

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

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

J.S. McCarthy Company
Augusta, Maine
1993

Sec. 4. 19 MRSA §305, sub-§4-A is enacted to read:

4-A. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 3, the Superior Court may hear and determine any issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

Sec. 5. 19 MRSA §305, sub-§6, ¶B, as enacted by PL 1993, c. 410, Pt. V, §4, is amended to read:

B. The department issues a decision after hearing that finds the obligor is not in compliance with a court order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 4; or

Sec. 6. 19 MRSA §306, sub-§3, ¶¶F and G, as enacted by PL 1993, c. 410, Pt. V, §4, are amended to read:

F. If the obligor requests a hearing, the obligor shall direct the request to the department's support enforcement office that is responsible for handling the obligor's case; ~~and~~

G. If the obligor files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, the department shall stay action to certify the obligor to the Secretary of State for noncompliance with a court order of support; and

Sec. 7. 19 MRSA §306, sub-§3, ¶H is enacted to read:

H. The obligor can come into compliance with a court order of support by:

(1) Paying current support;

(2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the department; and

(3) Meeting the obligor's health insurance obligation.

Sec. 8. 19 MRSA §306, sub-§4, as enacted by PL 1993, c. 410, Pt. V, §4, is amended to read:

4. Administrative hearing. An obligor may request an administrative hearing within 20 days of service of the notice described in subsection 3. The

request for hearing must be in writing and must be received by the department within 20 days. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV. The issues that may be ~~considered determined~~ at hearing are limited to whether the obligor is required to pay child support under a court order of support and whether the obligor is in compliance with a court order of support, although the obligor may raise additional issues, including the reasonableness of a payment agreement in light of the obligor's current circumstances, to be preserved for appeal.

Sec. 9. 19 MRSA §306, sub-§5-A is enacted to read:

5-A. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 4, the Superior Court may hear and determine any issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

Sec. 10. 19 MRSA §306, sub-§6, as enacted by PL 1993, c. 410, Pt. V, §4, is amended to read:

6. Stay. If an obligor timely requests a hearing to contest the issue of compliance, the department may not certify the name of the obligor to ~~a board the~~ Secretary of State for noncompliance with a court order of support until the department issues a decision after hearing that finds the obligor is not in compliance with a court order of support.

Sec. 11. 19 MRSA §306, sub-§7, ¶B, as enacted by PL 1993, c. 410, Pt. V, §4, is amended to read:

B. The department issues a decision after hearing that finds the obligor is not in compliance with a court order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 5; or

See title page for effective date.

CHAPTER 661

H.P. 1337 - L.D. 1800

An Act to Rename Boarding Care Facilities and Expand Their Definitions

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

Whereas, the State must comply with the changes made in federal law before the expiration of the 90-day period; 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. 22 MRSA §2053, sub-§3-A, as amended by PL 1993, c. 390, §5, is further amended to read:

3-A. Health care facility. "Health care facility" means a nursing home ~~or boarding home that is, or will be upon completion, licensed under chapter 405; a residential care facility that is, or will be upon completion, licensed under the laws of the State, chapter 1663; a hospital; a community mental health facility; or a community health center.~~

Sec. 2. 22 MRSA §7801, sub-§1, ¶A, as amended by PL 1985, c. 770, §4, is further amended to read:

A. A boarding residential care facility;

Sec. 3. 22 MRSA §7801, sub-§3, as enacted by PL 1985, c. 770, §4, is amended to read:

3. Residential care facilities. ~~An adult foster home~~ A residential care facility 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~~ residential care facilities to receive payment from available state funds. The department may issue 2-year licenses and conduct modified surveys for compliance of those facilities as long as the facilities have relatively deficiency-free surveys with no history of health or safety violations.

Sec. 4. 22 MRSA §7801, sub-§4, as enacted by PL 1985, c. 770, §4, is repealed.

Sec. 5. 22 MRSA §7802, sub-§1, ¶E is enacted to read:

E. A 2-year full license may be issued by the department when an individual or agency is licensed as a residential care facility for one or 2 adults as long as it has relatively deficiency-free surveys with no history of health or safety violations.

Sec. 6. 22 MRSA c. 1665, first 2 lines are repealed and the following enacted in their place:

CHAPTER 1665

RESIDENTIAL CARE FACILITIES

Sec. 7. 22 MRSA §7901-A, as amended by PL 1987, c. 769, Pt. A, §80, is further amended 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. Residential care. "Boarding Residential care" means care ~~which~~ that 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 Residential care" may include personal supervision, protection from environmental hazards, diet 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 and limited nursing services.

3. Residential care facility. "Boarding Residential care facility" means a house or other place ~~classified as either an adult foster home or a boarding home which~~ that, for consideration, is maintained wholly or partly for the ~~purpose~~ purpose of providing residents with boarding residential care as defined in subsection 2. A residential care facility includes, but is not limited to, facilities formerly defined and regulated as adult foster homes and boarding homes under this section. A "boarding residential care facility" does not include a licensed nursing home, a supported living arrangement certified by the Department of Mental Health and Mental Retardation 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 residential care facility, means being able to transfer independently and able to evacuate a facility in less

than 2 1/2 minutes with the assistance of another person throughout the evacuation procedure.

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~~ residential care facility in which the resident lives.

Sec. 8. 22 MRSA §7902, sub-§1, as amended by PL 1989, c. 355, §2, is further amended to read:

1. Rules. The commissioner shall ~~promulgate~~ adopt rules for ~~boarding various types of residential care facilities, which shall.~~ These rules must include but need are 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, criteria for placement of residents who are 17 years of age or older and under 18 years of age and licensing procedures. There shall be The commissioner may adopt separate rules promulgated for ~~boarding homes and foster homes~~ various types of residential care facilities.

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 homes~~ residential care facilities, the Department of Human Services ~~shall may~~ require unlicensed personnel to have successfully completed a program of training and instruction, approved by the department for the administration of medication ~~which, that~~ is not limited to in-service training.

Sec. 9. 22 MRSA §7903, as amended by PL 1991, c. 591, Pt. J, §§7 and 8, is further amended to read:

§7903. Fees for licenses

The department shall charge an annual fee of \$10 per licensed bed for ~~boarding homes and a flat fee of \$25 for foster homes~~ residential care facilities.

Sec. 10. 22 MRSA §7904-A, as amended by PL 1987, c. 304, §§3 and 4, is further amended to read:

§7904-A. Fire safety inspection

1. Inspection required. ~~No~~ A license may ~~not~~ not be issued by the department to a ~~boarding~~ residential

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~~ must indicate that the ~~boarding~~ residential care facility has complied with applicable fire safety provisions referred to in Title 25, section 2452, ~~shall~~ must 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~~ A residential care facility ~~which~~ that has a capacity of 17 or more beds ~~shall~~ must comply with the Life Safety Code, chapter ~~24~~ 22 or 23, the residential board and care occupancies ~~section~~ sections for large facilities, adopted by the State Fire Marshal. In addition, the following requirement must be met.

A. ~~Any~~ A building of 2 or more stories ~~shall~~ must 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~~ A residential care facility ~~which~~ that has a capacity of more than 6 but fewer than 17 beds ~~shall~~ must comply with the Life Safety Code, chapter ~~24~~ 22 or 23, the residential board and care occupancies ~~section~~ sections for small facilities, adopted by the State Fire Marshal. In addition, the following requirements must be met.

A. ~~Any~~ A building of 2 or more stories ~~shall~~ must 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~~ must be provided in ~~such~~ the number and location ~~as~~ required by the State Fire Marshal.

5. Requirements for residential care facilities with 6 or fewer beds. The department may permit any ~~boarding home~~ residential care facility having 6 or fewer ambulatory residents who can evacuate the facility without the assistance of another person in 2 or less minutes to comply with the one-family and 2-family dwelling requirements of the Life Safety Code adopted by the State Fire Marshal.

~~6. Adult foster homes with one to 4 ambulatory residents. Adult foster homes having one to 4 ambulatory residents who can evacuate the facility without the assistance of another person in 2 or less minutes 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 A local regulations which affect regulation that affects the life-safety requirements of any boarding a residential care facility and which are that is more stringent than those referred to in this section shall take takes precedence.~~

Sec. 11. 22 MRSA §7905, as amended by PL 1991, c. 69, §§2 and 3, is further amended to read:

§7905. Personal funds of residents

1. Permission to manage personal funds. ~~No~~ An operator or agent of any boarding a residential care facility may not manage, hold or deposit in a financial institution the personal funds of any a resident of the facility, unless the operator or agent has received written permission therefor from:

- A. The resident, if the resident has no guardian, trustee or conservator;
- B. The resident's guardian, trustee or conservator, if that person exists and can be reached; or
- C. The department, if a guardian, trustee or conservator exists, but can not be reached.

2. Itemized accounting. ~~Any An~~ An operator or agent who, after receiving written permission pursuant to subsection 1, manages or holds the personal funds of any a resident, shall must include for each resident a separate, itemized accounting for the use of the that resident's personal funds, with supporting documentation for every expenditure in excess of \$2.

3. Depositing personal funds. The department may require an operator or agent of a boarding residential care facility to deposit in a financial institution the personal funds of a resident, if the resident has a guardian, trustee or conservator who can not be reached.

4. Use of personal funds by operator prohibited. Under no circumstances ~~shall any may an~~ operator or agent of a boarding residential care facility use the personal funds of any a resident for the operating costs of the facility or for services or items which that are reimbursable on a reasonable cost basis. The personal funds of any a resident shall may not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any

a member of the owner's family or any an employee of the facility.

Sec. 12. 22 MRSA §7906-A, as enacted by PL 1985, c. 770, §13, is repealed.

Sec. 13. 22 MRSA §7907, as amended by PL 1991, c. 622, Pt. M, §29, is further amended to read:

§7907. Boarding care payments

~~Except as otherwise provided in section 7906 A, the~~ The department shall:

1. Former adult foster homes. Reimburse all ~~approved~~ facilities of up to 4 beds, formerly called adult foster homes, at a rate of at least \$225 \$433 per month; and

2. Residential care payments. Reimburse all ~~boarding residential care facilities of 5 or 6 or fewer beds, except as provided in section 7906 A, whose residents do not have severe mental or physical dysfunction or disability on a flat rate basis of at least \$601 per month.~~

Sec. 14. 22 MRSA §7909, first ¶, as enacted by PL 1981, c. 196, §4, is amended to read:

Whenever there are pertinent and available health and other records about a person who seeks admission as a resident to a boarding residential care facility, those records ~~shall must~~ be provided to the administrator of the facility at least 7 days prior to the date of admission, unless there are compelling reasons ~~which that~~ make this impossible or impractical. If there are compelling reasons, including, but not limited to, emergency situations, the administrator ~~shall must~~ receive, by not later than the date of admission, a written note ~~which that~~:

Sec. 15. 22 MRSA §7910, as enacted by PL 1983, c. 844, §1, is repealed.

Sec. 16. 22 MRSA §7911, as enacted by PL 1985, c. 770, §15, is repealed.

Sec. 17. 22 MRSA §7912-A, first ¶, as enacted by PL 1989, c. 19, §2, is amended to read:

~~Except as provided in section 7911, a boarding A residential care facility which that has 8 or fewer beds may not have residents who are nonambulatory or mobile nonambulatory unless the reason for the condition is temporary except as follows:~~

Sec. 18. 22 MRSA §7912-A, sub-§2, as enacted by PL 1989, c. 19, §2, is amended to read:

2. Requirements when number of nonambulatory or mobile nonambulatory residents exceed limits. Boarding Residential care facilities may

provide services to more residents who are nonambulatory or mobile nonambulatory than allowed under subsection 1 if, in addition to those requirements:

A. The structure meets all the requirements of the residential board and care occupancy section for small facilities of the National Fire Protection Association Life Safety Code, chapter ~~24~~ 22 or 23. The structure ~~shall~~ must be of protected wood frame construction unless it is provided with either a National Fire Protection Association Standard No. 13 or a Life Safety sprinkler system. Additional staff may be required at the direction of the Office of the State Fire Marshal; ~~and.~~

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

Sec. 19. 22 MRSA §7913, as enacted by PL 1985, c. 770, §15, is repealed.

Sec. 20. 22 MRSA §7922, sub-§1, as amended by PL 1991, c. 69, §4, is further amended to read:

1. Long-term care facility. "Long-term care facility" means any ~~boarding-home~~ residential care facility with more than 5 residents licensed pursuant to chapters 1663 and 1665, and any skilled nursing or intermediate care facility or unit licensed pursuant to chapter 405.

Sec. 21. 22 MRSA §7942, sub-§3, as enacted by PL 1987, c. 774, §4, is amended to read:

3. Long-term care facility. "Long-term care facility" means ~~any boarding~~ a residential care facility subject to licensure pursuant to chapters 1663 and 1665; and ~~any a~~ a skilled nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405, ~~with the exception of adult foster homes.~~

Sec. 22. 22 MRSA §7943, sub-§1, as enacted by PL 1987, c. 774, §4, is amended to read:

1. License required. It ~~shall be~~ is a violation of this chapter for ~~any a~~ a person to manage or operate ~~any a~~ a 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 to manage or operate a long-term care facility.~~

Sec. 23. 22 MRSA §7944, sub-§1, ¶C, as enacted by PL 1987, c. 774, §4, is amended to read:

C. The department may impose a penalty upon a long-term care facility. ~~In no event may any A~~ penalty or a combination of penalties imposed on a facility may not 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~~ 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~~ residential care facility.

Sec. 24. Report on use of vouchers for long-term care. By December 1, 1994 the Department of Human Services shall submit a report to the joint standing committee of the Legislature having jurisdiction over human resource matters regarding the degree to which existing opportunities for using vouchers for long-term care services are being exercised. The department shall include in the report an analysis of the reasons existing vouchers are or are not being used, an assessment of whether federal waivers are obtainable to use vouchers in the Medicaid program and the department's plans regarding vouchers.

Sec. 25. Assisted living rules. By July 1, 1994 the Department of Human Services shall adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 regarding assisted living. In drafting the rules, the department shall seek the advice of consumers of assisted living services, providers of assisted living services, the State Fire Marshal and the Long-term Care Task Force appointed by the Commissioner of Human Services. The rules must include, but are not limited to, the following:

1. A definition of assisted living that includes a range of services from in-home assistance to facility-based care but does not include supported living as certified by the Department of Mental Health and Mental Retardation;
2. A recognition that different levels of assisted living require different levels of regulation; and
3. A level of regulation that provides necessary protection for consumers without unduly restricting choice or increasing costs.

Until rules are adopted under this section assisted living facilities must be regulated according to applicable existing laws. A person or entity may not represent one's self as an assisted living facility or offer assisted living services until rules are adopted under this section.

Sec. 26. Accreditation progress report. By December 1, 1994 the Commissioner of Mental Health and Mental Retardation shall submit a progress report to the joint standing committee of the

Legislature having jurisdiction over human resource matters regarding the activities and recommendations of the process action team that, under the auspices of the Governor's Commission on Supported Employment, is addressing the issues of national accreditation, minimum standards and quality in disability services.

Sec. 27. Feasibility of long-term care development account. The Department of Human Services shall review the law governing certificates of need in the Maine Revised Statutes, Title 22, chapter 103 and determine the need for and feasibility of establishing a long-term care certificate of need development account. The department shall submit its recommendations along with any necessary implementing legislation to the joint standing committee of the Legislature having jurisdiction over human resource matters by November 1, 1994.

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

Effective April 12, 1994.

CHAPTER 662

S.P. 707 - L.D. 1904

An Act to Establish the Maine Surplus Energy Auction Program

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

Sec. 1. 35-A MRSA c. 44 is enacted to read:

CHAPTER 44

MAINE SURPLUS ENERGY AUCTION PROGRAM

§4401. Definitions

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

1. Eligible electric utility. "Eligible electric utility" means an electric utility in the State with over \$35,000,000 in annual revenues.

2. Marginal cost. "Marginal cost" means the actual additional power supply and delivery costs incurred by the eligible electric utility to serve the customers selected pursuant to section 4402.

§4402. Program established

1. Price of electricity. There is established within the commission the Maine Surplus Energy Auction Program, referred to in this chapter as "the program," which provides access to surplus electricity to selected industrial and commercial electricity consumers at a price no lower than the marginal cost of that electricity to the utility. Surplus electricity is available for sale under the program only for the period during which the commission, pursuant to section 4403, determines that surplus will be available.

2. Notification. Within 120 days of the effective date of this section, eligible electric utilities shall provide notice of the program to all industrial and commercial customers within their respective service areas and distribute to those customers requests for proposals for purchases of electricity under the program.

3. Selection criteria. Eligible electric utilities shall evaluate proposals received from customers in response to the notice provided under subsection 2 and select candidate customers from within the utilities' respective service areas to participate in the program. The proposals must be evaluated and selected on the basis of the following criteria.

A. The following are favored:

(1) Proposals to purchase electricity for new and incremental uses that would increase the customer's existing load and that would not occur but for this program;

(2) Proposals from customers who will be able to operate competitively at otherwise applicable electricity rates beyond the term of a contract made pursuant to the program;

(3) Proposals for contracts that, if accepted, would be likely to result in additions to or maintenance of the employment base in this State; and

(4) Proposals for contracts that, if accepted, would maximize contributions to utility revenues and load, with due consideration given to the quality and the type of that load.

B. The following is not favored:

(1) Any proposal that, if accepted, would likely result in a shift in business activity to or create an unfair competitive advantage for the business making the proposal to the