

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1800

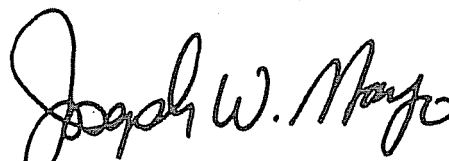
H.P. 1337

House of Representatives, January 27, 1994

**An Act to Rename Boarding Care Facilities and Expand Their
Definitions.**

(EMERGENCY)

Submitted by the Department of Human Services pursuant to Joint Rule 24.
Reference to the Committee on Human Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative BRUNO of Raymond.
Cosponsored by Representative: GEAN of Alfred, Senators: HARRIMAN of Cumberland,
PARADIS of Aroostook.

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

Whereas, the State must comply with the changes made in federal law before the expiration of the 90-day period; 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, ¶A, as amended by PL 1985, c. 770, §4, is further amended to read:

A. A boarding residential care facility;

Sec. 2. 22 MRSA §7801, sub-§3, as enacted by PL 1985, c. 770, §4, is amended to read:

3. Residential care facilities. ~~An--adult--foster--home~~ A residential care facility providing care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the ~~adult--foster--home~~ residential care facilities to receive payment from available state funds. The department may issue 2-year licenses and conduct modified surveys for compliance of those facilities as long as the facilities have relatively deficiency-free surveys with no history of health or safety violations.

Sec. 3. 22 MRSA §7801, sub-§4, as enacted by PL 1985, c. 770, §4, is repealed.

Sec. 4. 22 MRSA §7802, sub-§1, ¶E is enacted to read:

E. A 2-year full license may be issued by the department when an individual or agency is licensed as a residential care facility for one or 2 adults as long as it has relatively deficiency-free surveys with no history of health or safety violations.

Sec. 5. 22 MRSA c. 1665, first 2 lines are repealed and the following enacted in their place:

CHAPTER 1665

RESIDENTIAL CARE FACILITIES

2 **Sec. 6. 22 MRSA §7901-A**, as amended by PL 1987, c. 769, Pt.
A, §80, is further amended to read:

4 **§7901-A. Definitions**

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

8 ~~1. **Adult foster home.** "Adult foster home" means a boarding~~
10 ~~care facility having less than 5 residents.~~

12 **2. Residential care.** "Boarding Residential care" means
care which is greater than that necessarily attendant upon mere
14 eating and lodging services, but which is less than that
attendant upon nursing home care or hospital care. "Boarding
16 Residential care" may include personal supervision, protection
from environmental hazards, diet care, care concerning grooming,
18 hand and foot care, skin care, mouth and teeth care, shampooing,
bathing, assistance in ambulation, supervision and assistance in
20 the administration of medications, diversional or motivational
activities, and stimulation of, or assistance in, activities of
22 daily living or physical exercise and limited nursing services.

24 **3. Residential care facility.** "Boarding Residential care
facility" means a house or other place ~~classified as either an~~
26 ~~adult foster home or a boarding home~~ which, for consideration, is
maintained wholly or partly for the purposes of providing
28 residents with boarding residential care as defined in subsection
2. A residential care facility includes, but is not limited to,
30 facilities formerly defined and regulated as adult foster homes
and boarding homes under this section. A "boarding residential
32 care facility" does not include a licensed nursing home or
certified elderly congregate housing.

34 ~~4. **Boarding home.** "Boarding home" means a boarding care~~
36 ~~facility having 5 or more residents and those facilities of less~~
~~than 5 certified by the department as being eligible for cost~~
38 ~~reimbursement pursuant to section 7906.~~

40 **5. Mobile nonambulatory.** "Mobile nonambulatory," as
applied to a resident of a boarding residential care facility,
42 means being able to transfer independently and able to evacuate a
facility in less than 2 1/2 minutes with the assistance of
44 another person throughout the evacuation procedure.

46 **8. Resident.** "Resident" means any aged, blind, mentally
ill, mentally retarded or other person 18 years of age or older
48 who is not related by blood or marriage to the owner or person in
charge of the boarding residential care facility in which the
50 resident lives.

2 **Sec. 7. 22 MRSA §7902, sub-§1**, as amended by PL 1989, c. 355,
§2, is further amended to read:

4
6 **1. Rules promulgated.** The commissioner shall promulgate
rules for boarding various types of residential care facilities,
8 ~~which.~~ These rules shall include but need not be limited to
rules pertaining to administration, staffing, the number of
10 residents, the quality of care, the quality of treatment, if
applicable, the health and safety of staff and residents, the
12 rights of residents, community relations, the administration of
medication, criteria for placement of residents who are 17 years
14 of age or older and under 18 years of age and licensing
procedures. ~~There shall be~~ The commissioner may adopt separate
16 rules promulgated for ~~boarding-homes-and-foster-homes~~ various
types of residential care facilities.

18 In establishing the rules for the administration of medication,
the commissioner shall consider, among other factors, the general
20 health of the persons likely to receive medication, the number of
persons served by the facility and the number of persons employed
22 by the facility. In the rules for the administration of
medication established for ~~boarding---homes~~ residential care
24 facilities, the Department of Human Services shall may require
unlicensed personnel to have successfully completed a program of
26 training and instruction approved by the department for the
administration of medication which is not limited to in-service
28 training.

30 **Sec. 8. 22 MRSA §7903**, as amended by PL 1991, c. 591, Pt. J,
§§7 and 8, is further amended to read:

32 **§7903. Fees for licenses**

34 The department shall charge an annual fee of \$10 per
36 licensed bed for ~~boarding-homes-and-a-flat-fee-of-\$25-for-foster~~
~~homes~~ residential care facilities.

38 **Sec. 9. 22 MRSA §7904-A**, as amended by PL 1987, c. 304, §§3
40 and 4, is further amended to read:

42 **§7904-A. Fire safety inspection**

44 **1. Inspection required.** No license may be issued by the
department to a boarding residential care facility until the
46 department has received from the State Fire Marshal a written
statement signed by one of the officials designated under Title
48 25, section 2360, 2391 or 2392, to make fire safety inspections.
This statement, which shall indicate that the boarding
50 residential care facility has complied with applicable fire

2 safety provisions referred to in Title 25, section 2452, shall be
furnished annually by the State Fire Marshal to the department.

4 2. Fees. The department shall establish and pay reasonable
fees to the State Fire Marshal or municipal official for each
6 such inspection.

8 3. Requirements for facilities with 17 or more beds. Any
boarding residential care facility which has a capacity of 17 or
10 more beds shall comply with the Life Safety Code, chapter 21 22
or 23, the residential board and care occupancies section
12 sections for large facilities, adopted by the State Fire
Marshal. In addition, the following requirement must be met.

14 A. Any building of 2 or more stories shall be equipped with
16 an approved automatic sprinkler system, unless the building
is of fire resistive or protected noncombustible
18 construction as defined in the current edition of the
National Fire Protection Association's Standard Types of
20 Building Construction.

22 4. Requirements for facilities with more than 6 but fewer
than 17 beds. Any boarding residential care facility which has a
24 capacity of more than 6 but fewer than 17 beds shall comply with
the Life Safety Code, chapter 21 22 or 23, the residential board
26 and care occupancies section sections for small facilities,
adopted by the State Fire Marshal. In addition, the following
28 requirements must be met.

30 A. Any building of 2 or more stories shall be equipped with
an approved automatic sprinkler system, unless the building
32 is of fire resistive or protected noncombustible
construction as defined in the current edition of the
34 National Fire Protection Association's Standard Types of
Building Construction.

36 B. Automatic emergency lights shall be provided in such
38 number and location as required by the State Fire Marshal.

40 5. Requirements for residential care facilities with 6 or
fewer beds. The department may permit any boarding--home
42 residential care facility having 6 or fewer ambulatory residents
who can evacuate the facility without the assistance of another
44 person in 2 or less minutes to comply with the one-family and
2-family dwelling requirements of the Life Safety Code adopted by
46 the State Fire Marshal.

48 ~~6. Adult foster homes with one to 4 ambulatory residents.~~
Adult foster homes having one to 4 ambulatory residents who can
50 evacuate the facility without the assistance of another person in

~~2-or-less-minutes-shall-comply-with-the-one-family-and-2-family
dwelling-requirements-of-the-Life-Safety-Code-adopted-by-the
State-Fire-Marshal.~~

7. **Local regulations.** Any local regulations which affect the life-safety requirements of any boarding residential care facility and which are more stringent than those referred to in this section shall take precedence.

Sec. 10. 22 MRSA §7905, as amended by PL 1991, c. 69, §§2 and 3, is further amended to read:

§7905. Personal funds of residents

1. **Permission to manage personal funds.** No operator or agent of any boarding residential care facility may manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless the operator or agent has received written permission therefor from:

A. The resident, if the resident has no guardian, trustee or conservator;

B. The resident's guardian, trustee or conservator, if that person exists and can be reached; or

C. The department, if a guardian, trustee or conservator exists, but can not be reached.

2. **Itemized accounting.** Any operator or agent who, after receiving written permission pursuant to subsection 1, manages or holds the personal funds of any resident, shall maintain an account for these funds, which shall include for each resident a separate, itemized accounting for the use of the resident's personal funds, with supporting documentation for every expenditure in excess of \$2.

3. **Depositing personal funds.** The department may require an operator or agent of a boarding residential care facility to deposit in a financial institution the personal funds of a resident, if the resident has a guardian, trustee or conservator who can not be reached.

4. **Use of personal funds by operator prohibited.** Under no circumstances shall any operator or agent of a boarding residential care facility use the personal funds of any resident for the operating costs of the facility or for services or items which are reimbursable on a reasonable cost basis. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of

2 the owner, any member of the owner's family or any employee of
the facility.

4 **Sec. 11. 22 MRSA §7906-A**, as enacted by PL 1985, c. 770, §13,
is repealed.

6 **Sec. 12. 22 MRSA §7907**, as amended by PL 1991, c. 622, Pt. M,
8 §29, is further amended to read:

10 **§7907. Boarding care payments**

12 ~~Except as otherwise provided in section 7906-A,~~ the The
department shall:

14 1. **Former adult foster homes.** Reimburse all approved
16 facilities of up to 4 beds, formerly called adult foster homes,
at a rate of at least \$225 ~~\$433~~ per month; and

18 2. **Residential care payments.** Reimburse all boarding
20 residential care facilities of 5 or 6 or fewer beds, ~~except as~~
22 provided in section 7906-A, whose residents do not have severe
mental or physical dysfunction or disability on a flat rate basis
24 of at least \$601 per month.

26 **Sec. 13. 22 MRSA §7909, first ¶**, as enacted by PL 1981, c. 196,
§4, is amended to read:

28 Whenever there are pertinent and available health and other
30 records about a person who seeks admission as a resident to a
boarding residential care facility, those records shall be
32 provided to the administrator of the facility at least 7 days
34 prior to the date of admission, unless there are compelling
reasons which make this impossible or impractical. If there are
36 compelling reasons, including, but not limited to, emergency
situations, the administrator shall receive, by not later than
the date of admission, a written note which:

38 **Sec. 14. 22 MRSA §7910**, as enacted by PL 1983, c. 844, §1, is
repealed.

40 **Sec. 15. 22 MRSA §7911**, as enacted by PL 1985, c. 770, §15,
42 is repealed.

44 **Sec. 16. 22 MRSA §7912-A, first ¶**, as enacted by PL 1989, c.
19, §2, is amended to read:

46 ~~Except as provided in section 7911, a boarding~~ A residential
48 care facility which has 8 or fewer beds may not have residents
who are nonambulatory or mobile nonambulatory unless the reason
50 for the condition is temporary except as follows+.

2 **Sec. 17. 22 MRSA §7912-A, sub-§2**, as enacted by PL 1989, c.
19, §2, is amended to read:

4
6 **2. Requirements when number of nonambulatory or mobile
nonambulatory residents exceed limits.** Boarding Residential care
8 facilities may provide services to more residents who are
nonambulatory or mobile nonambulatory than allowed under
subsection 1 if, in addition to those requirements:

10 A. The structure meets all the requirements of the
12 residential board and care occupancy section for small
14 facilities of the National Fire Protection Association Life
Safety Code, chapter ~~21~~ 22 or 23. The structure shall be of
16 protected wood frame construction unless it is provided with
18 either a National Fire Protection Association Standard No.
13 or a Life Safety sprinkler system. Additional staff may
be required at the direction of the Office of the State Fire
Marshal, ~~and.~~

20 ~~B. A physician certifies that the nonambulatory resident
22 does not require nursing care. This certification is
24 required at least annually.~~

26 **Sec. 18. 22 MRSA §7913**, as enacted by PL 1985, c. 770, §15,
is repealed.

28 **Sec. 19. 22 MRSA §7922, sub-§1**, as amended by PL 1991, c. 69,
§4, is further amended to read:

30 **1. Long-term care facility.** "Long-term care facility"
32 means any ~~boarding-home~~ residential care facility with more than
34 5 residents licensed pursuant to chapters 1663 and 1665, and any
skilled nursing or intermediate care facility or unit licensed
pursuant to chapter 405.

36 **Sec. 20. 22 MRSA §7942**, as enacted by PL 1987, c. 774, §4, is
38 amended to read:

40 **§7942. Definitions**

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

44 ~~1. Department. "Department" means the Department of Human
46 Services.~~

48 ~~2. Directed plan of correction. "Directed plan of
50 correction" means a plan of correction issued by the department
which directs a long-term care facility how to correct a~~

2 ~~deficiency or deficiencies of state licensing rules and when the~~
3 ~~correction must be made.~~

4 **3. Long-term care facility.** "Long-term care facility"
5 means any boarding residential care facility subject to licensure
6 pursuant to chapters 1663 and 1665, and any skilled nursing or
7 intermediate care facility or unit subject to licensure pursuant
8 to chapter 405, ~~with the exception of adult foster homes.~~

10 ~~4. Person. "Person" means any natural person, partnership,~~
11 ~~association or corporation or other entity, including any county,~~
12 ~~local or governmental unit.~~

14 ~~5. Plan of correction. "Plan of correction" means a~~
15 ~~document executed by a long term care facility in response to a~~
16 ~~statement of deficiencies issued by the department. A plan of~~
17 ~~correction shall describe with specificity how and when~~
18 ~~deficiencies of state licensing rules will be corrected.~~

20 ~~6. Resident. "Resident" means any person who lives in and~~
21 ~~receives services or care in a long term care facility.~~

23 ~~7. State licensing rules. "State licensing rules" refers~~
24 ~~to the department's rules governing the licensing and functioning~~
25 ~~of skilled nursing and intermediate care facilities, intermediate~~
26 ~~care facilities for the mentally retarded and boarding care~~
27 ~~facilities.~~

28 ~~8. Statement of deficiencies. "Statement of deficiencies"~~
29 ~~means a document issued by the department which describes a~~
30 ~~long term care facility's deficiencies in complying with state~~
31 ~~licensing rules.~~

33 **Sec. 21. 22 MRSA §7943, sub-§1,** as enacted by PL 1987, c. 774,
34 §4, is amended to read:

35 **1. License required.** It shall be a violation of this
36 chapter for any person to manage or operate any long-term care
37 facility as defined in this chapter ~~or adult foster home as~~
38 ~~defined in section 7901-A~~ without first obtaining a license
39 therefor.

41 **Sec. 22. 22 MRSA §7944, sub-§1, ¶C,** as enacted by PL 1987, c.
42 774, §4, is amended to read:

43 C. The department may impose a penalty upon a long-term
44 care facility. In no event may any penalty or combination
45 of penalties imposed on a facility be greater than a sum
46 equal to \$5 times the total number of residents residing in
47 the facility per violation, up to a maximum of \$5,000 for
48 the facility per violation, up to a maximum of \$5,000 for
49 the facility per violation, up to a maximum of \$5,000 for
50 the facility per violation, up to a maximum of \$5,000 for

2 each instance in which the department issues a statement of
4 deficiency to a skilled nursing or intermediate care
6 facility; or \$3 times the total number of residents residing
in the facility per violation, up to a maximum of \$3,000 in
each instance in which the department issues a statement of
deficiency to any boarding residential care facility.

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

12 STATEMENT OF FACT

14 This bill changes the name of boarding care facilities to
16 residential care facilities in order to associate the facilities
of Human Services widely used around the country. The Department
18 of Human Services would have more flexibility to adopt rules that
address additional types of models of facilities. The department
20 would have authority to issue 2-year licenses to 1- to 2-bed
facilities that are normally exempt from licensure but seek
22 licensure to obtain funding. It sets licensing fees for all
facilities at \$10 per bed, which may be a slight increase for
24 some foster homes that formerly paid \$25 per facility, and a
savings for 1- to 2-bed facilities. It expands civil monetary
26 penalties to those homes licensed as foster homes. This bill
also repeals the Maine Revised Statutes, Title 22, section 7910,
which has never been funded since its passage in 1986.

30
32
34 This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.