

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

facility care and treatment of patients with mental diseases.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>		
Bureau of Medical Services		
All Other		\$220,500
To provide state matching funds for expanded Medicaid reimbursements.		
General Assistance		
All Other	(\$100,000)	(300,000)
Total	(\$100,000)	(\$ 79,500)

Sec. 3. Allocation. The following funds are allocated from the federal expenditure funds to carry out the purposes of this Act.

	<u>1986-87</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>	
Bureau of Medical Services	
All Other	\$487,593
To provide federal matching funds for expanded Medicaid reimbursements.	

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

Effective April 24, 1986.

CHAPTER 770

S.P. 959 - L.D. 2401

AN ACT to Protect the Public Health and
Safety of Residents in Boarding Care
Facilities.

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

Sec. 1. 18-A MRSA §5-311, sub-§(c), as enacted by PL 1979, c. 540, §1, is repealed and the following enacted in its place:

(c) No owner, proprietor, administrator, employee or other person with a substantial financial interest in a facility or institution which is licensed under Title 22, sections 1817 and 7801, may act as guardian of an incapacitated person who is a resident, as defined in Title 22, section 7901-A.

Sec. 2. 18-A MRSA §5-410, sub-§(c), as enacted by PL 1979, c. 690, §20, is amended to read:

(c) A facility or institution licensed under Title 22, ~~sections~~ sections 1817 and 7801, or an owner, proprietor, administrator, employee or other person with substantial financial interest in the facility or institution, may not act as conservator of the estate of a resident of that facility or institution, unless he is entitled to appointment under subsection (a), ~~paragraphs~~ paragraph (3), (4), (5) or (6).

Sec. 3. 22 MRSA §3273, sub-§1, ¶B, as reenacted by PL 1985, c. 506, Pt. B, §18-A, is amended to read:

B. For an individual who resides in an adult foster home, or boarding home, having a contract with the department for the provision of services to eligible residents, or nursing home, as defined in section 1812-A, in addition to the benefits provided herein under paragraphs A and C, provide sufficient income to allow the individual for personal needs an amount equal to at least \$30 a month, plus an amount sufficient to meet the monthly per resident payment rate as established by the department of the adult foster home or boarding home in which the individual resides; and

Sec. 4. 22 MRSA §7801, as repealed and replaced by PL 1983, c. 386, §1, is amended to read:

§7801. License or approval required

1. License required. ~~No~~ Except as provided in subsection 3, no person, firm, corporation or association may operate any of the following without having, subject to this subtitle and to the rules promulgated by the department under this subtitle, a written license therefor from the department:

- A. A boarding home care facility;
- B. A drug treatment center;
- C. A children's home;
- D. A child placing agency;
- E. A day care facility; or
- F. A nursery school.

2. Approval. No person, firm, corporation or association which operates an adult foster care facility may be entitled to reimbursement from state funds without having, subject to this subtitle and to the rules promulgated by the department under this subtitle, a written approval therefor from the department.

3. Adult foster homes. An adult foster home providing care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the adult foster home to receive payment from available state funds.

4. Boarding homes. Notwithstanding section 7901-A, a boarding home licensed for 3 or 4 residents prior to the effective date of this subsection may continue to be licensed as a boarding home or may apply for a license as an adult foster home, provided that it meets all the requirements for that license other than number of residents.

Sec. 5. 22 MRSA §7901, as amended by PL 1981, c. 260, §2, is repealed.

Sec. 6. 22 MRSA §7901-A is enacted to read:

§7901-A. Definitions

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

1. Adult foster home. "Adult foster home" means a boarding care facility having less than 5 residents.

2. Boarding care. "Boarding care" means care which is greater than that necessarily attendant upon mere eating and lodging services, but which is less than that attendant upon nursing home care or hospital care. "Boarding care" may include personal supervision, protection from environmental hazards, di-

et care, care concerning grooming, hand and foot care, skin care, mouth and teeth care, shampooing, bathing, assistance in ambulation, supervision and assistance in the administration of medications, diversional or motivational activities, and stimulation of, or assistance in, activities of daily living or physical exercise.

3. Boarding care facility. "Boarding care facility" means a house or other place classified as either an adult foster home or a boarding home which, for consideration, is maintained wholly or partly for the purposes of providing residents with boarding care as defined in subsection 2. A "boarding care facility" does not include a licensed nursing home or certified elderly congregate housing.

4. Boarding home. "Boarding home" means a boarding care facility having 5 or more residents and those facilities of less than 5 certified by the department as being eligible for cost reimbursement pursuant to section 7906.

5. Mobile nonambulatory. "Mobile nonambulatory," as applied to a resident of a boarding care facility, means being able to transfer independently, but unable to walk or unable to transfer without assistance, but able to move from place to place with the use of a device, such as a walker, crutches, wheelchair or wheeled platform, as certified by a physician or psychologist.

6. Physician. "Physician" means any person who is licensed in this State to practice medicine or osteopathy and who has had specialized training or at least one year of experience in treating persons with conditions similar to the conditions of the resident being certified pursuant to section 7904-A.

7. Psychologist. "Psychologist" means any person who is licensed in this State as a psychologist or psychological examiner and who has had specialized training or at least one year of experience in providing services to persons with conditions similar to the conditions of the resident being certified pursuant to section 7904-A.

8. Resident. "Resident" means any aged, blind, mentally ill, mentally retarded or other person 18 years of age or older who is not related by blood or marriage to the owner or person in charge of the boarding care facility in which the resident lives.

Sec. 7. 22 M RSA §7902, sub-§1, as amended by PL 1977, c. 497, §4, is further amended to read:

1. Rules promulgated. The commissioner shall promulgate rules for boarding care facilities, which shall include but need not be limited to rules pertaining to administration, staffing, the number of residents, the quality of care, the quality of treatment, if applicable, the health and safety of staff and residents, the rights of residents, community relations, the administration of medication and licensing procedures. There shall be separate rules promulgated for boarding homes and foster homes.

In establishing the rules for the administration of medication, the commissioner shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed by the facility. In the rules for the administration of medication established for boarding care facilities with 15 or more residents homes, the Department of Human Services shall require unlicensed personnel to have successfully completed a program of training and instruction approved by the department for the administration of medication which is not limited to in-service training.

Sec. 8. 22 MRSA §7903, as enacted by PL 1975, c. 719, §6, is amended to read:

§7903. Fees for licenses

The department shall charge an annual fee of \$25 for regular licenses for boarding care facilities homes having a capacity of 6 or less residents and \$50 for regular licenses for boarding care facilities homes having a capacity of more than 6 residents.

~~In addition, the department shall charge a fee of \$25 for temporary or conditional licenses for boarding care facilities having a capacity of 6 or less residents and \$50 for such licenses for boarding care facilities having a capacity of more than 6 residents.~~

There shall be no license fee for adult foster homes.

Sec. 9. 22 MRSA §7904, as amended by PL 1981, c. 196, §§2 and 3, is repealed.

Sec. 10. 22 MRSA §7904-A is enacted to read:

§7904-A. Fire safety inspection

1. Inspection required. No license may be issued by the department to a boarding care facility

until the department has received from the State Fire Marshal a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392, to make fire safety inspections. This statement, which shall indicate that the boarding care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452, shall be furnished annually by the State Fire Marshal to the department.

2. Fees. The department shall establish and pay reasonable fees to the State Fire Marshal or municipal official for each such inspection.

3. Requirements for facilities with 17 or more beds. Any boarding care facility which has a capacity of 17 or more beds shall comply with the Life Safety Code, chapter 21, the residential board and care occupancies section for large facilities, adopted by the State Fire Marshal. In addition, the following requirement must be met.

A. Any building of 2 or more stories shall be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

4. Requirements for facilities with more than 6 but fewer than 17 beds. Any boarding care facility which has a capacity of more than 6 but fewer than 17 beds shall comply with the Life Safety Code, chapter 21, the residential board and care occupancies section for small facilities, adopted by the State Fire Marshal. In addition, the following requirements must be met.

A. Any building of 2 or more stories shall be equipped with an approved automatic sprinkler system, unless the building is of fire resistive or protected noncombustible construction as defined in the current edition of the National Fire Protection Association's Standard Types of Building Construction.

B. Automatic emergency lights shall be provided in such number and location as required by the State Fire Marshal.

5. Requirements for boarding homes with 6 or fewer beds. The department may permit any boarding home having 6 or fewer ambulatory residents to comply

with the one-family and 2-family dwelling requirements of the Life Safety Code adopted by the State Fire Marshall provided the residents are certified annually by a physician or a psychologist as ambulatory and capable of following directions and taking appropriate action for self-preservation under emergency conditions.

6. Adult foster homes with one to 4 ambulatory residents. Adult foster homes having one to 4 ambulatory residents shall comply with the one-family and 2-family dwelling requirements of the Life Safety Code adopted by the State Fire Marshal.

7. Local regulations. Any local regulations which affect the life-safety requirements of any boarding care facility and which are more stringent than those referred to in this section shall take precedence.

Sec. 11. 22 MRSA §7905, sub-§1, as enacted by PL 1975, c. 719, §6, is amended to read:

1. Permission to manage personal funds. No operator or agent of any boarding care facility shall manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless the operator or agent has received written permission therefor from:

- A. The resident, if the resident is not mentally retarded and has no guardian, trustee or conservator;
- B. The resident's guardian, trustee or conservator, if such person exists and can be reached; or
- C. The department, if a guardian, trustee or conservator exists, but cannot be reached, or, in the case of a mentally retarded resident, if such resident has no guardian, trustee or conservator.

Whenever the department gives written permission to an operator or agent to manage, hold or deposit the personal funds of any mentally retarded residents, the department may request the Bureau of Mental Retardation, Department of Mental Health and ~~Corrections~~ Mental Retardation, to develop, insofar as resources are available, an appropriate plan for the management of these funds.

Sec. 12. 22 MRSA §7906, as enacted by PL 1975, c. 719, §6, is repealed.

Sec. 13. 22 MRSA §7906-A is enacted to read:

§7906-A. Reimbursements to small boarding homes for mentally retarded persons

No rule of the department may be adopted or enforced which would have the effect of denying, solely by reason of size, to any boarding home which was licensed prior to the effective date of this section and has a capacity of 6 or less residents and serves only mentally retarded persons or persons with related conditions, the opportunity to receive from the department reimbursements based on the reasonable costs of operating the facility. In no case may the maximum allowable costs be less than the ceilings set for boarding homes with a capacity of more than 6.

Sec. 14. 22 MRSA §7908, as enacted by PL 1979, c. 725, §2, is repealed.

Sec. 15. 22 MRSA §§7911 to 7913 are enacted to read:

§7911. Nonambulatory and mobile nonambulatory residents; temporarily disabled

Residents of boarding care facilities who become nonambulatory or mobile nonambulatory may remain in the facility provided that:

1. Reason for condition is temporary. The reason for their nonambulatory or mobile nonambulatory condition is temporary, such as in the case of short-term illness; and

2. Physician approved. Their attending physicians have approved the appropriateness of the residents' continued stay in the boarding care facility.

§7912. Nonambulatory and mobile nonambulatory residents; permanently disabled

Except as provided in section 7911, a boarding care facility may not accept residents who are nonambulatory or mobile nonambulatory except as follows:

1. General requirements. The Department of Human Services may permit mobile nonambulatory residents to reside in a boarding care facility which has 8 or fewer beds if the following conditions are met.

A. The facility conforms to the residential board and care occupancy section for small facilities of the Life Safety Code, chapter 21, as adopted by the State Fire Marshal.

B. No more than 2 of the beds in the facility may be for mobile nonambulatory residents.

C. All mobile nonambulatory residents shall be housed on the first floor of the facility with direct egress to a common corridor with 2 exits leading directly to the exterior of the facility.

D. Facilities of 7 and 8 beds shall be ramped to grade at both exits referred to in paragraph B. Facilities of 6 or fewer beds shall be ramped to grade at one exit.

E. There shall be at least one staff person available on the premises of the facility when any resident is present.

F. If a facility of 7 or 8 beds is of new construction, any doorway in the path of egress for a mobile nonambulatory resident shall be at least 36 inches in width. If the facility is of existing construction, any doorway in the path of egress for a mobile nonambulatory resident shall be at least 34 inches in width.

G. If a facility of 7 or 8 beds has mobile nonambulatory residents who are mentally ill or mentally retarded or who have related conditions, the facility shall be certified by the Department of Mental Health and Mental Retardation as being able to ensure the safety of and provide services to such residents. If the facility has mobile nonambulatory residents who are elderly, physically disabled or adult protective services' clients, or have conditions not related to mental illness or mental retardation, the facility shall be certified by the Department of Human Services as being able to ensure the safety of and provide services to such residents.

2. Home and community based waiver program. Boarding care facilities which provide residential habilitation services through the Home and Community Based Waiver Program for persons who are mentally retarded may admit residents who are nonambulatory or mobile nonambulatory, if:

A. The structure meets all of the requirements of the fire code for institutional occupancy; and

B. A physician certifies that the nonambulatory resident does not require nursing care. This certification is required at least annually.

§7913. Conflict of intent prohibited

No physician or psychologist who certifies or recertifies a resident may be in the regular employ of or may have a financial interest in the boarding care facility in which the resident resides.

Sec. 16. 22 MRSA §7932, sub-§2, as enacted by PL 1983, c. 454, is amended to read:

2. Facility. "Facility" means any boarding care facility home subject to licensure pursuant to chapters 1663 and 1665 and any skilled nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405.

Sec. 17. 25 MRSA §2452, as amended by PL 1979, c. 59, §§1 and 2, is further amended to read:

§2452. Exits

The Commissioner of Public Safety shall adopt and may amend, after notice and public hearing, reasonable rules and regulations governing the safety to life from fire in all buildings or other structures within his jurisdiction. ~~Such regulations~~ These rules shall not apply to boarding or lodging homes having 6 or less boarders or lodgers or to nursing homes having 3 or less patients. Automatic sprinkler systems shall not be required in boarding homes having 6 or less boarders or lodgers and existing non-commercial places of assembly. Noncommercial places of assembly shall include those facilities used for such purposes as deliberation, worship, entertainment, amusement or awaiting transportation which have a capacity of 100 to 300 persons.

1. Effective date. The regulations, and amendments thereto, become effective when reviewed for form and legality by the Office of the Attorney General and a certified copy of them has been approved in writing by the Commissioner of Public Safety and filed with the Secretary of State.

2. Rights declared. Any person aggrieved by a regulation or by an act of the commissioner in enforcing it may have his rights declared by bringing an action for declaratory judgment under Title 14, chapter 707, naming the commissioner as defendant.

3. Violation. Any person who violates a regulation issued by the commissioner under this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both.

Existing boarding homes or other existing buildings licensed pursuant to Title 22, subtitle 6, having more than 6 boarders, with the exception of boarding care facilities, shall comply with any rules and regulations for residential-custodial care facilities required by the State Fire Marshal's Office, except that such existing facilities of not more than 2 stories in height shall not be required to be fire resistive, protected or unprotected noncombustible, protected wood frame or heavy timber construction. Such existing facilities must be protected by a complete approved automatic sprinkler system and meet all other requirements of residential-custodial care facilities as required by the State Fire Marshal's Office.

Existing boarding care facilities licensed pursuant to Title 22, subtitle 6, shall comply with the applicable fire safety requirements of the Life Safety Code adopted by the State Fire Marshal pursuant to Title 22, section 7904-A.

Effective July 16, 1986.

CHAPTER 771

H.P. 1651 - L.D. 2329

AN ACT Relating to the Administration of Preventable Disease Programs and the Bureau of Health.

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

Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL 1983, c. 171, §1, is further amended to read:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 29, chapter 17; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or re-issuance of a license of that agency may be refused. The Administrative Court shall have original concurrent jurisdiction to grant equitable relief in pro-