

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1800

H.P. 1254

House of Representatives, March 29, 2007

### An Act To Amend Licensing and Certification Requirements

(EMERGENCY)

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative LEWIN of Eliot.  
Cosponsored by Senator RAYE of Washington and  
Representatives: CROSTHWAITE of Ellsworth, Speaker CUMMINGS of Portland, PERRY of  
Calais, PINGREE of North Haven, WALKER of Lincolnville, Senators: MARRACHÉ of  
Kennebec, ROSEN of Hancock, WESTON of Waldo.

1       **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3       **Whereas,** there is a need to amend the licensing laws of health care facilities and  
4 long-term care facilities for children and adults to permit sanctions to be levied and to  
5 protect the people of Maine; and

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

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

11       **Sec. 1. 5 MRSA §200-H, sub-§1, ¶C,** as enacted by PL 2003, c. 433, §1 and  
12 amended by c. 689, Pt. B, §6, is further amended to read:

13       C. The Director of the Division of Licensing and ~~Certification~~ Regulatory Services  
14 within the Department of Health and Human Services, ~~Bureau of Medical Services,~~  
15 ex officio;

16       **Sec. 2. 22 MRSA §1717, sub-§1, ¶C,** as amended by PL 2003, c. 673, Pt. NN,  
17 §1, is further amended to read:

18       C. "Personal care agency" means a business entity or subsidiary of a business entity  
19 that is not otherwise licensed by the Division of Licensing and ~~Certification~~  
20 Regulatory Services and that hires and employs unlicensed assistive personnel to  
21 provide assistance with activities of daily living and related tasks to individuals in the  
22 places in which they reside, either permanently or temporarily. An individual who  
23 hires and employs unlicensed assistive personnel to provide care for that individual is  
24 not a personal care agency, except when permitted by rule of the department.

25       **Sec. 3. 22 MRSA §1717, sub-§4,** as repealed and replaced by PL 2003, c. 634,  
26 §2, is amended to read:

27       **4. Penalties.** The following penalties apply to violations of this section.

28       A. A person who operates a personal care agency without registering with the  
29 department as required by subsection 2 commits a civil violation for which a fine of  
30 not less than \$500 per day of operation but not more than \$10,000 may be adjudged.  
31 Each day of violation constitutes a separate offense.

32       B. A person who operates a personal care agency in violation of the employment  
33 prohibitions in subsection 3 commits a civil violation for which a fine of not less than  
34 \$500 per day of operation in violation but not more than \$10,000 per day may be  
35 adjudged, beginning on the first day that a violation occurs. Each day of violation  
36 constitutes a separate offense.

37       **Sec. 4. 22 MRSA §1717, sub-§5** is enacted to read:

1       **5. Injunctive relief.** Notwithstanding any other remedies provided by law, the  
2 Office of the Attorney General may seek an injunction to require compliance with the  
3 provisions of this subtitle.

4       **Sec. 5. 22 MRSA §1717, sub-§6** is enacted to read:

5       **6. Enforcement.** The Office of the Attorney General may file a complaint with the  
6 District Court seeking civil penalties or injunctive relief or both for violations of this  
7 subtitle.

8       **Sec. 6. 22 MRSA §1717, sub-§7** is enacted to read:

9       **7. Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152  
10 for violations of this subtitle.

11       **Sec. 7. 22 MRSA §1717, sub-§8** is enacted to read:

12       **8. Burden of proof.** The burden is on the department to prove, by a preponderance  
13 of the evidence, that the alleged violations of this subtitle occurred.

14       **Sec. 8. 22 MRSA §1717, sub-§9** is enacted to read:

15       **9. Right of entry.** This subsection governs the department's right of entry.

16       A. An application for registration of a personal care agency constitutes permission  
17 for entry and inspection to verify compliance with applicable laws and rules.

18       B. The department has the right to enter and inspect the premises of a personal care  
19 agency registered by the department at a reasonable time and, upon demand, has the  
20 right to inspect and copy any books, accounts, papers, records and other documents in  
21 order to determine the state of compliance with applicable laws and rules.

22       C. To inspect a personal care agency that the department knows or believes is being  
23 operated without being registered, the department may enter only with the permission  
24 of the owner or person in charge or with an administrative inspection warrant issued  
25 pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court  
26 authorizing entry and inspection.

27       **Sec. 9. 22 MRSA §1717, sub-§10** is enacted to read:

28       **10. Administrative inspection warrant.** The department and a duly designated  
29 officer or employee of the department have the right to enter upon and into the premises  
30 of an unregistered personal care agency with an administrative inspection warrant issued  
31 pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a  
32 reasonable time and, upon demand, have the right to inspect and copy any books,  
33 accounts, papers, records and other documents in order to determine the state of  
34 compliance with this subtitle. The right of entry and inspection extends to all premises  
35 and documents of a person, firm, partnership, association, corporation or other entity that  
36 the department has reason to believe is operating without being registered. The  
37 administrative inspection warrant must also authorize the department to interview an

1 individual who may be an employee of the unregistered personal care agency or a person  
2 with knowledge of the unregistered personal care agency.

3 **Sec. 10. 22 MRSA §1717, sub-§11** is enacted to read:

4 **11. Violation of injunction.** A person, firm, partnership, association, corporation or  
5 other entity that violates the terms of an injunction issued under this section shall pay to  
6 the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day  
7 of violation constitutes a separate offense. In any action brought by the Office of the  
8 Attorney General against a person, firm, partnership, association, corporation or other  
9 entity for violating the terms of an injunction under this section, the District Court may  
10 make the necessary orders or judgments regarding violation of the terms of the injunction.

11 In an action under this section, when a permanent injunction has been issued, the District  
12 Court may order the person, firm, partnership, association, corporation or other entity  
13 against which the permanent injunction is issued to pay to the General Fund the costs of  
14 the investigation of that person, firm, partnership, association, corporation or other entity  
15 by the Office of the Attorney General and the costs of suit, including attorney's fees.

16 **Sec. 11. 22 MRSA §1717, sub-§12** is enacted to read:

17 **12. Suspension or revocation of registration.** A personal care agency found to be  
18 in violation of this section may have its registration to operate as a personal care agency  
19 suspended or revoked. The department may file a complaint with the District Court  
20 requesting suspension or revocation of a registration to operate a personal care agency.

21 **Sec. 12. 22 MRSA §1717, sub-§13** is enacted to read:

22 **13. Rules.** The department may adopt rules to implement this section. Rules  
23 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
24 chapter 375, subchapter 2-A.

25 **Sec. 13. 22 MRSA §1812-H**, as amended by PL 2001, c. 600, §1, is further  
26 amended to read:

27 **§1812-H. Participation in the Medicare health insurance for the aged program**

28 **1. Medicare.** Any nursing facility that participates in the Medicaid program must  
29 participate in the Medicare health insurance for the aged program as a skilled nursing  
30 facility.

31 **2. Compliance.** Any nursing facility required to participate in the Medicare health  
32 insurance for the aged program shall:

- 33 A. File an application to become a Medicare provider by January 1, 1994;
- 34 B. Follow required federal procedures for certification and become certified within  
35 90 days of the department's recommendation for certification;
- 36 C. Submit an annual application for Medicare participation at the same time  
37 applications for licensure and Medicaid certification are due; and

1 D. Participate in the Medicare program by billing Medicare for care provided to  
2 eligible recipients prior to billing Medicaid.

3 **2-A. Rules.** The department shall adopt rules to implement this section. The rules  
4 must consider the unique needs of different parts of the State. Nursing facilities in  
5 different parts of the State may be required to certify different numbers or percentages of  
6 beds depending on the number of Medicare recipients in those areas, the number of  
7 patients in hospitals who are waiting for nursing facility admission and other relevant  
8 demographic information. Nothing in this subsection prohibits the department from  
9 requiring all nursing facilities to certify all of their beds as Medicare skilled nursing  
10 facility beds.

11 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
12 chapter 375, subchapter 2-A.

13 **2-B. Implementation.** Notwithstanding any provision of this section to the contrary,  
14 a nursing facility may decline to admit a prospective resident after an evaluation of the  
15 person's clinical condition and related care needs and a determination that the facility  
16 lacks qualified staff to meet the level of care required for that person. A nursing facility  
17 is not subject to penalty or sanction for declining to admit a prospective resident under  
18 this subsection. Nothing in this subsection affects the obligation of a nursing facility to  
19 provide care specific to the needs of residents of the facility.

20 **3. Sanctions.** Failure to comply with any of the provisions listed in this section may  
21 result in the imposition of a penalty. The department may impose a penalty of not less  
22 than \$100 per bed per day and not more than \$5,000 per day for failure to comply with  
23 any of these provisions. This penalty must be imposed for each day a facility fails to  
24 comply with subsection 2, paragraph D. A repeated failure to comply with ~~any~~ a  
25 provision results in fines of not less than \$200 per bed per day and not more than \$10,000  
26 per day. The imposition and collection of these penalties are governed by section 7946.

27 **Sec. 14. 22 MRSA §1817**, as corrected by RR 1999, c. 2, §24 and affected by §25,  
28 is repealed and the following enacted in its place:

29 **§1817. Issuance of licenses**

30 The department is authorized to issue licenses to operate hospitals, sanatoriums,  
31 convalescent homes, rest homes, nursing homes, ambulatory surgical facilities and other  
32 related institutions that, after inspection, are found to comply with this chapter and any  
33 rules adopted by the department. An initial license may be issued for up to 12 months. A  
34 license may be renewed for up to 24 months. The fee for this temporary or conditional  
35 license is \$15 and is payable at the time of issuance of the license regardless of the term.  
36 When an institution, upon inspection by the department, is found not to meet all  
37 requirements of this chapter or department rules, the department is authorized to issue  
38 either:

39 **1. Temporary license.** A temporary license for a specified period not to exceed 90  
40 days, during which time corrections specified by the department must be made by the  
41 institution for compliance with this chapter and departmental rules, if in the judgment of  
42 the commissioner the best interests of the public will be so served; or

1        **2. Conditional license.** A conditional license setting forth conditions that must be  
2 met by the institution to the satisfaction of the department.

3        Failure of the institution to meet any of the department's conditions immediately  
4 voids the temporary or conditional license by written notice by the department to the  
5 licensee or, if the licensee cannot be reached for personal service, by notice left at the  
6 licensed premises. A new application for a regular license may be considered by the  
7 department if, when and after the conditions set forth by the department at the time of the  
8 issuance of this temporary or conditional license have been met and satisfactory evidence  
9 of this fact has been furnished to the department. The department may amend, modify or  
10 refuse to renew a license in conformity with the Maine Administrative Procedure Act, or  
11 file a complaint with the District Court requesting suspension or revocation of any license  
12 on any of the following grounds: violation of this chapter or the rules issued pursuant to  
13 this chapter; permitting, aiding or abetting the commission of any illegal act in that  
14 institution; or conduct of practices detrimental to the welfare of a patient. Whenever, on  
15 inspection by the department, conditions are found to exist that violate this chapter or  
16 department rules issued pursuant to this chapter that, in the opinion of the commissioner,  
17 immediately endanger the health or safety of patients in an institution or create an  
18 emergency, the department by its duly authorized agents may, under the emergency  
19 provisions of Title 4, section 184, subsection 6, request that the District Court suspend or  
20 revoke the license. Rules adopted pursuant to this section are routine technical rules as  
21 defined in Title 5, chapter 375, subchapter 2-A.

22        **Sec. 15. 22 MRSA §7702-B** is enacted to read:

23        **§7702-B. Operating without a license or certificate; violations; penalties**

24        **1. License or certificate required.** A person, firm, partnership, association,  
25 corporation or other entity may not, without first obtaining a license:

26        A. Manage or operate a long-term care facility as defined in chapter 1666-B;

27        B. Operate a child care facility as defined in section 8301-A, subsection 1-A,  
28 paragraph B; or

29        C. Operate as a family child care provider as defined in section 8301-A, subsection  
30 1-A, paragraph C.

31        **2. Civil Penalties.** A person, firm, partnership, association, corporation or other  
32 entity who violates subsection 1 commits a civil violation and is subject to a civil penalty  
33 of not less than \$500 nor more than \$10,000 per day. Each day of violation constitutes a  
34 separate offense.

35        **3. Injunctive relief.** Notwithstanding any other remedies provided by law, the  
36 Office of the Attorney General may seek an injunction to require compliance with the  
37 provisions of subsection 1.

38        **4. Enforcement.** The Office of the Attorney General may file a complaint with the  
39 District Court seeking civil penalties or injunctive relief or both for violations of  
40 subsection 1.

1        **5. Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152  
2 for violations of subsection 1.

3        **6. Burden of proof.** The burden is on the department to prove, by a preponderance  
4 of the evidence, that the alleged violations of subsection 1 occurred.

5        **7. Right of entry.** To inspect the premises of a long-term care facility, child care  
6 facility or family child care provider that the department knows or believes is being  
7 operated without a license or certificate, the department may enter only with the  
8 permission of the owner or person in charge or with an administrative inspection warrant  
9 issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court,  
10 authorizing entry and inspection.

11        **8. Administrative inspection warrant.** The department and a duly designated  
12 officer or employee of the department have the right to enter upon and into the premises  
13 of an unlicensed long-term care facility or child care facility or an uncertified family child  
14 care provider with an administrative inspection warrant issued pursuant to the Maine  
15 Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon  
16 demand, have the right to inspect and copy any books, accounts, papers, records and other  
17 documents in order to determine the state of compliance with subsection 1. The right of  
18 entry and inspection extends to all premises and documents of a person, firm, partnership,  
19 association, corporation or other entity that the department has reason to believe is  
20 operating without a license or a certificate. The administrative inspection warrant must  
21 also authorize the department to interview an individual who may be a resident, attendee  
22 or employee of the unlicensed long-term care facility or child care facility or an  
23 uncertified family child care provider, or a person with knowledge of the unlicensed long-  
24 term care facility or child care facility or an uncertified family child care provider.

25        **9. Violation of injunction.** A person, firm, partnership, association, corporation or  
26 other entity that violates the terms of an injunction issued under this section shall pay to  
27 the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day  
28 of violation constitutes a separate offense. In an action brought by the Office of the  
29 Attorney General against a person, firm, partnership, association, corporation or other  
30 entity for violating the terms of an injunction under this section, the District Court may  
31 make the necessary orders or judgments regarding violation of the terms of the injunction.

32 In an action under this section, when a permanent injunction has been issued, the District  
33 Court may order the person, firm, partnership, association, corporation or other entity  
34 against which the permanent injunction is issued to pay to the General Fund the costs of  
35 the investigation of that person, firm, partnership, association, corporation or other entity  
36 by the Office of the Attorney General and the costs of suit, including attorney's fees.

37        **10. Rules.** The department shall adopt rules to implement this section. Rules  
38 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
39 chapter 375, subchapter 2-A.

40        **Sec. 16. 22 MRSA §7703, sub-§2,** as amended by PL 2001, c. 596, Pt. B, §11  
41 and affected by §25, is further amended to read:



1       **2. Confidential information.** Except as provided in subsections 3 and 4,  
2 confidential information may not be released without a court order or a written release  
3 from the person about whom the confidential information has been requested. The  
4 following information is confidential:

5       A. ~~Any information which~~ Information that identifies, directly or indirectly, a  
6 recipient of services of the facility, a client of the facility or ~~his the client's~~ family or  
7 custodian, except ~~where~~ when the family member or custodian is an owner or  
8 operator of the facility;

9       B. Notwithstanding sections 3474 and 4008, any information gathered in the course  
10 of an investigation of neglect or abuse, except a statement indicating whether or not a  
11 report of abuse or neglect has been received, the nature of the alleged abuse or  
12 neglect and the conclusion reached by the department, if any;

13       C. ~~Any information~~ Information that identifies, directly or indirectly, a reference,  
14 complainant or reporter of suspected abuse or neglect;

15       D. ~~Any information~~ Information pertaining to the adoption of an individual;

16       E. ~~Any information~~ Information about the private life of ~~any~~ a person, other than an  
17 owner, operator or employee of a facility, in which there is no legitimate public  
18 interest and ~~which that~~ would be offensive to a reasonable person, if disclosed, except  
19 as provided in paragraph F; ~~and~~

20       F. ~~Any information~~ Information about the private life of ~~any~~ a person who has  
21 applied for a license or approval or is or has been licensed or approved as an adult  
22 foster home, licensed pursuant to chapter 1663, and family foster home as defined in  
23 section 8101, subsection 3, in which there is no legitimate public interest and ~~which~~  
24 that would be offensive to a reasonable person, if disclosed; ~~and~~

25       G. Information that identifies, directly or indirectly, a reference, complainant or  
26 reporter of suspected licensing violations.

27 Within the department, confidential information ~~shall~~ must be available to and used by  
28 appropriate departmental personnel and legal counsel in carrying out their various  
29 functions. Nothing in this section may prevent the release of statistical information  
30 regarding the population of the facility by diagnosis or other classification, ~~provided that~~  
31 as long as it does not directly or indirectly identify the clients or recipients of services of  
32 the facility.

33       **Sec. 17. 22 MRSA §7703, sub-§6** is enacted to read:

34       **6. Rules.** The department may adopt rules necessary to implement this section.  
35 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
36 chapter 375, subchapter 2-A.

37       **Sec. 18. 22 MRSA §7802, sub-§2, ¶B,** as amended by PL 2005, c. 640, §1, is  
38 further amended to read:

39       B. The terms of full licenses or approvals are as follows.

- 1 (1) Except as provided in subparagraphs (2) to ~~(6)~~ (7), the term of all full  
2 licenses and approvals issued pursuant to this chapter is for one year or the  
3 remaining period of a conditional or provisional license that has been issued for  
4 less than one year.
- 5 (2) The term of a residential child care facility license is for 2 years.
- 6 (3) The term of a drug treatment center license may be for either one or 2 years.
- 7 (4) The term of a family foster home or specialized foster home license is for 2  
8 years.
- 9 (5) The term of a child care facility license issued under section 8301-A,  
10 subsection 2 is for 2 years.
- 11 (6) The term of a home day care certificate issued under section 8301-A,  
12 subsection 3 is for 2 years.
- 13 (7) The term of an adult day care program license pursuant to chapter 1679 is for  
14 either one or 2 years at the discretion of the department.

15 **Sec. 19. 22 MRSA §7802, sub-§6** is enacted to read:

16 **6. Time limit on reapplication after denial or revocation.** The following time  
17 limit applies to a reapplication after denial or revocation.

18 A. When a license or certificate for a child care facility or a family child care  
19 provider has been denied or revoked on one occasion, the applicant or licensee may  
20 not reapply for a license or certificate for a child care facility or a family child care  
21 provider for a period of one year from the effective date of the denial or revocation  
22 decision if not appealed, or, if appealed, from the effective date of the  
23 commissioner's final decision or the reviewing court's order, whichever is later.

24 B. If a license or certificate for a child care facility or a family child care provider  
25 has been denied or revoked on 2 occasions, the applicant or licensee may not reapply  
26 for a license or certificate for a child care facility or a family child care provider for a  
27 period of 2 years from the effective date of the second denial or revocation decision if  
28 the decision is not appealed or, if appealed, from the effective date of the  
29 commissioner's final decision or the reviewing court's order, whichever is later.

30 C. If a license or certificate for a child care facility or a family child care provider  
31 has been denied or revoked on 3 occasions, the applicant or licensee may not receive  
32 another license or certificate for the care of children.

33 **Sec. 20. 22 MRSA §7802, sub-§7** is enacted to read:

34 **7. Rules.** The department may adopt rules necessary to implement this section.  
35 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
36 chapter 375, subchapter 2-A.

37 **Sec. 21. 22 MRSA §7944, sub-§1**, as amended by PL 2003, c. 634, §9, is further  
38 amended to read:

1           **1. Authorization.** The department is authorized to impose one or more of the  
2 following sanctions when a violation of this chapter occurs and the department  
3 determines that a sanction is necessary and appropriate to ensure compliance with state  
4 licensing rules or to protect the residents of long-term care facilities as defined in section  
5 7852 or the general public.

6           A. The long-term care facility may be directed to stop all new admissions regardless  
7 of payment source or to admit only those residents the department approves until  
8 such time as it is determined that corrective action has been taken.

9           B. The department may direct a long-term care facility to correct any deficiencies in  
10 a manner and within a time frame that the department determines is are appropriate to  
11 ensure compliance with state licensing rules or to protect the residents of the long-  
12 term care facility.

13           C. The department may impose a penalty upon a long-term care facility ~~for operating~~  
14 ~~without a license or~~ for a violation of this chapter. Each day of violation constitutes a  
15 separate offense. The minimum penalty for operating without a license is \$500 per  
16 day. A penalty or a combination of penalties imposed on a facility may not be greater  
17 than a sum equal to \$10 times the total number of residents residing in the facility per  
18 violation, up to a maximum of \$10,000 for each instance in which the department  
19 issues a statement of deficiency to a ~~skilled nursing or intermediate care~~ long-term  
20 care facility, ~~or \$6 times the total number of residents residing in the facility per~~  
21 ~~violation, up to a maximum of \$6,000 in each instance in which the department issues~~  
22 ~~a statement of deficiency to any assisted living program or residential care facility.~~

23           D. The department may direct a long-term care facility to transfer residents in that  
24 facility to other locations in an emergency that threatens the health, safety or welfare  
25 of the residents of the facility and shall assist the facility in making arrangements for  
26 transfers.

27 The department may adopt rules as necessary for the implementation of this subsection.  
28 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
29 chapter 375, subchapter 2-A.

30           **Sec. 22. 22 MRSA §8101, sub-§2,** as enacted by PL 1981, c. 260, §4, is amended  
31 to read:

32           **2. Emergency shelter.** "Emergency shelter" means a children's home ~~which~~ that  
33 operates to receive children 24 hours a day and ~~which~~ that limits placement to 30  
34 consecutive days or less. For purposes of this section, the definition of "children"  
35 includes a person under the age of 21 years of age. "Emergency shelter" ~~shall~~ does not  
36 mean a family foster home or specialized children's home and, if a service of a residential  
37 child care facility, ~~shall be~~ is restricted to a designated physical area of the facility.

38           **Sec. 23. 22 MRSA §8101, sub-§4,** as enacted by PL 1981, c. 260, §4, is amended  
39 to read:

40           **4. Residential child care facility.** "Residential child care facility" means any a  
41 children's home ~~which~~ that provides board and care for one or more children on a regular,  
42 24-hour a day, residential basis. For purposes of this section, the definition of "children"

1 includes a person under 21 years of age. A residential child care facility does not mean a  
2 family foster home, a specialized children's home or an emergency shelter facility. The  
3 term includes, but is not limited to:

- 4 ~~A. A residential care facility under Title 20, section 3125, subsection 5;~~  
5 B. An approved treatment facility under Title 5, section 7103 20003, subsection -4  
6 3;  
7 C. A drug treatment center under section 8001; and  
8 ~~D. A community residence under Title 34, section 2105; and~~  
9 E. A residential facility under Title 34- 34-B, section 2142, subsection 8 sections  
10 1431 and 5601.

11 **Sec. 24. 22 MRSA §8101, sub-§4-A**, as enacted by PL 1989, c. 270, §15, is  
12 amended to read:

13 **4-A. Shelter for homeless children.** "Shelter for homeless children" means an  
14 emergency shelter designed to provide for the overnight lodging and supervision of  
15 children 10 years of age or older for no more than 30 consecutive overnights. For  
16 purposes of this section, the definition of "children" includes a person under 21 years of  
17 age.

18 **Sec. 25. 22 MRSA §8101, sub-§4-B**, as enacted by PL 1995, c. 301, §1, is  
19 amended to read:

20 **4-B. Residential treatment facility with secure capacity.** "Residential treatment  
21 facility with secure capacity" means a children's home that provides a mental health  
22 intensive treatment program to a child whose diagnostic assessment indicates that the  
23 persistent pattern of the child's mental health presents a likely threat of harm to self or  
24 others and requires treatment in a setting that prevents the child from leaving the  
25 program. For purposes of this section, the definition of "children" includes a person  
26 under 21 years of age.

27 **Sec. 26. Maine Revised Statutes amended; revision clause.** Wherever in the  
28 Maine Revised Statutes the words "Division of Licensing and Certification" appear or  
29 reference is made to that entity within the Department of Health and Human Services or  
30 to those words, they are amended to read or mean "Division of Licensing and Regulatory  
31 Services" or "division" within the Department of Health and Human Services, and the  
32 Revisor of Statutes shall implement this revision when updating, publishing or  
33 republishing the statutes.

34 **Sec. 27. Rules.** The Department of Health and Human Services may adopt rules to  
35 implement the changes made in the Maine Revised Statutes, Title 22, section 8101 by this  
36 Act. Rules adopted pursuant to this section are routine technical rules as defined in Title  
37 5, chapter 375, subchapter 2-A.

38 **Emergency clause.** In view of the emergency cited in the preamble, this  
39 legislation takes effect when approved.

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## SUMMARY

This bill makes the following changes to licensing and certification requirements of Department of Health and Human Services.

1. It creates penalties, including injunctive relief, for operating an unregistered personal care agency.

2. The bill creates a cap on civil monetary penalties that the Department of Health and Human Services may impose on unlicensed, uncertified or unregistered entities. This responds to a decision of the Maine Superior Court.

3. The bill creates a maximum 2-year license renewal term for hospitals, nursing facilities, ambulatory surgical facilities and related institutions. An initial license may be issued for up to 12 months.

4. It creates penalties, including injunctive relief, for operating without a license or certificate by a long-term care facility, a child care facility, and a family child care provider

5. The bill places a time limit on reapplication after denial or revocation of a license for a child care facility or revocation of a certificate for a family child care provider.

6. The bill defines children in the Department of Health and Human Services laws governing facilities for children and adults as being under 21 years of age to make the provisions consistent with those governing MaineCare, the department's Office of Child and Family Services and special education.