

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 595

S.P. 181

In Senate, February 23, 1993

An Act Regarding Licensing Regulations for Boarding Care Facilities.

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current licensing requirements for community services sometimes conflict with rules governing services to individuals with mental retardation; and

Whereas, service providers are sometimes caught between conflicting rules of 2 departments of State Government; and

Whereas, the Bureau of Mental Retardation is the acknowledged expert in the provision of services to persons with mental retardation; and

Whereas, there are no provisions for licensing rules specific to persons with mental retardation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §7801, sub-§1, as amended by PL 1987, c. 389, §§2 to 4, is further amended to read:

1. License required. Except as provided in subsection 3, no person, firm, corporation or association may operate any of the following without having, subject to this subtitle and to the rules promulgated adopted by the department under this subtitle, a written license therefor from the department:

A. A boarding care facility;

B. A drug treatment center;

C. A children's home;

D. A child placing agency;

E. A day care facility;

F. A nursery school; ~~or~~

G. An adult day care program; or

H. A community living arrangement for persons with mental retardation as defined in section 2901-A, subsection 9.

2
3 **Sec. 2. 22 MRSA §7801, sub-§6** is enacted to read:

4 6. Community living arrangements for persons with mental
5 retardation. Notwithstanding section 7901-A, a community living
6 arrangement for persons with mental retardation licensed as
7 either a boarding home or a foster home prior to the effective
8 date of this subsection may continue to be licensed as a boarding
9 home or a foster home provided it meets the requirements of that
10 license.

11 **Sec. 3. 22 MRSA §7901-A, sub-§3**, as enacted by PL 1985, c.
12 770, §6, is amended to read:

13 **3. Boarding care facility.** "Boarding care facility" means
14 a house or other place classified as either an adult foster home
15 or, a boarding home or a community living arrangement, which, for
16 consideration, is maintained wholly or partly for the purposes of
17 providing residents with boarding care as defined in subsection
18 2. A "boarding care facility" does not include a licensed
19 nursing home or certified elderly congregate housing.

20 **Sec. 4. 22 MRSA §7901-A, sub-§9** is enacted to read:

21 9. Community living arrangement for persons with mental
22 retardation. "Community living arrangement for persons with
23 mental retardation" means a boarding care facility that is not
24 owned or leased by consumers, that houses more than 2 but fewer
25 than 9 persons with mental retardation and that is staffed by
26 persons not directly hired and controlled by the residents.

27 **Sec. 5. 22 MRSA §7902, sub-§1**, as amended by PL 1989, c. 355,
28 §2, is further amended to read:

29 **1. Rules adopted.** The commissioner shall promulgate adopt
30 rules for boarding care facilities, ~~which shall~~ that include but
31 need not be limited to rules pertaining to administration,
32 staffing, the number of residents, the quality of care, the
33 quality of treatment, if applicable, the health and safety of
34 staff and residents, the rights of residents, community
35 relations, the administration of medication, criteria for
36 placement of residents who are 17 years of age or older and under
37 18 years and licensing procedures. There shall ~~shall~~ must be separate
38 rules promulgated adopted for boarding homes and, foster homes
39 and community living arrangements for persons with mental
40 retardation.

41 In establishing the rules for the administration of medication,
42 the commissioner shall consider, among other factors, the general
43 health of the persons likely to receive medication, the number of
44 persons served by the facility and the number of persons employed
45 by the facility. In the rules for the administration of

2 medication established for boarding homes, the Department of
Human Services shall require unlicensed personnel to have
4 successfully completed a program of training and instruction
approved by the department for the administration of medication
which that is not limited to in-service training.

6
8 In establishing rules for community living arrangements for
persons with mental retardation, the department shall adopt rules
developed by the Bureau of Mental Retardation.

10
12 **Sec. 5. 22 MRSA §7904-A, sub-§1, as enacted by PL 1985, c.
770, §10, is amended to read:**

14 **1. Inspection required.** No A license may not be issued by
the department to a boarding care facility until the department
16 has received from the State Fire Marshal a written statement
signed by one of the officials designated under Title 25, section
18 2360, 2391 or 2392, to make fire safety inspections; except that
local fire officials may issue such a statement for community
20 living arrangements for persons with mental retardation. This
statement, which shall must indicate that the boarding care
22 facility has complied with applicable fire safety provisions
referred to in Title 25, section 2452, shall must be furnished
24 annually by the State Fire Marshal or the local fire official to
the department.

26
28 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

30
32 **STATEMENT OF FACT**

34 This bill amends the licensing provisions for boarding care
facilities to include a new category of community residences for
persons with mental retardation. It requires the Department of
36 Human Services to adopt rules developed by the Bureau of Mental
Retardation that reflect accepted standards of practice in the
38 provision of services to individuals with mental retardation. It
requires the Department of Human Services to adopt rules written
40 by the Bureau of Mental Retardation to govern licensure and
reimbursement for these new facilities.

42
44 Finally, this bill allows local fire officials to provide
certification of compliance with fire safety codes in addition to
the State Fire Marshal. This change is necessary due to the
46 extensive workload of the State Fire Marshal and the delay in
licensure created as a result.