

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1806

S.P. 707

In Senate, February 20, 1996

An Act to Promote Choice and Quality in Long-term Care.

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

A handwritten signature in cursive script, reading "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator PENDEXTÉR of Cumberland. (GOVERNOR'S BILL).
Cosponsored by Representative TOWNSEND of Portland and
Senators: MICHAUD of Penobscot, MILLS of Somerset, PARADIS of Aroostook, PINGREE
of Knox, Representatives: MITCHELL of Portland, OTT of York, WINGLASS of Auburn.

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

2 **Sec. 1. 17-A MRSA §207, sub-§2**, as amended by PL 1985, c. 495,
4 §4, is repealed and the following enacted in its place:

6 2. Assault is a Class D crime; except, if the actor is at
8 least 18 years of age and causes bodily injury to a person who is
 less than 6 years of age or 60 years of age or older, it is a
 Class C crime.

10 **Sec. 2. 17-A MRSA §903, sub-§§2 and 3**, as enacted by PL 1975,
12 c. 499, §1, are repealed and the following enacted in their place:

14 2. As used in this section "fiduciary" includes: a person
16 carrying on fiduciary functions on behalf of an organization that
 is a fiduciary; a guardian or conservator appointed by the
18 Probate Court; an attorney-in-fact holding a power of attorney or
 durable power of attorney; or a representative payee or fiduciary
 appointed by an agency of the Federal Government.

20 3. Misuse of entrusted property is a Class D crime; except,
22 if the entrusted property belongs to a person who is 60 years of
 age or older, it is a Class C crime.

24 **Sec. 3. 22 MRSA §303, sub-§5**, as amended by PL 1981, c. 705,
26 Pt. V, §3, is further amended to read:

28 **5. Department.** "Department" means the Department of Human
30 Services, but does not include the Certificate of Need Advisory
 Committee within-the-department.

32 **Sec. 4. 22 MRSA §303, sub-§7**, as amended by PL 1981, c. 705,
34 Pt. V, §5, is further amended to read:

36 **7. Health care facility.** "Health care facility" means any
 ~~facility,--whether--public--or--private,--proprietary--or--not--for~~
38 ~~profit,--required--to--obtain--a--certificate--of--need--in--accordance~~
 ~~with--federal--laws--and--regulations--under--the--National--Health~~
40 ~~Planning--and--Resources--Development--Act--of--1974,--or--any--amendment,~~
 and-shall-include hospitals, psychiatric hospitals, tuberculosis-
42 hospitals,--skilled nursing facilities, kidney disease treatment
 centers including free-standing free-standing hemodialysis units,
44 intermediate--care facilities, rehabilitation facilities, and
 ambulatory surgical facilities,--home-health-care-providers--and
46 health-maintenance-organizations. The-term-shall-not-apply-to
 any--facility--operated--by--religious--groups--relying--solely--on
 spiritual-means-through-prayer-for-healing.

48 **Sec. 5. 22 MRSA §303, sub-§11-C** is enacted to read:

2 **11-C. Hospital swing bed.** "Hospital swing bed" means acute
care beds licensed by the Division of Licensure and
4 Certification, Bureau of Medical Services for use also as nursing
care beds. Swing beds may be established only in rural hospitals
6 with fewer than 100 licensed acute care beds.

8 **Sec. 6. 22 MRSA §303, sub-§12,** as enacted by PL 1977, c. 687,
§1, is repealed.

10 **Sec. 7. 22 MRSA §303, sub-§12-B** is enacted to read:

12 **12-B. Nursing facility.** "Nursing facility" means any
14 facility defined under section 1812-A.

16 **Sec. 8. 22 MRSA §303, sub-§19,** as enacted by PL 1977, c. 687,
§1, is repealed.

18 **Sec. 9. 22 MRSA §304-A, sub-§3,** as amended by PL 1989, c. 919,
20 §5 and affected by §18, is further amended to read:

22 **3. Capital expenditures.** The obligation by or on behalf of
a health care facility, except a ~~skilled-or-intermediate-care~~
24 ~~facility-or~~ hospital, of any capital expenditure of ~~\$350,000-or~~
~~more.--Intermediate-care-and-skilled-nursing-care-facilities-have~~
26 ~~a-threshold-of~~ \$500,000 or more, except that any transfer of
ownership is reviewable;

28 **Sec. 10. 22 MRSA §304-A, sub-§3-A,** as repealed and replaced by
30 PL 1991, c. 485, §1 and affected by §10, is amended to read:

32 **3-A. Hospital capital expenditures.** The obligation, by or
on behalf of a hospital, of any capital expenditure of ~~\$1,000,000~~
34 \$2,000,000 or more, except that:

36 A. A capital expenditure for the purpose of acquiring major
medical equipment is reviewable only to the extent provided
38 in subsection 2; and

40 B. Any transfer of ownership of a hospital is reviewable.

42 **Sec. 11. 22 MRSA §304-A, sub-§4,** as enacted by PL 1981, c.
705, Pt. V, §16, is amended to read:

44 **4. New health services.** The offering or development of any
new health service. For purposes of this section, "new health
46 services" ~~shall~~ includes only the following:

48 A. The obligation of any capital expenditures by or on
50 behalf of a health care facility ~~which~~ that is associated

2 with the addition of a health service ~~which~~ that was not
3 offered on a regular basis by or on behalf of the facility
4 within the 12-month period prior to the time the services
would be offered;

6 B. The addition of a health service ~~which~~ that is to be
7 offered by or on behalf of a health care facility ~~which~~ that
8 was not offered on a regular basis by or on behalf of the
9 facility within the 12-month period prior to the time the
10 services would be offered, and ~~which~~ that, for the 3rd
11 fiscal year of operation, including a partial first year,
12 following addition of that service, absent any adjustment
13 for inflation, is projected to entail annual operating costs
14 of at least the expenditure minimum for annual operating
15 costs; or

16 C. The addition of a health service ~~which~~ that falls within
17 a category of health services ~~which~~ that are subject to
18 review regardless of capital expenditure or operating cost
19 and which category the department has defined through
20 regulations promulgated pursuant to section 312, ~~based on~~
21 ~~recommendations from the State Health Coordinating Council,~~

22 This subsection does not prohibit a nursing facility from
23 converting beds used for the provision of nursing services to
24 beds to be used for the provision of boarding care services. If
25 such a conversion occurs, public funds are not obligated for
26 payment of services provided in the converted beds;

27 **Sec. 12. 22 MRSA §304-A, sub-§5,** as amended by PL 1989, c.
28 919, §7 and affected by §18, is further amended to read:

29 **5. Termination of a health service.** The obligation of any
30 capital expenditure by or on behalf of a health care facility
31 other than a hospital that is associated with the termination of
32 a health service that was previously offered by or on behalf of
33 the health care facility; except, neither the conversion of
34 licensed nursing facility beds to residential care beds nor a
35 decrease in the licensed or certified bed capacity of a nursing
36 facility may be considered a termination of a health service;

37 **Sec. 13. 22 MRSA §304-A, sub-§6,** as amended by PL 1993, c.
38 410, Pt. FF, §1, is further amended to read:

39 **6. Changes in bed complement.** Any change in the existing
40 bed complement of a health care facility other than a hospital;
41 except that a decrease in the licensed or certified bed capacity
42 of a nursing facility is not subject to review so long as any
43 capital expenditure incurred in the decrease does not trigger
44 review under subsection 3.

2 **Sec. 14. 22 MRSA §304-A, sub-§8,** as amended by PL 1993, c.
283, §1, is further amended to read:

4 **8. New health care facilities.** The construction,
6 development or other establishment of a new health care facility,
subject-to-the-following-limitations; and

8 ~~A.--Except as provided in paragraph B, the department shall~~
10 ~~review certificate of need applications, including business~~
12 ~~plans, for home health care providers only to determine~~
14 ~~whether the provider is fit, willing and able to provide the~~
16 ~~proposed services at the proper standard of care as provided~~
18 ~~in section 309, subsection 1, paragraph A. The department~~
shall establish a reduced filing fee for home health care
providers whose applications are reviewed under this
paragraph.

20 ~~B.--The department shall review an application for a home~~
22 ~~health care provider to determine its compliance with all~~
the requirements of section 309, subsection 1 if the
application involves:

24 (1)--A business plan that forecasts 3rd year operating
costs exceeding \$500,000; or

26 (2)--A transfer of ownership of an existing home health
28 care provider; and

30 **Sec. 15. 22 MRSA §306-A, sub-§6,** as enacted by PL 1981, c.
705, Pt. V, §19, is amended to read:

32 **6. Automatic withdrawal.** Any incomplete application shall
34 be deemed is considered withdrawn if the applicant fails to
36 respond to a request for additional required information within
one year 180 days of the date such the request was forwarded by
the department.

38 **Sec. 16. 22 MRSA §306-A, sub-§§7 and 8** are enacted to read:

40 **7. Voluntary withdrawal of application.** During the review
42 period, an applicant may voluntarily withdraw an application
44 without prejudice. Written notice of the withdrawal must be
46 submitted to the department. A withdrawn application may be
resubmitted at a later date, as a new application, requiring a
new letter of intent, new filing fees and new docketing and
review.

48 **8. Filing fee.** A nonrefundable filing fee must be paid at
50 the time an application is filed with the department.

2 A. The department shall establish minimum and maximum
4 filing fees, pursuant to section 312, to be paid per
 application.

6 B. If the approved capital expenditure is higher than the
8 initially proposed capital expenditure, then the filing fee
 must be recalculated and the difference in fees, if any,
 must be paid before the certificate of need may be issued.

10 **Sec. 17. 22 MRSA §307, sub-§2-A, ¶A,** as repealed and replaced
12 by PL 1985, c. 737, Pt. A, §48, is further amended to read:

14 A. The committee ~~shall-be~~ is composed of 10 members, 9 of
16 whom ~~shall--be~~ are appointed by the Governor. The
 Commissioner of Human Services shall name a designee to
18 serve as an ex officio, nonvoting member of the committee.
 The 9 members appointed by the Governor ~~shall~~ must be
 selected in accordance with the following requirements.

20 (1) Four members ~~shall~~ must be appointed to represent
22 the following.

24 (a) One member ~~shall~~ must represent the hospitals.

26 (b) One member ~~shall~~ must represent the ~~nursing~~
 ~~home~~ long-term care industry.

28 (c) One member ~~shall~~ must represent major
30 3rd-party payors.

32 (d) One member ~~shall~~ must represent ~~physieians~~
 providers.

34 In appointing these representatives, the Governor shall
36 consider recommendations made by the Maine Hospital
 Association, the Maine Health Care Association, the
38 Maine Medical Association, the Maine Osteopathic
 Association and other representative organizations.

40 (2) Five public members ~~shall~~ must be appointed as
42 consumers of health care. One of these members ~~shall~~
 must be designated on an annual basis by the Governor
44 as chair of the committee. Neither the public members
 nor their spouses or children may, within 12 months
46 preceding the appointment, have been affiliated with,
 employed by, or have had any professional affiliation
48 with any health care facility or institution, health
 product manufacturer or corporation or insurer

providing coverage for hospital or medical care,--and
provided--that; however neither membership in or
subscription to a service plan maintained by a
nonprofit hospital and medical service organization,
nor enrollment in a health maintenance organization,
nor membership as a policyholder in a mutual insurer or
coverage under such a policy, nor the purchase of or
coverage under a policy issued by a stock insurer may
disqualify a person from serving as a public member.

Sec. 18. 22 MRSA §307, sub-§2-B, ¶D, as amended by PL 1983, c.
722, is further amended to read:

D. The ~~chairman--shall--serve~~ chair serves as a voting
presiding officer and, in consultation with the members of
the committee, shall rule on the relevance of argument and
evidence and make determinations as to reasonable
questioning. The department's administrative hearing unit
shall provide technical support to the committee for the
conducting of hearings as necessary. Members of the
committee may conduct reasonable questioning in the course
of a hearing.

Sec. 19. 22 MRSA §307, sub-§2-B, ¶H, as enacted by PL 1981, c.
705, Pt. V, §25, is amended to read:

H. At its next meeting following the receipt of comments
pursuant to paragraph F or G, or in the case of a public
hearing pursuant to paragraph G, the committee shall make a
recommendation of approval ~~or~~ disapproval or approval with
conditions with respect to the application or applications
under consideration. This meeting is open to the public;
however, during the committee's deliberations, participation
is limited to committee members. The recommendation shall
must be determined by majority vote of the appointed members
present and voting. Members of the committee may make
additional oral comments or submit written comments, as they
~~deem~~ consider appropriate, with respect to the basis for
their recommendations or their individual views. The
committee recommendation and any accompanying comments shall
must be forwarded to the commissioner. If the committee is
unable to obtain a majority on a recommendation, the
committee shall report to the commissioner the result of any
vote taken.

Sec. 20. 22 MRSA §307, sub-§5-A, ¶B, as amended by PL 1985, c.
418, §9, is further amended to read:

B. After reviewing each application, the commissioner shall
make a decision either to issue a certificate of need or to

2 deny the application for a certificate of need. The
decision of the commissioner shall must be based on the
4 informational record developed in the course of review as
specified in paragraph C. The commissioner may issue a
6 certificate of need with specific conditions. Notice of the
decision shall must be sent to the applicant and the
8 committee. This notice shall must incorporate written
findings which that state the basis of the decision,
including the findings required by section 309, subsection
10 1. If the decision is not consistent with the
recommendations of the Certificate of Need Advisory
12 Committee, the commissioner shall provide a detailed
statement of the reasons for the inconsistency.

14 **Sec. 21. 22 MRSA §307, sub-§6-A,** as amended by PL 1993, c.
16 410, Pt. FF, §2, is further amended to read:

18 **6-A. Review cycles.** The department shall establish review
cycles for the review of applications. There must be at least
20 one review cycle for each type or category of project each
calendar year, the dates for which must be published at least 3
22 months in advance. ~~An application must be reviewed during the~~
24 ~~next scheduled review cycle following the date on which the~~
~~application is either declared complete or submitted for review~~
~~pursuant to section 306-A, subsection 4, paragraph B. Hospital~~
26 ~~projects that must be considered within the constraints~~
~~established by the Certificate of Need Development Account~~
28 ~~established pursuant to section 396-K may be grouped for~~
~~competitive review purposes at least once each year, provided~~
30 ~~that, for minor projects, as defined by the department through~~
~~rules adopted pursuant to section 312, the department shall~~
32 ~~allocate a portion of the Certificate of Need Development Account~~
~~for the approval of those projects and shall establish at least 6~~
34 ~~review cycles each year for the review of these projects.~~
~~Nursing home projects that propose to add new nursing home beds~~
36 ~~to the inventory of nursing home beds within the State may be~~
~~grouped for competitive review purposes consistent with~~
38 ~~appropriations made available for that purpose by the~~
~~Legislature. A nursing home project that proposes renovation,~~
40 ~~replacement or other actions that will increase Medicaid costs~~
~~and for which an application is filed after March 1, 1993 may be~~
42 ~~approved only if appropriations have been made by the Legislature~~
~~expressly for the purpose of meeting those costs. The department~~
44 ~~may hold an application for up to 90 days following the~~
~~commencement of the next scheduled review cycle if, on the basis~~
46 ~~of one or more letters of intent on file at the time the~~
~~application is either declared complete or submitted for review~~
48 ~~pursuant to section 306-A, subsection 4, paragraph B, the~~
~~department expects to receive within the additional 90 days one~~
50 ~~or more other applications pertaining to similar types of~~

services, facilities or equipment affecting--the--same--health
service-area.--Pertinent-health-service-areas-must-be-defined-in-
rules-adopted-by-the-department-pursuant-to-section-312,-based-on
recommendations-by-the-State-Health-Coordinating-Council.

Sec. 22. 22 MRSA §309, sub-§1, ¶D, as amended by PL 1995, c.
462, Pt. A, §41, is further amended to read:

D. That the proposed services are consistent with the
orderly and economic development of health facilities and
health resources for the State, and that the citizens of the
State have the ability to underwrite the additional costs of
the proposed services and-that-the-proposed-services-are-in
accordance-with-standards,-criteria-or-plans-adopted-and
approved-pursuant-to-the-state-health-plan-developed-by-the
department-and-the-findings-of-the-Maine-Health-Care-Finance
Commission-under-section-396-K-with-respect-to-the-ability
of-the-citizens-of-the-State-to-pay-for-the-proposed
services.

Sec. 23. 22 MRSA §309, sub-§2, as amended by PL 1985, c. 661,
§§4 and 5, is repealed.

Sec. 24. 22 MRSA §309, sub-§2-A is enacted to read:

2-A. Criteria for certificate of need. In determining
whether to issue or deny a certificate of need under subsection
1, the department shall, among other criteria, consider the
following:

A. Whether the project will substantially address specific
problems or unmet needs in the area to be served by the
project;

B. Whether the project will have a positive impact on the
health status indicators of the population to be served;

C. Whether the services affected by the project will be
accessible to all residents of the area proposed to be
served. Accessibility is determined through analysis of the
area including population, topography and availability of
transportation and health services;

D. Whether there are less costly or more effective
alternate methods of reasonably meeting identified health
service needs of the project;

E. Whether the project is financially feasible in both an
intermediate and long-term time frame;

2 F. Whether the project would produce a cost benefit in the
4 existing health care system of the State and the area in
6 which the project is proposed;

8 G. Whether the quality of any health care provided by the
10 applicant in the past meets industry standards; and

12 H. Whether the project will provide demonstrable
14 improvements in quality and outcome measures applicable to
16 the services proposed in the project.

18 **Sec. 25. 22 MRSA §309, sub-§6,** as amended by PL 1989, c. 502,
20 Pt. A, §65, is repealed.

22 **Sec. 26. 22 MRSA §324,** as enacted by PL 1981, c. 705, is
24 repealed and the following enacted in its place:

26 **§324. Review**

28 The Department shall report to the legislative joint
30 standing committee having jurisdiction over health and
32 institutional services not later than January 31, 1999 on the
34 continuing feasibility of this chapter.

36 **Sec. 27. 22 MRSA §3472, sub-§5,** as amended by PL 1989, c. 858,
38 §4, is further amended to read:

40 **5. Department.** "Department" means either the Department of
42 Human Services ~~through its Bureau of Elder and Adult Services~~ or,
44 in the case of mentally retarded adults, the Department of Mental
46 Health and Mental Retardation.

48 **Sec. 28. 22 MRSA §3477, sub-§1,** as amended by PL 1989, c. 858,
50 §11, is further amended to read:

52 **1. Reasonable cause to suspect.** When, while acting in a
54 professional capacity, an allopathic or osteopathic physician,
56 medical intern, medical examiner, physician's assistant, dentist,
58 chiropractor, podiatrist, registered or licensed practical nurse,
60 certified nursing assistant, Christian Science practitioner,
62 social worker, psychologist, pharmacist, physical therapist,
64 speech therapist, occupational therapist, mental health
66 professional, law enforcement official, coroner, emergency room
68 personnel, ambulance attendant or emergency medical technician
70 suspects that an adult has been abused, neglected or exploited,
72 and has reasonable cause to suspect that the adult is
74 incapacitated, then the professional shall immediately report or
76 cause a report to be made to the department.

2 Whenever a person is required to report in the capacity as a
3 member of the staff of a medical, public or private institution,
4 agency or facility, the staff person shall immediately ~~notify the~~
5 ~~person in charge of the institution, agency or facility, or the~~
6 ~~designated agent of the person in charge, who shall then cause a~~
7 ~~report to be made.~~ The staff person shall also make a report
8 directly to the department.

10 **Sec. 29. 22 MRSA §3480, sub-§1-A** is enacted to read:

12 **1-A. Right of entry and access to records of licensed**
13 **facilities.** The department and any duly designated officer or
14 employee of the department have the right to enter upon and into
15 the premises of any facility licensed under sections 1817 and
16 7801 in order to obtain information necessary and relevant to an
17 investigation of a report of suspected abuse, neglect or
18 exploitation or to a subsequent adult protective proceeding. The
19 department has access to all records in the facility's possession
20 and is not required to issue a subpoena to the facility before
21 obtaining access to the records.

22 **Sec. 30. 22 MRSA §5107-A, first ¶,** as amended by PL 1993, c.
23 284, §1, is further amended to read:

24 In accordance with the program established pursuant to
25 section 5106, subsection 11-C, the ombudsman may enter onto the
26 premises of any boarding residential care facility licensed
27 according to section 7801 and any nursing home facility licensed
28 according to section 1817 to investigate complaints concerning
29 those facilities or to perform any other functions authorized by
30 this section or other applicable law or rules. The ombudsman
31 shall investigate complaints received on behalf of individuals
32 receiving long-term care services provided by home-based care
33 programs, the Medicaid waiver program, licensed home health
34 agencies, certified homemaker agencies and licensed adult day
35 care agencies. To carry out this function, any staff member or
36 volunteer authorized by the ombudsman may enter onto the premises
37 of any adult foster care facility, boarding residential care
38 facility or nursing home during the course of an investigation,
39 speak privately with any individual in the facility or home who
40 consents to the conversation and inspect and copy all records
41 pertaining to a resident as long as the resident or the legal
42 representative of the resident consents in writing to that
43 inspection. The consent, when required and not obtainable in
44 writing, may be conveyed orally or otherwise to the staff of the
45 facility or home. When a resident is not competent to grant
46 consent and has no legal representative, the ombudsman may
47 inspect the resident's records and may make copies without the
48 written consent of a duly appointed legal representative. The
49 ombudsman may authorize as many individuals as necessary, in
50

addition to staff, to carry out this function except that these individuals may not make copies of confidential client information. Appropriate identification must be issued to all such persons. In accordance with the federal 1987 Older Americans Act, 42 United States Code, Section 3001 as amended, a person may not serve as an ombudsman without training as to the rights and responsibilities of an ombudsman or without a specific plan of action under direction of the ombudsman. The ombudsman shall renew the authorization and issue identification annually. The findings of the ombudsman must be available to the public upon request.

Sec. 31. 32 MRSA §2102, sub-§2, ¶F, as amended by PL 1993, c. 600, Pt. A, §110, is further amended to read:

F. Administration of medications and treatment as prescribed by a legally authorized individual. Nothing in this section may be construed as limiting the administration of medication by licensed or unlicensed personnel as provided in other laws; and

Sec. 32. 32 MRSA §2102, sub-§2, ¶G, as enacted by PL 1985, c. 724, §2, is amended to read:

G. Teaching activities of daily living to care providers designated by the patient and family; and

Sec. 33. 32 MRSA §2102, sub-§2, ¶H is enacted to read:

H. Coordination and oversight of patient care services provided by unlicensed health care assistive personnel.

STATEMENT OF FACT

This bill increases the penalties for assault against and misuse of entrusted property of victims 60 years of age or older and provides a broader definition of a "fiduciary" against whom a charge of misuse of entrusted property may be brought.

This bill streamlines the regulatory process under the Maine Certificate of Need Act and eliminates outdated or unnecessary requirements. The changes will make it easier for nursing facilities to convert existing capacity to different levels of care in order to respond to changes in the market for residential long-term care services. The bill also removes home health agencies from review in order to eliminate regulatory barriers to the establishment of additional home care resources. Home health agencies will continue to require a license from the Department of Human Services.

2 This bill streamlines the reporting of abuse, neglect and
3 exploitation occurring within licensed facilities by eliminating
4 duplication in reports from these facilities. The bill also
5 expands the Department of Human Services' access to records of
6 licensed facilities when investigating reports of abuse, respect
7 or exploitation. A technical amendment is made to long-term care
8 ombudsman program to reflect statutory changes from a previous
9 legislative session having to do with the licensing of
10 residential care facilities and ensures that ombudsman staff and
11 volunteers will have access to adult family care homes licensed
12 by the department. This bill also expands the definition of the
13 practice of professional nursing to include the coordination and
14 oversight of patient care services provided by other unlicensed
15 assistive personnel.
16