

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1784

H.P. 1303

House of Representatives, February 15, 1996

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**An Act to Amend the Home Health Laws.**

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative WINGLASS of Auburn.  
Cosponsored by Representatives: ETNIER of Harpswell, JOY of Crystal, KNEELAND of Easton.

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

4 **Sec. 1. 22 MRSA §2144, sub-§4, ¶D** is enacted to read:

6 D. The department may petition the Superior Court to  
8 appoint a receiver to operate a home health agency in  
10 accordance with chapter 1666-A.

12 **Sec. 2. 22 MRSA §2146**, as amended by PL 1991, c. 591, Pt. J,  
14 §3, is further amended to read:

16 **§2146. Fees**

18 Each application for a license under this chapter must be  
20 accompanied by the fee established by the department. ~~No such~~  
22 ~~fee may be refunded~~ The fee is not refundable. ~~The department~~  
24 ~~shall establish such fees on the basis of a sliding fee scale~~  
26 ~~reflecting variations in size and scope of operations, but in no~~  
28 ~~event may the fee exceed \$300.~~ ~~The department shall charge a~~  
30 ~~nonrefundable fee of \$25 for any change to a license requiring~~  
32 ~~reissuance of the full license during the term of the license.~~  
34 ~~The change in status of a license to a provisional or conditional~~  
36 ~~license requires an additional fee of \$100 payable at the time of~~  
38 ~~issuance of such license.~~ All fees received by the department  
40 under this chapter must be paid into the State Treasury to the  
42 credit of the department for the purpose of reducing the costs of  
44 carrying out this chapter.

46 **Sec. 3. 22 MRSA §2150-B** is enacted to read:

48 **§2150-B. Staff; hiring; policy**

50 A home health agency must develop and implement written  
policies and procedures that prohibit abuse, neglect or  
misappropriation of client's property. Prior to hiring a  
certified nursing assistant or home health aid, the home health  
agency must verify with the Maine Registry of Certified Nursing  
Assistants that the individual is listed on the registry. The  
agency may not employ an individual who:

1. Court. Has been found guilty in a court of law of  
abuse, neglect or misappropriation of the property of an  
individual, corporation or entity in a health care setting; or

2. State survey agency. Has been found by the state survey  
agency to have abused, neglected or misappropriated the property  
of an individual, corporation or entity in a health care setting.

**Sec. 4. 22 MRSA §7931**, as enacted by PL 1983, c. 454, is  
amended to read:

2           **§7931. Policy**

4           It is the purpose of this chapter to develop a mechanism  
6           whereby by which the concept of receivership can be utilized for  
8           the protection of residents in long-term care facilities and  
10          clients of home health care providers. It is the intent of the  
Legislature that receivership shall be a remedy of last resort  
when all other methods of remedy have failed or when the  
implementation of other remedies would be futile.

12           **Sec. 5. 22 MRSA §7932, sub-§§1-A and 3-A** are enacted to read:

14           1-A. Client. "Client" means a person who receives services  
16           from a home health agency.

18           3-A. Home health care provider. "Home health care  
20           provider" means any business entity or subdivision of a business  
22           entity, whether public or private, proprietary or nonprofit, that  
24           is engaged in providing acute, restorative, rehabilitative,  
26           maintenance, preventive or health promotion services through  
28           professional nursing or another therapeutic service, such as  
30           physical therapy, home health aids, nurse assistants, medical  
32           social work, nutritionist services or personal care services,  
34           either directly or through contractual agreement, in a client's  
36           place of residence. This term does not apply to any sole  
38           practitioner providing private duty nursing services or other  
40           restorative, rehabilitative, maintenance, preventive or health  
promotion services in a client's place of residence or to  
municipal entities providing health promotion services in a  
client's place of residence. This term does not apply to a  
federally qualified health center or a rural health clinic as  
defined in 42 United States Code, Section 1395x, subsection (aa)  
(1993) that is delivering case management services or health  
education in a client's place of residence. Beginning October 1,  
1991 "home health care provider" includes any business entity or  
subdivision of a business entity, whether public or private,  
proprietary or nonprofit, that is engaged in providing speech  
pathology services.

42           **Sec. 6. 22 MRSA §7933, sub-§1,** as enacted by PL 1983, c. 454,  
is amended to read:

44           **1. Grounds for appointment.** The following circumstances  
46           shall be are grounds for the appointment of a receiver to operate  
a long-term care facility or home health care provider.

48           A. A facility or home health care provider intends to close  
50           but has not arranged at least 30 days prior to closure for  
the orderly transfer of its residents or clients.

2 B. An emergency exists in a facility or home health care  
3 provider ~~which that~~ threatens the health, security or  
4 welfare of residents or clients.

6 C. A facility or home health care provider is in  
7 substantial or habitual violation of the standards of  
8 health, safety or resident care established under state or  
9 federal regulations to the detriment of the welfare of the  
10 residents or clients.

11 This remedy is in addition to, and not in lieu of, the power of  
12 the department to revoke, suspend or refuse to renew a license  
13 under the Maine Administrative Procedure Act, Title 5, chapter  
14 375.

15 **Sec. 7. 22 MRSA §7934**, as enacted by PL 1983, c. 454, is  
16 amended to read:

17 **§7934. Powers and duties of the receiver**

18  
19  
20 1. **Powers and duties.** A receiver appointed pursuant to this  
21 chapter ~~shall-have~~ has such powers as the court may direct to  
22 operate the facility or home health care provider and to remedy  
23 the conditions ~~which that~~ constituted grounds for the  
24 receivership, to protect the health, safety and welfare of the  
25 residents or clients and to preserve the assets and property of  
26 the residents or clients, the owner and the licensee. On notice  
27 and hearing, the court may issue a writ of possession in behalf  
28 of the receiver, for specified facility property.

29  
30 The receiver shall make reasonable efforts to notify residents or  
31 clients and family that the facility or home health care provider  
32 is placed in receivership. The owner and licensee ~~shall-be~~ are  
33 divested of possession and control of the facility or home health  
34 care provider during the period of receivership under such  
35 conditions as the court ~~shall--specify~~ specifies. With the  
36 court's approval, the receiver ~~shall-have~~ has specific authority  
37 to:  
38

39 A. Remedy violations of federal and state regulations  
40 governing the operation of the facility or home health care  
41 provider;

42  
43 B. Hire, direct, manage and discharge any employees,  
44 including the administrator of the facility or home health  
45 care provider;

46  
47 C. Receive and expend in a reasonable and prudent manner  
48 the revenues of the facility or home health care provider

2 due during the 30-day period preceding the date of  
appointment and becoming due thereafter;

4 D. Continue the business of the home or home health care  
6 provider and the care of residents or clients;

8 E. Correct or eliminate any deficiency of the facility  
10 which or home health care provider that endangers the safety  
12 or health of the residents or clients, ~~provided-that if~~ the  
total cost of the correction does not exceed \$3,000. The  
court may order expenditures for this purpose in excess of  
\$3,000 on application from the receiver; and

14 F. Exercise such additional powers and perform such  
16 additional duties, including regular accountings, as the  
court ~~deems~~ considers appropriate.

18 **2. Revenues of the facility.** Revenues of the facility shall  
20 must be handled as follows.

22 A. The receiver shall apply the revenues of the facility or  
24 home health care provider to current operating expenses and,  
26 subject to the following provisions, to debts incurred by  
28 the licensee prior to the appointment of the receiver. The  
30 receiver shall ask the court for direction in the treatment  
32 of debts incurred prior to appointment where such debts  
34 appear extraordinary, of questionable validity, or unrelated  
36 to the normal and expected maintenance and operation of the  
facility or home health care provider, or where payment of  
the debts will interfere with the purposes of the  
receivership. Priority shall must be given by the receiver  
to expenditures for current direct resident or client care.  
Revenues held by or owing to the receiver in connection with  
the operation of the facility ~~shall-be~~ or home health care  
provider are exempt from attachment and trustee process,  
including process served prior to the institution of  
receivership proceedings.

38 B. The receiver may correct or eliminate any deficiency of  
40 the facility which or home health care provider that  
42 endangers the safety or health of the resident or client,  
~~provided-that if~~ the total ~~ests~~ cost of the correction does  
44 not exceed \$3,000. On application by the receiver, the  
46 court may order expenditures for this purpose in excess of  
\$3,000. The licensee or owner may apply to the court to  
determine the reasonableness of any expenditure over \$3,000  
by the receiver.

48 C. In the event that the receiver does not have sufficient  
50 funds to cover expenses needed to prevent or remove jeopardy

2 to the residents or clients, the receiver may petition the  
3 court for permission to borrow for these purposes. Notice of  
4 the receiver's petition to the court for permission to  
5 borrow shall must be given to the owner, the licensee and  
6 the department. The court may, after hearing, authorize the  
7 receiver to borrow money upon specified terms of repayment  
8 and to pledge security, if necessary, if the court  
9 determines that the facility or home health care provider  
10 should not be closed and that the loan is reasonably  
11 necessary to prevent or remove jeopardy or if it determines  
12 that the facility or home health care provider should be  
13 closed and that the expenditure is necessary to prevent or  
14 remove jeopardy to residents or clients for the limited  
15 period of time that they are awaiting transfer. The purpose  
16 of this provision is to protect residents or clients and to  
17 prevent the closure of facilities which or home health care  
18 providers that, under proper management, are likely to be  
19 viable operations. This section shall may not be construed  
20 as a method of financing major repair or capital  
21 improvements to facilities which that have been allowed to  
22 deteriorate because the owner or licensee has been unable or  
unwilling to secure financing by conventional means.

24 **3. Avoidance of preexisting leases, mortgages and**  
25 **contracts.** A receiver may not be required to honor any a lease,  
26 mortgage, secured transaction or other contract entered into by  
27 the owner or licensee of the facility or home health care  
28 provider if the court finds that:

30 A. The person seeking payment under the agreement has an  
31 ownership interest in the facility or home health care  
32 provider or was related to the licensee or, the facility or  
33 the home health care provider by any a significant degree of  
34 common ownership or control at the time the agreement was  
35 made; or

36 B. The rental, price or rate of interest required to be  
37 paid under the agreement is in excess of a reasonable  
38 rental, price or rate of interest.

39 If the receiver is in possession of real estate or goods subject  
40 to a lease, mortgage or security interest which that the receiver  
41 is permitted to avoid and if the real estate or goods are  
42 necessary for the continued operation of the facility or home  
43 health care provider, the receiver may apply to the court to set  
44 a reasonable rental, price or rate of interest to be paid by the  
45 receiver during the term of the receivership. The court shall  
46 hold a hearing on the application within 15 days, and the  
47 receiver shall send notice of the application to any known owners  
48 and mortgagees of the property at least 10 days before the  
49  
50

2 hearing. Payment by the receiver of the amount determined by the  
3 court to be reasonable is a defense to any an action against the  
4 receiver for payment or for the possession of the subject goods  
or real estate by any a person who received such notice.

6 Notwithstanding this subsection, there shall may not be no a  
7 foreclosure or eviction during the receivership by any person  
8 where if the foreclosure or eviction would, in view of the court,  
serve to defeat the purpose of the receivership.

10 **4. Closing of the facility or home health care provider.**  
11 The receiver may not close the facility or home health care  
12 provider without leave of the court. In ruling on the issue of  
13 closure, the court shall consider:

16 A. The rights and best interests of the residents or  
17 clients;

18 B. The availability of suitable alternative placements;

20 C. The rights, interest and obligations of the owner and  
21 licensee;

24 D. The licensure status of the facility or home health care  
25 provider; and

26 E. Any other factors which that the court deems considers  
27 relevant.

30 When a facility or home health care provider is closed, the  
31 receiver shall provide for the orderly transfer of residents or  
32 clients to mitigate transfer trauma.

34 **Sec. 8. 22 MRSA §§7935 and 7937**, as enacted by PL 1983, c.  
35 454, are amended to read:

36 **§7935. Termination of receivership**

38 The receivership shall ~~terminate~~ terminates when the court  
39 certifies that the conditions which that prompted the appointment  
40 have been corrected or, in the case of a discontinuance of  
41 operation, when the residents or clients are safely relocated.  
42 The court shall review the necessity of the receivership at least  
43 semiannually.

46 A receivership shall may not be terminated in favor of the  
47 former or the new licensee, unless such that person assumes all  
48 obligations incurred by the receiver and provides collateral or  
49 other assurances of payment deemed considered sufficient by the  
50 court.



