

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1492

S.P. 484

In Senate, March 12, 1997

An Act to Provide Recipients of All Assisted Living Programs and Services Residents' Rights and Equivalent Reporting and Enforcement Opportunities.

Reference to the Committee on Health and Human Services 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 PINGREE of Knox.

Cosponsored by Senators: PARADIS of Aroostook, JENKINS of Androscoggin, O'GARA of Cumberland, RAND of Cumberland, TREAT of Kennebec, Representative: SAXL of Portland.

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

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4 **Sec. 1. 22 MRSA §7902-A, sub-§6** is enacted to read:

6 6. Applicability of residents' rights rules. Any rules
8 adopted pursuant to this section pertaining to residents' rights
 are applicable to both licensed and unlicensed assisted living
 service programs.

10 **Sec. 2. 22 MRSA §7924, sub-§1**, as corrected by RR 1995, c. 2,
12 §45, is amended to read:

14 **1. Alleged violations reported and investigated.** Any
16 person who believes that any of those ~~regulations~~ rules governing
18 the licensure of long-term care facilities ~~duly-promulgated or~~
20 the operation of assisted living programs and services authorized
22 pursuant to section 7901-B adopted by the Department of Human
24 Services pertaining to residents' rights and conduct of resident
26 care has been violated may report the alleged violation to the
 protection and advocacy agency designated pursuant to Title 5,
 section 19501; the long-term care ombudsman pursuant to section
 5106, subsection 11-C and section 5107-A; the Office of Advocacy
 pursuant to Title 34-A, section 1203; and any other agency or
 person whom the Commissioner of Human Services and the
 Commissioner of Mental Health, Mental Retardation and Substance
 Abuse Services may designate.

28 **Sec. 3. 22 MRSA §7948, sub-§1**, as enacted by PL 1991, c. 637,
30 §2, is amended to read:

32 **1. Generally.** Any resident whose rights have been violated
34 as described in this section may commence a civil action in the
36 Superior Court on that resident's own behalf for injunctive and
38 declaratory relief against any long-term care facility or
40 provider of assisted living programs and services that is alleged
 to be in violation of any rule described in section 7924 or
 7902-A or in violation of the rights enumerated in 42 United
 States Code, Section 1396r, Subsection (c). In order to grant a
 preliminary or permanent injunction under this section, the
 Superior Court must find that:

42 A. The plaintiff will suffer irreparable injury if the
44 injunction is not granted;

46 B. The irreparable injury outweighs any harm that granting
 the injunctive relief would inflict on the defendant;

48 C. The plaintiff has exhibited a likelihood of success on
50 the merits of the case; and

2 D. The public interest will not be adversely affected by
granting the injunction.

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SUMMARY

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8 This bill extends the private right of action now available
to residents of licensed nursing facilities and licensed assisted
10 living facilities to all individuals receiving assisted living
programs and services. The bill ensures that residents' rights
12 violations may be reported and enforced regardless of the setting
where assisted living programs and services are delivered and
regardless of whether the provider is licensed or unlicensed.
14 The bill also makes clear that assisted living services rules
describing residents' rights adopted by the Department of Human
16 Services apply to all providers of assisted living services
whether licensed or unlicensed.