

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)

DATE: *March 19, 1998*

(Filing No. S-555)

HEALTH AND HUMAN SERVICES

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 754, L.D. 2032, Bill, "An Act to Permit the Department of Mental Health, Mental Retardation and Substance Abuse Services to Exercise Emergency Receivership Authority for Protection of Individuals Receiving Services"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Receivership Authority for Protection of Individuals Receiving Services from the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Human Services'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Whereas, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Human Services provide services to thousands of Maine citizens who are clients of the departments through contracts with community-based providers on a daily basis; and

Whereas, the services provided are necessary to the quality of life of the clients of the departments and others receiving services through the providers' organizations; and

Whereas, the financial, programmatic and management stability of the providers is critical to their continuous operation; and

COMMITTEE AMENDMENT

2 **Whereas**, when providers experience financial, programmatic
or management instability, that instability threatens the
4 provision of services and the health, safety and welfare of the
clients of the departments; and

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

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

14 **Sec. 1. 22 MRSA §7932, sub-§2**, as amended by PL 1985, c. 770,
§16, is further amended to read:

16 **2. Facility.** "Facility" means any boarding home subject to
18 licensure pursuant to chapters 1663 and 1665 and, any skilled
nursing or intermediate care facility or unit subject to
20 licensure pursuant to chapter 405 and any private psychiatric
hospital subject to licensure pursuant to chapter 405.

22 **Sec. 2. 22 MRSA §7933, sub-§2**, as enacted by PL 1983, c. 454,
24 is amended to read:

26 **2. Who may bring action.** The commissioner or acting
commissioner may bring an action in Superior Court requesting the
28 appointment of a receiver. In an action brought regarding a
private psychiatric hospital, prior to or at the time of bringing
30 the action, the commissioner shall consult and work
collaboratively with the Commissioner of Mental Health, Mental
32 Retardation and Substance Abuse Services.

34 **Sec. 3. 34-B MRSA c. 13** is enacted to read:

36 CHAPTER 13

38 APPOINTMENT OF RECEIVERS

40 §13001. Policy

42 It is the purpose of this chapter to develop a mechanism by
which the concept of receivership can be utilized for the
44 protection of individuals served or funded by the department. It
is the intent of the Legislature that receivership be a remedy of
46 last resort when all other methods of remedy have failed or when
the implementation of other remedies would be futile.

48 §13002. Definitions
50

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

4 1. Client. "Client" means a person who receives services
from a provider.

6
8 2. Emergency. "Emergency" means a situation, physical
condition, financial condition or one or more practices, methods
10 or operations that present imminent danger of death or serious
physical or mental harm to individuals served or funded by the
12 department, including, but not limited to, imminent or actual
abandonment of a facility or service.

14 3. Facility. "Facility" means any residential facility
funded in whole or in part by the department but does not include
16 hospitals licensed pursuant to Title 22, chapter 405.

18 4. Habitual violation. "Habitual violation" means a
violation of state or federal law that, due to its repetition,
20 presents a reasonable likelihood of serious physical or mental
harm to residents.

22
24 5. Licensee. "Licensee" means any person or any other legal
entity, other than a receiver appointed under section 13003, who
26 is licensed or required to be licensed to operate a facility or
to provide services.

28 6. Owner. "Owner" means the holder of the title to the real
estate in which the facility is maintained.

30
32 7. Provider. "Provider" means a business entity or
subdivision of a business entity, whether public or private,
34 proprietary or nonprofit, engaged in providing services licensed
or funded, in whole or in part, by the department but does not
36 include a hospital licensed pursuant to Title 22, chapter 405.

38 8. Resident. "Resident" means any person who lives in and
receives services or care in a facility.

40 9. Substantial violation. "Substantial violation" means a
violation of state or federal law that presents a reasonable
42 likelihood of serious physical or mental harm to residents.

44 10. Transfer trauma. "Transfer trauma" means the
combination of medical and psychological reactions to abrupt
46 physical transfer that may increase the risk of grave illness or
death.

48
50 §13003. Appointment of receiver

1 1. Grounds for appointment. The following circumstances are
2 grounds for the appointment of a receiver to operate a facility
3 or a provider.

4
5 A. A facility or provider intends to close but has not
6 arranged at least 30 days prior to closure for the orderly
7 transfer of its residents or clients.

8
9 B. An emergency exists in a facility or provider that
10 threatens the health, security or welfare of residents or
11 clients.

12
13 C. A facility or provider is in substantial or habitual
14 violation of the standards of health, safety or resident
15 care established under state rules or federal regulations to
16 the detriment of the welfare of the residents or clients.

17 This remedy is in addition to, and not in lieu of, any power of
18 the department, including, but not limited to, the power to
19 revoke, suspend or refuse to renew any license or the power of
20 the Department of Human Services to bring an action pursuant to
21 Title 22, chapter 1666-A.

22
23 2. Who may bring action. The commissioner or acting
24 commissioner may bring an action in Superior Court requesting the
25 appointment of a receiver.

26
27 3. Procedure for hearing. The procedure for a hearing is as
28 follows.

29
30 A. The court shall hold a hearing not later than 10 days
31 after the action is filed, unless all parties agree to a
32 later date. Notice of the hearing must be served on both
33 the owner and the licensee not less than 5 days before the
34 hearing. If either the owner or the licensee cannot be
35 served, the court shall specify the alternative notice to be
36 provided. The department shall post notice, in a form
37 approved by the court, in a conspicuous place in the
38 facility or provider for not less than 3 days before the
39 hearing. After the hearing, the court may appoint a
40 receiver if it finds that any one of the grounds for
41 appointment set forth is satisfied.

42
43 B. A temporary receiver may be appointed with or without
44 notice to the owner or licensee if it appears by verified
45 complaint or affidavit that an emergency exists in the
46 facility or provider that must be remedied immediately to
47 ensure the health, safety and welfare of the clients or
48 residents. The appointment of a temporary receiver without
49 notice to the owner or licensee may be made only if the
50

2 court is satisfied that the petitioner has made a diligent
4 attempt to provide reasonable notice under the
6 circumstances. Upon appointment of a temporary receiver,
8 the department shall proceed to make service as provided in
10 paragraph A, and a hearing must be held within 10 days,
12 unless all parties agree to a later date. If the department
14 does not proceed with the petition, the court shall dissolve
the receivership. On 2 days' notice to the temporary
receiver, all parties and the department, or on such shorter
notice as the court may prescribe, the owner or licensee may
appear and move the dissolution or modification of an order
appointing a temporary receiver that has been entered
without notice, and in that event the court shall proceed to
hear and determine the motion as expeditiously as possible.

16 4. Who may be appointed receiver. The court may appoint any
18 person, except a state employee, considered appropriate by the
court to act as receiver.

20 5. Compensation of receiver. The court shall set a
22 reasonable compensation for the receiver and may require the
24 receiver to furnish a bond with any surety the court requires.
Any expenditures are paid from the revenues of the facility or
provider.

26 **§13004. Powers and duties of the receiver**

28 1. Powers and duties. A receiver appointed pursuant to this
30 chapter has such powers as the court may direct to operate the
32 facility or provider and to remedy the conditions that
34 constituted grounds for the receivership, to protect the health,
36 safety and welfare of the residents or clients and to preserve
38 the assets and property of the residents or clients, the owner
40 and the licensee. On notice and hearing, the court may issue a
42 writ of possession in behalf of the receiver, for specified
facility or provider property. The receiver shall make
reasonable efforts to notify residents or clients and family that
the facility or provider is placed in receivership. The owner
and licensee are divested of possession and control of the
facility or provider during the period of receivership under
conditions as the court specifies. With the court's approval,
the receiver has specific authority to:

44 A. Remedy violations of state rules and federal regulations
46 governing the operation of the facility or provider;

48 B. Hire, direct, manage and discharge any employees,
including the administrator of the facility or provider;

2 C. Receive and expend in a reasonable and prudent manner
4 the revenues of the facility or provider due during the
6 30-day period preceding the date of appointment and becoming
8 due after the appointment;

10 D. Continue the business of the facility or provider and
12 the care of residents or clients;

14 E. Correct or eliminate any deficiency of the facility or
16 provider that endangers the safety or health of the
18 residents or clients, if the total cost of the correction
20 does not exceed \$3,000. The court may order expenditures
22 for this purpose in excess of \$3,000 on application from the
24 receiver; and

26 F. Exercise additional powers and perform additional
28 duties, including regular accountings, the court considers
30 appropriate.

32 2. Revenues of facility or provider. Revenues of the
34 facility or provider must be handled as follows.

36 A. The receiver shall apply the revenues of the facility or
38 provider to current operating expenses and, subject to the
40 following provisions, to debts incurred by the licensee
42 prior to the appointment of the receiver. The receiver
44 shall ask the court for direction in the treatment of debts
46 incurred prior to appointment when those debts appear
48 extraordinary, of questionable validity, unrelated to the
50 normal and expected maintenance and operation of the
facility or provider or when payment of the debts will
interfere with the purposes of the receivership. Priority
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 or provider are exempt from attachment and trustee
process, including process served prior to the institution
of receivership proceedings.

B. The receiver may correct or eliminate any deficiency of
the facility or provider that endangers the safety or health
of the residents or clients, if the total cost of the
correction does not exceed \$3,000. On application by the
receiver, the 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.

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

2 to the residents or clients, the receiver may petition the
4 court for permission to borrow for these purposes. Notice
6 of the receiver's petition to the court for permission to
8 borrow must be given to the owner, the licensee and the
10 department. The court may, after hearing, authorize the
12 receiver to borrow money upon specified terms of repayment
14 and to pledge security, if necessary, if the court
16 determines that the facility or provider should not be
18 closed and that the loan is reasonably necessary to prevent
20 or remove jeopardy or if it determines that the facility or
22 provider should be closed and that the expenditure is
necessary to prevent or remove jeopardy to residents or
clients for the limited period of time that they are
awaiting transfer. The purpose of this provision is to
protect residents or clients and to prevent the closure of
facilities or providers that, under proper management, are
likely to be viable operations. This section may not be
construed as a method of financing major repair or capital
improvements to facilities that have been allowed to
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**
26 **contracts.** A receiver may not be required to honor a lease,
28 mortgage, secured transaction or other contract entered into by
30 the owner or licensee of the facility or provider if the court
32 finds that:

34 **A. The person seeking payment under the agreement has an**
36 **ownership interest in the facility or provider or was**
38 **related to the licensee, the facility or the provider by a**
40 **significant degree of common ownership or control at the**
42 **time the agreement was made; or**

44 **B. The rental, price or rate of interest required to be**
46 **paid under the agreement is in excess of a reasonable**
48 **rental, price or rate of interest.**

50 If the receiver is in possession of real estate or goods subject
to a lease, mortgage or security interest that the receiver is
permitted to avoid and if the real estate or goods are necessary
for the continued operation of the facility or provider, the
receiver may apply to the court to set a reasonable rental, price
or rate of interest to be paid by the receiver during the term of
the receivership. The court shall hold a hearing on the
application within 15 days, and the receiver shall send notice of
the application to any owners and mortgagees of the property at
least 10 days before the hearing. Payment by the receiver of the
amount determined by the court to be reasonable is a defense to
an action against the receiver for payment or for the possession

2 of the subject goods or real estate by a person who received that
notice.

4 Notwithstanding this subsection, there may not be a foreclosure
or eviction during the receivership by any person if the
6 foreclosure or eviction would, in view of the court, serve to
defeat the purpose of the receivership.

8 **4. Closing of facility or provider.** The receiver may not
10 close the facility or provider without leave of the court. In
ruling on the issue of closure, the court shall consider:

12 A. The rights and best interests of the residents or
14 clients;

16 B. The availability of suitable alternative placements;

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

22 D. The licensure status of the facility or provider; and

24 E. Any other factors that the court considers relevant.

26 When a facility or provider is closed, the receiver shall provide
for the orderly transfer of residents or clients to mitigate
transfer trauma.

28 **§13005. Termination of receivership**

30 The receivership terminates when the court certifies that
32 the conditions that prompted the appointment are corrected or, in
the case of a discontinuance of operation, when the residents or
34 clients are safely relocated. The court shall review the
necessity of the receivership at least semiannually.

36 A receivership may not be terminated in favor of the former
38 or the new licensee, unless that person assumes all obligations
incurred by the receiver and provides collateral or other
40 assurances of payment considered sufficient by the court.

42 **§13006. Liability of receiver**

44 A person may not bring suit against a receiver appointed
under section 13003 without first securing leave of the court.
46 Except in cases of gross negligence or intentional wrongdoing,
the receiver is liable in the receiver's official capacity only
48 and any judgment rendered must be satisfied out of receivership
assets.

50

§13007. Court order to have effect of license

An order appointing a receiver under section 13003 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the facility or provider during the receivership, and a violation of regulations governing the conduct of the facility or provider, if not promptly corrected, must be reported by the department to the court.

§13008. Rule-making authority to implement receivership law

The department may adopt rules as necessary to implement this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

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

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The additional costs associated with the process of appointing a receiver under certain circumstances can be absorbed by the Department of Human Services and by the Department of Mental Health, Mental Retardation and Substance Abuse Services utilizing existing budgeted resources.

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

SUMMARY

This amendment replaces the bill. It redefines the entities over which the Department of Mental Health, Mental Retardation and Substance Abuse Services may exercise receivership authority to be providers of services licensed or funded, in whole or in part, by the department. It grants to the Department of Human Services receivership authority over private psychiatric hospitals and requires the department, prior to exercising such power, to consult with the Department of Mental Health, Mental

COMMITTEE AMENDMENT "A" to S.P. 754, L.D. 2032

2 Retardation and Substance Abuse Services. It deletes reference
to long-term care facilities and home health care providers. It
4 excludes state employees from the persons who may be appointed as
receivers. It makes a few grammatical corrections. It also adds
a fiscal note.