

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

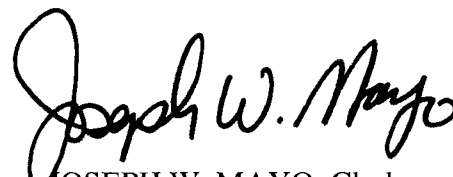
No. 2015

H.P. 1410

House of Representatives, March 23, 1999

An Act to Amend the Health Care Receivership Laws.

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative KANE of Saco.

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

2
4 **Sec. 1. 22 MRSA §7931**, as amended by PL 1995, c. 620, §4, is further amended to read:

6 **§7931. Policy**

8 It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of residents in long-term care facilities and, clients of home health care providers, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

18 **Sec. 2. 22 MRSA §7932, sub-§1-A**, as enacted by PL 1995, c. 620, §5, is amended to read:

20 **1-A. Client.** "Client" means a person who receives services from a home health agency, long-term care facility, general and specialty hospital, critical access hospital, ambulatory surgical facility, hospice agency or end-stage renal disease unit.

26 **Sec. 3. 22 MRSA §7932, sub-§§1-B and 2-A** are enacted to read:

28 **1-B. End-stage renal disease unit.** "End-stage renal disease unit" means a facility that provides specialized services to assist individuals who have been diagnosed as having an irreversible and permanent kidney disease that requires dialysis or kidney transplantation to maintain life.

34 **2-A. General hospital.** "General hospital" means an acute health care facility with permanent inpatient beds planned, organized, operated and maintained to offer on a continuous basis facilities and services for the diagnosis and treatment of illness, injury and deformity that has a governing board and an organized medical staff, offering a continuous 24-hour professional nursing care plan to provide continuous 24-hour emergency treatment and that includes the following services or organizational units:

44 A. Administration;

46 B. Nursing services;

48 C. Emergency services;

2 D. Dietary service;

4 E. Medical record service;

6 F. Radiology service;

8 G. Pathology or clinical laboratory service;

10 H. Pharmaceutical service;

12 I. Hospital safety program;

14 J. Disaster plan; and

16 K. Inservice education.

18 "General hospital" does not mean a federally controlled or
20 state-controlled institution, a community health center, an
 independent outpatient diagnostic or treatment center, a doctor's
 office, a college infirmary or an industrial dispensary.

22 **Sec. 4. 22 MRSA §7932, sub-§3-A, as enacted by PL 1995, c.**
24 **620, §5, is amended to read:**

26 **3-A. Home health care provider.** "Home health care
28 provider" means any business entity or subdivision of a business
30 entity, whether public or private, proprietary or nonprofit, that
32 is engaged in providing acute, restorative, rehabilitative,
34 maintenance, preventive or health promotion services through
36 professional nursing or another therapeutic service, such as
38 physical therapy, home health aids aides, nurse assistants,
40 medical social work, nutritionist services or personal care
42 services, either directly or through contractual agreement, in a
44 client's place of residence. This term does not apply to any
46 sole practitioner providing private duty nursing services or
48 other 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.

50 **Sec. 5. 22 MRSA §7932, sub-§3-B is enacted to read:**

2 3-B. Hospice agency. "Hospice agency" means a public
3 agency or private organization that is primarily engaged in
4 providing specified services to terminally ill individuals and
5 their families. The services provided are nursing care,
6 physicians services, physical and speech therapy, home health
7 aid, homemaker services, pastoral counseling, social work
8 services, occupational therapy and dietary services in addition
9 to bereavement counseling. The care may be provided as services
10 to patients in institutions, as respite care, as routine home
11 care or as continuous home care.

12 **Sec. 6. 22 MRSA §7932, sub-§§9 and 10** are enacted to read:

14 9. Ambulatory surgical facility. "Ambulatory surgical
15 facility" means a facility with the primary purpose of providing
16 elective surgical care to a patient who is admitted to and
17 discharged from the facility within the same day. In order to
18 meet this primary purpose, a facility must at least administer
19 anesthetic agents, maintain a sterile environment in a surgical
20 suite and share a facility fee separate from the professional
21 license. "Ambulatory surgical facility" does not include:

22 A. A facility that is licensed as part of a hospital;

24 B. A facility that provides services or accommodations for
25 patients who stay overnight;

28 C. A facility existing for the primary purpose of
29 performing terminations of pregnancies; or

30 D. The private office of a physician or dentist in
31 individual or group practice, unless the office is certified
32 as a Medicare ambulatory surgical center.

34 10. Critical access hospital. "Critical access hospital"
35 means a hospital that must first be designated and approved by
36 the State, as long as the State also has established an approved
37 rural hospital flexibility program. In addition, it must also:

40 A. Be a rural public or nonprofit hospital located in a
41 state that has established a rural hospital flexibility
42 program;

44 B. Have a Medicare participation agreement as a hospital
45 and be in compliance with the Medicare hospital conditions
46 of participation;

48 C. Be located more than a 35-mile drive from any other
49 hospital or critical access hospital. In mountainous

2 terrain or in areas with only secondary roads, the mileage
3 criterion is 15 miles;

4 D. Provide not more than 15 beds for acute hospital-level
5 inpatient care;

6
7 (1) Except that a swing-bed facility is allowed to
8 have up to 25 inpatient beds that can be used
9 interchangeably for acute or skilled nursing facility
10 care, as long as not more than 15 beds are used at any
11 one time for acute care;

12
13 E. Agree to keep each inpatient for no longer than 96
14 hours, unless a longer period is required because of
15 inclement weather or other emergency conditions or a Peer
16 Reviser Organization, "PRO" or other equivalent entity, on
17 request, waives the 96-hour restriction; and

18
19 F. Meet the requirements of the Conditions of Participation
20 for Critical Access Hospitals found in 42 Code of Federal
21 Regulations, Part 485, Subpart F.

22
23 **Sec. 7. 22 MRSA §7933, sub-§1, as amended by PL 1995, c. 620,**
24 **§6, is further amended to read:**

25
26 **1. Grounds for appointment.** The following circumstances are
27 grounds for the appointment of a receiver to operate a long-term
28 care facility or, home health care provider, general and
29 specialty hospitals, critical access hospitals, ambulatory
30 surgical centers, hospice agencies and end-stage renal disease
31 units.

32
33 **A.** A long-term care facility or, home health care provider,
34 general hospital, specialty hospital, critical access
35 hospital, ambulatory surgical center, hospice agency or
36 end-stage renal disease unit intends to close but has not
37 arranged at least 30 days prior to closure for the orderly
38 transfer of its residents or clients.

39
40 **B.** An emergency exists in a long-term care facility or,
41 home health care provider, general hospital, specialty
42 hospital, critical access hospital, ambulatory surgical
43 center, hospice agency or end-stage renal disease unit that
44 threatens the health, security or welfare of residents or
45 clients.

46
47 **C.** A long-term care facility or, home health care provider,
48 general hospital, specialty hospital, critical access
49 hospital, ambulatory surgical center, hospice agency or
50 end-stage renal disease unit is in substantial or habitual

2 violation of the standards of health, safety or resident
care established under state or federal regulations to the
4 detriment of the welfare of the residents or clients.

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

10 **Sec. 8. 22 MRSA §7934**, as amended by PL 1995, c. 620, §7, is
further amended to read:

12 **§7934. Powers and duties of the receiver**

14 **1. Powers and duties.** A receiver appointed pursuant to this
16 chapter has such powers as the court may direct to operate the
long-term care facility ~~or~~, home health care provider, general
18 hospital, specialty hospital, critical access hospital,
ambulatory surgical center, hospice agency or end-stage renal
20 disease unit and to remedy the conditions that constituted
grounds for the receivership, to protect the health, safety and
22 welfare of the residents or clients and to preserve the assets
and property of the residents or clients, the owner and the
24 licensee. On notice and hearing, the court may issue a writ of
possession in behalf of the receiver, for specified facility
26 property.

28 The receiver shall make reasonable efforts to notify residents or
clients and family that the long-term care facility ~~or~~, home
30 health care provider, general hospital, specialty hospital,
critical access hospital, ambulatory surgical center, hospice
32 agency or end-stage renal disease unit is placed in
receivership. The owner and licensee are divested of possession
34 and control of the long-term care facility ~~or~~, home health care
provider, general hospital, specialty hospital, critical access
36 hospital, ambulatory surgical center, hospice agency or end-stage
renal disease unit during the period of receivership under such
38 conditions as the court specifies. With the court's approval,
the receiver has specific authority to:

40 **A.** Remedy violations of federal and state regulations
42 governing the operation of the long-term care facility ~~or~~,
home health care provider, general hospital, specialty
44 hospital, critical access hospital, ambulatory surgical
center, hospice agency or end-stage renal disease unit;

46 **B.** Hire, direct, manage and discharge any employees,
48 including the administrator of the long-term care facility
or, home health care provider, general hospital, specialty

2 hospital, critical access hospital, ambulatory surgical
3 center, hospice agency or end-stage renal disease unit;

4 C. Receive and expend in a reasonable and prudent manner
5 the revenues of the long-term care facility or, home health
6 care provider, general hospital, specialty hospital,
7 critical access hospital, ambulatory surgical center,
8 hospice agency or end-stage renal disease unit due during
9 the 30-day period preceding the date of appointment and
10 becoming due thereafter;

11 D. Continue the business of the ~~home--or~~ long-term care
12 facility, home health care provider, general hospital,
13 specialty hospital, critical access hospital, ambulatory
14 surgical center, hospice agency or end-stage renal disease
15 unit and the care of residents or clients;

16 E. Correct or eliminate any deficiency of the long-term
17 care facility or, home health care provider, general
18 hospital, specialty hospital, critical access hospital,
19 ambulatory surgical center, hospice agency or end-stage
20 renal disease unit that endangers the safety or health of
21 the residents or clients, if the total cost of the
22 correction does not exceed \$3,000. The court may order
23 expenditures for this purpose in excess of \$3,000 on
24 application from the receiver; and
25

26 F. Exercise such additional powers and perform such
27 additional duties, including regular accountings, as the
28 court considers appropriate.
29

30
31 **2. Revenues of the facility.** Revenues of the facility must
32 be handled as follows.

33 A. The receiver shall apply the revenues of the long-term
34 care facility or, home health care provider, general
35 hospital, specialty hospital, critical access hospital,
36 ambulatory surgical center, hospice agency or end-stage
37 renal disease unit to current operating expenses and,
38 subject to the following provisions, to debts incurred by
39 the licensee prior to the appointment of the receiver. The
40 receiver shall ask the court for direction in the treatment
41 of debts incurred prior to appointment where such debts
42 appear extraordinary, of questionable validity, or unrelated
43 to the normal and expected maintenance and operation of the
44 long-term care facility or, home health care provider,
45 general hospital, specialty hospital, critical access
46 hospital, ambulatory surgical center, hospice agency or
47 end-stage renal disease unit, or where payment of the debts
48 will interfere with the purposes of the receivership.
49
50

2 Priority must be given by the receiver to expenditures for
3 current direct resident or client care. Revenues held by or
4 owing to the receiver in connection with the operation of
5 the long-term care facility or, home health care provider,
6 general hospital, specialty hospital, critical access
7 hospital, ambulatory surgical center, hospice agency or
8 end-stage renal disease unit are exempt from attachment and
9 trustee process, including process served prior to the
10 institution of receivership proceedings.

11 B. The receiver may correct or eliminate any deficiency of
12 the long-term care facility or, home health care provider,
13 general hospital, specialty hospital, critical access
14 hospital, ambulatory surgical center, hospice agency or
15 end-stage renal disease unit that endangers the safety or
16 health of the resident or client, if the total cost of the
17 correction does not exceed \$3,000. On application by the
18 receiver, the court may order expenditures for this purpose
19 in excess of \$3,000. The licensee or owner may apply to the
20 court to determine the reasonableness of any expenditure
21 over \$3,000 by the receiver.

22 C. In the event that the receiver does not have sufficient
23 funds to cover expenses needed to prevent or remove jeopardy
24 to the residents or clients, the receiver may petition the
25 court for permission to borrow for these purposes. Notice of
26 the receiver's petition to the court for permission to
27 borrow must be given to the owner, the licensee and the
28 department. The court may, after hearing, authorize the
29 receiver to borrow money upon specified terms of repayment
30 and to pledge security, if necessary, if the court
31 determines that the long-term care facility or, home health
32 care provider, general hospital, specialty hospital,
33 critical access hospital, ambulatory surgical center,
34 hospice agency or end-stage renal disease unit should not be
35 closed and that the loan is reasonably necessary to prevent
36 or remove jeopardy or if it determines that the long-term
37 care facility or, home health care provider, general
38 hospital, specialty hospital, critical access hospital,
39 ambulatory surgical center, hospice agency or end-stage
40 renal disease unit should be closed and that the expenditure
41 is necessary to prevent or remove jeopardy to residents or
42 clients for the limited period of time that they are
43 awaiting transfer. The purpose of this provision is to
44 protect residents or clients and to prevent the closure of
45 long-term care facilities or, home health care providers
46 general hospitals, specialty hospitals, critical access
47 hospitals, ambulatory surgical centers, hospice agencies or
48 end-stage renal disease units that, under proper management,
49 are likely to be viable operations. This section may not be
50

2 construed as a method of financing major repair or capital
improvements to facilities that have been allowed to
4 deteriorate because the owner or licensee has been unable or
unwilling to secure financing by conventional means.

6 **3. Avoidance of preexisting leases, mortgages and**
contracts. A receiver may not be required to honor a lease,
8 mortgage, secured transaction or other contract entered into by
the owner or licensee of the long-term care facility ex, home
10 health care provider, general hospital, specialty hospital,
critical access hospital, ambulatory surgical center, hospice
12 agency or end-stage renal disease unit if the court finds that:

14 A. The person seeking payment under the agreement has an
ownership interest in the long-term care facility ex, home
16 health care provider, general hospital, specialty hospital,
critical access hospital, ambulatory surgical center,
18 hospice agency or end-stage renal disease unit or was
related to the licensee, the long-term care facility ex-the,
20 home health care provider, general hospital, specialty
hospital, critical access hospital, ambulatory surgical
22 center, hospice agency or end-stage renal disease unit by a
significant degree of common ownership or control at the
24 time the agreement was made; or

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

30 If the receiver is in possession of real estate or goods subject
to a lease, mortgage or security interest that the receiver is
32 permitted to avoid and if the real estate or goods are necessary
for the continued operation of the long-term care facility ex,
34 home health care provider, general hospital, specialty hospital,
critical access hospital, ambulatory surgical center, hospice
36 agency or end-stage renal disease unit, the receiver may apply to
the court to set a reasonable rental, price or rate of interest
38 to be paid by the receiver during the term of the receivership.
The court shall hold a hearing on the application within 15 days,
40 and the receiver shall send notice of the application to any
known owners and mortgagees of the property at least 10 days
42 before the hearing. Payment by the receiver of the amount
determined by the court to be reasonable is a defense to an
44 action against the receiver for payment or for the possession of
the subject goods or real estate by a person who received such
46 notice.

48 Notwithstanding this subsection, there may not be a foreclosure
or eviction during the receivership by any person if the

2 foreclosure or eviction would, in view of the court, serve to
3 defeat the purpose of the receivership.

4 **4. Closing of long-term care facility, home health care**
5 **provider, general hospital, specialty hospital, critical access**
6 **hospital, ambulatory surgical center, hospice agency or end-stage**
7 **renal disease unit.** The receiver may not close the long-term care
8 facility or, home health care provider, general hospital,
9 specialty hospital, critical access hospital, ambulatory surgical
10 center, hospice agency or end-stage renal disease unit without
11 leave of the court. In ruling on the issue of closure, the court
12 shall consider:

14 A. The rights and best interests of the residents or
15 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 long-term care facility or,
23 home health care provider, general hospital, specialty
24 hospital, critical access hospital, ambulatory surgical
25 center, hospice agency or end-stage renal disease unit; and

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

28
29 When a long-term care facility or, home health care provider,
30 general hospital, specialty hospital, critical access hospital,
31 ambulatory surgical center, hospice agency or end-stage renal
32 disease unit is closed, the receiver shall provide for the
33 orderly transfer of residents or clients to mitigate transfer
34 trauma.

36 **Sec. 9. 22 MRSA §7937**, as amended by PL 1995, c. 620, §8, is
37 further amended to read:

38 **§7937. Court order to have effect of license**

39
40 An order appointing a receiver under section 7933 has the
41 effect of a license for the duration of the receivership. The
42 receiver is responsible to the court for the conduct of the
43 long-term care facility or, home health care provider, general
44 hospital, specialty hospital, critical access hospital,
45 ambulatory surgical center, hospice agency or end-stage renal
46 disease unit during the receivership, and a violation of
47 regulations governing the conduct of the long-term care facility
48 or, home health care provider, general hospital, specialty
49 hospital, critical access hospital, ambulatory surgical center,
50

2 hospice agency or end-stage renal disease unit, if not promptly
corrected, must be reported by the department to the court.

4

SUMMARY

6

8 This bill adds general and specialty hospitals, critical
access hospitals, ambulatory surgical centers, hospice agencies
10 and end stage renal disease units to the list of facilities for
which the Department of Human Services can exercise its
12 receivership authority to protect the patients of these
facilities.