

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2032

S.P. 754

In Senate, January 15, 1998

**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.**

Submitted by the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to Joint Rule 204.

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 MITCHELL of Penobscot.
Cosponsored by Representative FISHER of Brewer and
Senator PARADIS of Aroostook, Representatives: BRAGDON of Bangor, BROOKS of
Winterport, JOYNER of Hollis, KANE of Saco, SNOWE-MELLO of Poland.

2 proprietary or nonprofit, that is engaged in providing speech
3 pathology services.

4 6. Licensee. "Licensee" means any person or any other legal
5 entity, other than a receiver appointed under section 13002, who
6 is licensed or required to be licensed to operate a facility or
7 home health care provider.

8
9 7. Owner. "Owner" means the holder of the title to the real
10 estate in which the facility is maintained.

11
12 8. Program. "Program" means an agency-operated formal
13 program designed to meet the habilitative, vocational or
14 therapeutic needs of an individual served or funded by the
15 department as prescribed by the individual's service plan.

16
17 9. Resident. "Resident" means any person who lives in and
18 receives services or care in a long-term care facility.

19
20 10. Substantial violation. "Substantial violation" means a
21 violation of state or federal law that presents a reasonable
22 likelihood of serious physical or mental harm to residents.

23
24 11. Transfer trauma. "Transfer trauma" means the
25 combination of medical and psychological reactions to abrupt
26 physical transfer that may increase the risk of grave illness or
27 death.

28 §13002. Appointment of receiver

29
30 1. Grounds for appointment. The following circumstances are
31 grounds for the appointment of a receiver to operate a long-term
32 care facility or home health care provider.

33
34 A. A facility or home health care provider intends to close
35 but has not arranged at least 30 days prior to closure for
36 the orderly transfer of its residents or clients.

37
38 B. An emergency exists in a facility or home health care
39 provider that threatens the health, security or welfare of
40 residents or clients.

41
42 C. A facility or home health care provider is in
43 substantial or habitual violation of the standards of
44 health, safety or resident care established under state
45 rules or federal regulations to the detriment of the welfare
46 of the residents or clients.

2 This remedy is in addition to, and not in lieu of, the power of
3 the department to revoke, suspend or refuse to renew a license
4 under Title 5, chapter 375.

5 2. Who may bring action. The commissioner or acting
6 commissioner may bring an action in Superior Court requesting the
7 appointment of a receiver.

8 3. Procedure for hearing. The procedure for a hearing is as
9 follows.

10
11
12 A. The court shall hold a hearing not later than 10 days
13 after the action is filed, unless all parties agree to a
14 later date. Notice of the hearing must be served on both
15 the owner and the licensee not less than 5 days before the
16 hearing. If either the owner or the licensee can not be
17 served, the court shall specify the alternative notice to be
18 provided. The department shall post notice, in a form
19 approved by the court, in a conspicuous place in the
20 facility or home health care provider, for not less than 3
21 days before the hearing. After the hearing, the court may
22 appoint a receiver if it finds that any one of the grounds
23 for appointment set forth is satisfied.

24
25
26 B. A receiver may be appointed with or without notice to
27 the owner or licensee if it appears by verified complaint or
28 affidavit that an emergency exists in the facility or home
29 health care provider that must be remedied immediately to
30 ensure the health, safety and welfare of the clients or
31 residents. The appointment of a receiver without notice to
32 the owner or licensee may be made only if the court is
33 satisfied that the petitioner has made a diligent attempt to
34 provide reasonable notice under the circumstances. Upon
35 appointment of a receiver, the department shall proceed to
36 make service as provided in paragraph A, and a hearing must
37 be held within 10 days, unless all parties agree to a later
38 date. If the department does not proceed with the petition,
39 the court shall dissolve the receivership. On 2 days'
40 notice to the receiver, all parties and the department, or
41 on such shorter notice as the court may prescribe, the owner
42 or licensee may appear and move the dissolution or
43 modification of an order appointing a receiver that has been
44 entered without notice, and in that event the court shall
45 proceed to hear and determine the motion as expeditiously as
46 possible.

47 4. Who may be appointed receiver. The court may appoint any
48 person considered appropriate by the court to act as receiver.

2 5. Compensation of receiver. The court shall set a
3 reasonable compensation for the receiver and may require the
4 receiver to furnish a bond with any surety the court requires.
5 Any expenditures are paid from the revenues of the facility or
6 home health care provider.

7 §13003. Powers and duties of receiver

8
9 1. Powers and duties. A receiver appointed pursuant to this
10 chapter has such powers as the court may direct to operate the
11 facility or home health care provider and to remedy the
12 conditions that constituted grounds for the receivership, to
13 protect the health, safety and welfare of the residents or
14 clients and to preserve the assets and property of the residents
15 or clients, the owner and the licensee. On notice and hearing,
16 the court may issue a writ of possession in behalf of the
17 receiver, for specified facility or home health care provider
18 property. The receiver shall make reasonable efforts to notify
19 residents or clients and family that the facility or home health
20 care provider is placed in receivership. The owner and licensee
21 are divested of possession and control of the facility or home
22 health care provider during the period of receivership under
23 conditions as the court specifies. With the court's approval,
24 the receiver has specific authority to:

25 A. Remedy violations of state rules and federal regulations
26 governing the operation of the facility or home health care
27 provider;

28 B. Hire, direct, manage and discharge any employees,
29 including the administrator of the facility or home health
30 care provider;

31 C. Receive and expend in a reasonable and prudent manner
32 the revenues of the facility or home health care provider
33 due during the 30-day period preceding the date of
34 appointment and becoming due after the appointment;

35 D. Continue the business of the facility or home health
36 care provider and the care of residents or clients;

37 E. Correct or eliminate any deficiency of the facility or
38 home health care provider that endangers the safety or
39 health of the residents or clients, if the total cost of the
40 correction does not exceed \$3,000. The court may order
41 expenditures for this purpose in excess of \$3,000 on
42 application from the receiver; and

2 F. Exercise additional powers and perform additional
3 duties, including regular accountings, the court considers
4 appropriate.

5 2. Revenues of facility or home health care provider.
6 Revenues of the facility or home health care provider must be
7 handled as follows.

8
9 A. The receiver shall apply the revenues of the facility or
10 home health care provider to current operating expenses and,
11 subject to the following provisions, to debts incurred by
12 the licensee prior to the appointment of the receiver. The
13 receiver shall ask the court for direction in the treatment
14 of debts incurred prior to appointment when those debts
15 appear extraordinary, of questionable validity, unrelated to
16 the normal and expected maintenance and operation of the
17 facility or home health care provider or when payment of the
18 debts will interfere with the purposes of the receivership.
19 Priority must be given by the receiver to expenditures for
20 current direct resident or client care. Revenues held by or
21 owing to the receiver in connection with the operation of
22 the facility or home health care provider are exempt from
23 attachment and trustee process, including process served
24 prior to the institution of receivership proceedings.

25
26 B. The receiver may correct or eliminate any deficiency of
27 the facility or home health care provider that endangers the
28 safety or health of the residents or clients, if the total
29 cost of the correction does not exceed \$3,000. On
30 application by the receiver, the court may order
31 expenditures for this purpose in excess of \$3,000. The
32 licensee or owner may apply to the court to determine the
33 reasonableness of any expenditure over \$3,000 by the
34 receiver.

35
36 C. In the event that the receiver does not have sufficient
37 funds to cover expenses needed to prevent or remove jeopardy
38 to the residents or clients, the receiver may petition the
39 court for permission to borrow for these purposes. Notice of
40 the receiver's petition to the court for permission to
41 borrow must be given to the owner, the licensee and the
42 department. The court may, after hearing, authorize the
43 receiver to borrow money upon specified terms of repayment
44 and to pledge security, if necessary, if the court
45 determines that the facility or home health care provider
46 should not be closed and that the loan is reasonably
47 necessary to prevent or remove jeopardy or if it determines
48 that the facility or home health care provider should be
49 closed and that the expenditure is necessary to prevent or
50 remove jeopardy to residents or clients for the limited

2 period of time that they are awaiting transfer. The purpose
4 of this provision is to protect residents or clients and to
6 prevent the closure of facilities or home health care
8 providers that, under proper management, are likely to be
10 viable operations. This section may not be construed as a
12 method of financing major repair or capital improvements to
14 facilities that have been allowed to deteriorate because the
16 owner or licensee has been unable or unwilling to secure
18 financing by conventional means.

20 3. Avoidance of preexisting leases, mortgages and
22 contracts. A receiver may not be required to honor a lease,
24 mortgage, secured transaction or other contract entered into by
26 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
32 ownership interest in the facility or home health care
34 provider or was related to the licensee, the facility or the
36 home health care provider by a significant degree of common
38 ownership or control at the time the agreement was made; or

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

46 If the receiver is in possession of real estate or goods subject
48 to a lease, mortgage or security interest that the receiver is
50 permitted to avoid and if the real estate or goods are necessary
for the continued operation of the facility or home health care
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 of the subject goods or real estate by a person
who received that notice.

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

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

- 2 A. The rights and best interests of the residents or
3 clients;
- 4
- 5 B. The availability of suitable alternative placements;
- 6
- 7 C. The rights, interest and obligations of the owner and
8 licensee;
- 9
- 10 D. The licensure status of the facility or home health care
11 provider; and
- 12
- 13 E. Any other factors that the court considers relevant.
- 14

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

18 **§13004. Termination of receivership**

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

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

28 **§13005. Liability of receiver**

29 A person may not bring suit against a receiver appointed
30 under section 13002 without first securing leave of the court.
31 Except in cases of gross negligence or intentional wrongdoing,
32 the receiver is liable in the receiver's official capacity only
33 and any judgment rendered must be satisfied out of receivership
34 assets.

35 **§13006. Court order to have effect of license**

36 An order appointing a receiver under section 13002 has the
37 effect of a license for the duration of the receivership. The
38 receiver is responsible to the court for the conduct of the
39 facility or home health care provider during the receivership,
40 and a violation of regulations governing the conduct of the
41 facility or home health care provider, if not promptly corrected,
42 must be reported by the department to the court.

43

2 §13007. Rule-making authority to implement receivership law

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

12 **SUMMARY**

14 This bill establishes a mechanism similar to what exists for
16 the Department of Human Services that would enable the Department
18 of Mental Health, Mental Retardation and Substance Abuse Services
to apply to Superior Court for appointment as a receiver. The
bill specifies the grounds for appointment as well as the
conditions governing the exercise of the authority of the
receiver. The receivership remedy should be one of the last
resort, used when all reasonable alternatives have failed or
would be futile in the department's judgment.