

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

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

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

First Offender Program

Positions	(-16)
Personal Services	(\$424,791)
All Other	(256,949)
Capital Expenditures	(6,450)

Multiple Offender Program

Positions	(-4)
Personal Services	(88,743)
All Other	(250,000)

Driver Education Evaluation Program
Appeals Board

Personal Services	(15,000)
All Other	(12,500)

DEPARTMENT OF HUMAN SERVICES
TOTAL (\$1,054,433)

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

Effective April 26, 1988.

CHAPTER 774

S.P. 485 — L.D. 1462

AN ACT to Improve the Quality of Care in Long-Term Care Facilities by Establishing Intermediate Sanctions and Incentives for High Quality Care.

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

Sec. 1. 22 MRSA §47, as amended by PL 1973, c. 521, §3, is further amended to read:

§47. Penalties and jurisdiction; certificate of commissioner as evidence

Whoever hinders, obstructs or interferes with any officer, inspector or duly authorized agent of the department while in the performance of his duties shall be punished by a fine of not less than \$5 nor more than \$50, or by imprisonment for not less than 10 days nor more than 30 days. Any person who violates any order, rule or regulation of the department made for the protection of life or health under law shall be punished by a fine of not less than \$20 nor more than \$200, for each offense unless otherwise provided in section 42 this Title. Whoever violates any provision of this Title or willfully fails, neglects or refuses to perform any of the duties imposed upon him by this Title shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, unless specific penalties are elsewhere provided for. Any certificate of the commissioner in regard to the records of the department shall be admissible in evidence in all prosecutions under this Title.

Sec. 2. 22 MRSA §1821, as amended by PL 1967, c. 231, §6, is repealed.

Sec. 3. 22 MRSA §7702, as amended by PL 1987, c. 389, §1, is further amended to read:

§7702. Violation; penalty

Whoever violates any provision of this subtitle, except section 7801, subsection 1, paragraph A, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both, except that anyone violating sections 7703, 8305 and 8603 shall be punished only by a fine of not more than \$500.

Sec. 4. 22 MRSA c. 1666-B is enacted to read:

CHAPTER 1666-B

INTERMEDIATE SANCTIONS AND INCENTIVES FOR IMPROVING THE QUALITY OF CARE IN LONG-TERM CARE FACILITIES

§7941. Policy

It is the purpose of this chapter to authorize the Department of Human Services to impose intermediate sanctions in order to improve the quality of care in long-term care facilities and to establish programs to reward long-term care facilities that provide the highest quality care. These intermediate sanctions will also provide an alternative to taking action to close facilities, which may cause great distress to the residents of those facilities.

§7942. Definitions

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

1. **Department.** "Department" means the Department of Human Services.

2. **Directed plan of correction.** "Directed plan of correction" means a plan of correction issued by the department which directs a long-term care facility how to correct a deficiency or deficiencies of state licensing rules and when the correction must be made.

3. **Long-term care facility.** "Long-term care facility" means any boarding care facility 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, with the exception of adult foster homes.

4. **Person.** "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit.

5. **Plan of correction.** "Plan of correction" means a

document executed by a long-term care facility in response to a statement of deficiencies issued by the department. A plan of correction shall describe with specificity how and when deficiencies of state licensing rules will be corrected.

6. Resident. "Resident" means any person who lives in and receives services or care in a long-term care facility.

7. State licensing rules. "State licensing rules" refers to the department's rules governing the licensing and functioning of skilled nursing and intermediate care facilities, intermediate care facilities for the mentally retarded and boarding care facilities.

8. Statement of deficiencies. "Statement of deficiencies" means a document issued by the department which describes a long-term care facility's deficiencies in complying with state licensing rules.

§7943. Violations

1. License required. It shall be a violation of this chapter for any person to manage or operate any long-term care facility as defined in this chapter or adult foster home as defined in section 7901-A without first obtaining a license therefor.

2. Interference or false information. It shall be a violation of this chapter for any person to impede or interfere with the enforcement of laws or rules governing the licensing of long-term care facilities, or for any person to give any false information in connection with the enforcement of laws or rules.

3. Correction of deficiencies. It shall be a violation of this chapter to:

A. Fail to submit a plan of correction within 10 working days after receipt of a statement of deficiencies; and

B. Fail to take timely corrective action in accordance with a plan of correction or a directed plan of correction. Each failure to correct any deficiency may be considered a separate violation of this section.

4. Protection of residents. Notwithstanding subsection 3, the following conduct is deemed to be a violation of this chapter without regard to whether a plan of correction or directed plan of correction is followed by a facility:

A. Failure to comply with state licensing laws or rules when this failure poses an immediate threat of death or substantial probability of serious mental or physical harm to a resident. Each failure to comply with any law or rule may be considered a separate violation of this section; and

B. The occurrence of a repeated deficiency that poses

a substantial risk to residents' health or safety or infringes upon residents' rights. For purposes of this section, a repeated deficiency is one that is found to exist in a long-term care facility during a current survey or investigation that has also been cited in a statement of deficiencies of that facility within the past 2 years. Each repeated deficiency may be considered a separate violation of this section.

5. Compliance with federal requirements. It shall be a violation of this chapter for any long-term care facility subject to the provisions of United States Code, Title 42, Section 1919 to fail to comply with the requirements of Section 1919, Subsections (b), (c) or (d). Each failure to comply with a requirement of United States Code, Title 42, Section 1919, Subsections (b), (c) or (d) may be considered a separate violation of this section.

§7944. Intermediate sanctions

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

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

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

C. The department may impose a penalty upon a long-term care facility. In no event may any penalty or combination of penalties imposed on a facility be greater than a sum equal to \$5 times the total number of residents residing in the facility per violation, up to a maximum of \$5,000 for each instance in which the department issues a statement of deficiency to a skilled nursing or intermediate care facility; or \$3 times the total number of residents residing in the facility per violation, up to a maximum of \$3,000 in each instance in which the department issues a statement of deficiency to any boarding care facility.

2. Schedule of penalties. The department shall establish a schedule of penalties according to the nature of the violation. In establishing the schedule, the department shall consider, among other factors, the immediacy and probability of physical or mental harm to residents caused by a particular type of violation and whether the facility in question has repeated deficiencies or a substantial number of deficiencies.

3. Reimbursement. Nothing in this chapter may limit the authority of the department to adjust the reimbursement due facilities for residents as stated in the departmental regulations governing reimbursement.

§7945. Incentives for high quality care

By January 1, 1989, the department shall establish programs to reward long-term care facilities that provide the highest quality care to residents, including, but not limited to, programs of public recognition.

§7946. Enforcement and appeal

1. Procedure. The department may impose any sanction in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, providing the long-term care facility the opportunity for an administrative hearing, or file a complaint with the Superior Court requesting the imposition of any sanction authorized by this chapter.

2. Collection of penalties; interest. Long-term care facilities that are fined pursuant to this chapter are required to pay the department the amount of the penalties. Penalties may be collected by the department by the offset of any reimbursement due the facility, or by any other method authorized by law. An appeal of the department's decision to penalize a long-term care facility shall stay the collection of any penalties. Interest will accrue on penalties that remain unpaid after any appeal period has passed at the rate described in Title 14, section 1602-A, subject to subsection 3.

3. Reduction or delay of penalties. The department may reduce the amount or delay the payment of a penalty when a facility is able to show that payment of the total amount due would result in inadequate funds to provide necessary services to residents. In making this determination, the department may consider, among other factors, the amount of any savings as calculated pursuant to the principles of reimbursement, overall profits or cash reserves and any extraordinary expenses experienced by the facility, as well as the necessity of providing an incentive to correct violations of this chapter.

4. Income from penalties. Any income from penalties shall be placed in a special revenue account and be used if needed and available when a receiver is appointed pursuant to section 7933, or for other costs associated with the protection of health or property of residents of long-term care facilities which are fined or sanctioned pursuant to this chapter.

5. No limitation on right of action. Nothing in this chapter may limit the right of a resident to bring an action arising out of events which constitute a violation of this chapter.

§7947. Rules

The department shall adopt rules for intermediate sanctions in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

Effective August 4, 1988.

CHAPTER 775

S.P. 946 — L.D. 2494

AN ACT to Establish the Strategic Training for Accelerated Reemployment Program.

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

Whereas, the Strategic Training for Accelerated Reemployment Program is created to go into effect on January 1, 1988, and to begin training Maine residents on July 1, 1988; and

Whereas, employers are notified in March of their unemployment insurance contribution rate amounts which are due by April 30, 1988; and

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

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

Sec. 1. 26 MRSA §2011, as enacted by PL 1987, c. 466, §3, is amended to read:

§2011. Funds

All funds under this subchapter shall be distributed among the State's 2 Job Training Partnership Act service delivery areas. Funds will be allocated to the State's 2 private industry councils serving all counties. The Department of Labor shall distribute these funds to the private industry councils, in the 2 service delivery areas, on a county-based formula determined by the Department of Labor.

Sec. 2. 26 MRSA §2012, sub-§1, as enacted by PL 1987, c. 466, §3, is amended to read:

1. Submission of plan to Governor and Legislature. Each private industry council shall submit its annual plan to the Governor and to the Legislature according to the requirements of section 1004, "Job Training Plan" and section 105, "Review and Approval of Plan" of the United States Job Training Partnership Act, Public Law 97-300, before funds may be provided to the private industry council under this subchapter.