
 the Bureau of Mental Health to the section of the law dealing
 with the powers of the commissioner.