

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

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
1995

terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

Sec. 8. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 24-A, sections 2392 and 2393 apply retroactively to July 1, 1995.

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

Effective April 8, 1996.

CHAPTER 620

H.P. 1303 - L.D. 1784

An Act to Amend the Home Health Laws

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

Sec. 1. 22 MRSA §2144, sub-§4, ¶D is enacted to read:

D. The department may petition the Superior Court to appoint a receiver to operate a home health agency in accordance with chapter 1666-A.

Sec. 2. 22 MRSA §2146, as amended by PL 1991, c. 591, Pt. J, §3, is further amended to read:

§2146. Fees

Each application for a license under this chapter must be accompanied by the fee established by the department. ~~No such fee may be refunded. The fee is not refundable. The department shall establish such fees on the basis of a sliding fee scale reflecting variations in size and scope of operations, but in no event may the fee exceed \$300. The department shall charge a nonrefundable fee of \$25 for any change to a license requiring reissuance of the full license during the term of the license. The change in status of a license to a provisional or conditional license requires an additional fee of \$100 payable at the time of issuance of such license.~~ All fees received by the department under this chapter must be paid into the State Treasury to the credit of the department for the purpose of reducing the costs of carrying out this chapter.

Sec. 3. 22 MRSA §2150-B is enacted to read:

§2150-B. Staff; hiring; policy

A home health agency must develop and implement written policies and procedures that prohibit abuse, neglect or misappropriation of client's property. Prior to hiring a certified nursing assistant or home health aid, the home health agency must verify with the Maine Registry of Certified Nursing Assistants that the individual is listed on the registry. The agency may not employ an individual who:

1. Court. Has been found guilty in a court of law of abuse, neglect or misappropriation of the property of an individual, corporation or entity in a health care setting; or

2. State survey agency. Has been found by the state survey agency to have abused, neglected or misappropriated the property of an individual, corporation or entity in a health care setting.

Sec. 4. 22 MRSA §7931, as enacted by PL 1983, c. 454, is amended to read:

§7931. Policy

It is the purpose of this chapter to develop a mechanism ~~whereby~~ by which the concept of receivership can be utilized for the protection of residents in long-term care facilities and clients of home health care providers. It is the intent of the Legislature that receivership ~~shall~~ be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

Sec. 5. 22 MRSA §7932, sub-§§1-A and 3-A are enacted to read:

1-A. Client. "Client" means a person who receives services from a home health agency.

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

qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a client's place of residence. Beginning October 1, 1991 "home health care provider" includes any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

Sec. 6. 22 MRSA §7933, sub-§1, as enacted by PL 1983, c. 454, is amended to read:

1. Grounds for appointment. The following circumstances ~~shall be~~ are grounds for the appointment of a receiver to operate a long-term care facility or home health care provider.

A. A facility or home health care provider intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents or clients.

B. An emergency exists in a facility or home health care provider ~~which that~~ threatens the health, security or welfare of residents or clients.

C. A facility or home health care provider is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients.

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

Sec. 7. 22 MRSA §7934, as enacted by PL 1983, c. 454, is amended to read:

§7934. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter ~~shall have~~ has such powers as the court may direct to operate the facility or home health care provider and to remedy the conditions ~~which that~~ constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents or clients and family that the facility or home health care provider is placed in receivership. The owner and licensee ~~shall be~~ are divested of possession and control of the facility or home health care provider during the period of receivership under such

conditions as the court ~~shall specify~~ specifies. With the court's approval, the receiver ~~shall have~~ has specific authority to:

A. Remedy violations of federal and state regulations governing the operation of the facility or home health care provider;

B. Hire, direct, manage and discharge any employees, including the administrator of the facility or home health care provider;

C. Receive and expend in a reasonable and prudent manner the revenues of the facility or home health care provider due during the 30-day period preceding the date of appointment and becoming due thereafter;

D. Continue the business of the home or home health care provider and the care of residents or clients;

E. Correct or eliminate any deficiency of the facility ~~which or home health care provider that~~ endangers the safety or health of the residents or clients, ~~provided that~~ if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and

F. Exercise such additional powers and perform such additional duties, including regular accountings, as the court ~~deems~~ considers appropriate.

2. Revenues of the facility. Revenues of the facility ~~shall~~ must be handled as follows.

A. The receiver shall apply the revenues of the facility or home health care provider to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility or home health care provider, or where payment of the debts will interfere with the purposes of the receivership. Priority ~~shall~~ must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the facility ~~shall be~~ or home health care provider are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings.

B. The receiver may correct or eliminate any deficiency of the facility ~~which or home health care provider that~~ endangers the safety or health

of the resident or client, ~~provided that~~ if the total ~~costs~~ cost of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver.

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow ~~shall~~ must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility or home health care provider should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the facility or home health care provider should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents or clients and to prevent the closure of facilities ~~which~~ or home health care providers that, under proper management, are likely to be viable operations. This section ~~shall~~ may not be construed as a method of financing major repair or capital improvements to facilities ~~which that~~ that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

3. Avoidance of preexisting leases, mortgages and contracts. A receiver may not be required to honor ~~any a~~ any a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the facility or home health care provider if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the facility or home health care provider or was related to the licensee ~~of~~ of the facility or the home health care provider by ~~any a~~ any a significant degree of common ownership or control at the time the agreement was made; or

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

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest ~~which that~~ that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility or home health care provider, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to ~~any an~~ any an action against the receiver for payment or for the possession of the subject goods or real estate by ~~any a~~ any a person who received such notice.

Notwithstanding this subsection, there ~~shall~~ may not be ~~no a~~ no a foreclosure or eviction during the receivership by any person ~~where~~ where if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

4. Closing of the facility or home health care provider. The receiver may not close the facility or home health care provider without leave of the court. In ruling on the issue of closure, the court shall consider:

- A. The rights and best interests of the residents or clients;
- B. The availability of suitable alternative placements;
- C. The rights, interest and obligations of the owner and licensee;
- D. The licensure status of the facility or home health care provider; and
- E. Any other factors ~~which that~~ which that the court ~~deems~~ considers relevant.

When a facility or home health care provider is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

Sec. 8. 22 MRSA §§7935 and 7937, as enacted by PL 1983, c. 454, are amended to read:

§7935. Termination of receivership

The receivership ~~shall terminate~~ terminates when the court certifies that the conditions ~~which that~~ which that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents or clients are safely relocated. The court shall review the necessity of the receivership at least semiannually.

A receivership ~~shall~~ may not be terminated in favor of the former or the new licensee, unless ~~such that~~ person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment ~~deemed~~ considered sufficient by the court.

§7937. Court order to have effect of license

An order appointing a receiver under section 7933 ~~shall have~~ has the effect of a license for the duration of the receivership. The receiver ~~shall be~~ is responsible to the court for the conduct of the facility or home health care provider during the receivership, and ~~any~~ a violation of regulations governing the conduct of the facility or home health care provider, if not promptly corrected, ~~shall~~ must be reported by the department to the court.

See title page for effective date.

CHAPTER 621

H.P. 1311 - L.D. 1795

An Act to Clarify the Laws Pertaining to the Regulation of Narcotic Dependency Treatment Programs

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

Sec. 1. 5 MRSA §20053, sub-§5, ¶¶C and D, as enacted by PL 1995, c. 499, §1 and affected by §5, are amended to read:

C. Standards for the distribution of scheduled or prescription drugs and controlled substances and for the security of these drugs and controlled substances consistent with the rules adopted by the Board of Commissioners of the Profession of Pharmacy, including, but not limited to, the use of ~~identifiable~~ appropriately labeled containers in dispensing the drugs and controlled substances;

D. Procedures for the immediate disclosure to regulatory and law enforcement authorities by treatment programs of any lost, missing, stolen ~~or~~, diverted, spilled or contaminated scheduled or prescription drugs or controlled substances;

Sec. 2. 5 MRSA §20053, sub-§7, as enacted by PL 1995, c. 499, §1 and affected by §5, is amended to read:

7. Employees. ~~Except as authorized by the Director of the Office of Substance Abuse, a~~ A person may not be employed by or contract with a treatment program in a capacity in which that person handles or has access to scheduled or prescription drugs or

controlled substances if that person has been convicted of a felony or an offense related to the possession, use, sale or distribution of scheduled or prescription drugs or controlled substances under Title 17-A, chapter 45, or under any law of another jurisdiction. The director may authorize an exception to this employment prohibition if the following circumstances exist:

A. Federal regulations do not prohibit such employment;

B. The prospective employee or contractor has obtained any required waiver from the federal Drug Enforcement Administration; and

C. The director determines that there is no substantial risk to the integrity of the program.

Promptly after authorizing an exception under this subsection, the director shall notify the Maine Drug Enforcement Agency and the law enforcement agency of the county or municipality in which the treatment program is located.

Sec. 3. 22 MRSA §2383-B, sub-§4, as enacted by PL 1995, c. 499, §3 and affected by §5, is repealed.

Sec. 4. 32 MRSA §13723, sub-§7, ¶C, as enacted by PL 1995, c. 499, §4 and affected by §5, is repealed.

See title page for effective date.

CHAPTER 622

H.P. 1268 - L.D. 1743

An Act to Establish Consistency between Federal and State Drinking Water Laws

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

Sec. 1. 22 MRSA §2613, sub-§1, as amended by PL 1979, c. 541, Pt. B, §28, is further amended to read:

1. Variances. The commissioner may grant one or more variances from an applicable state primary ~~water~~ drinking water regulation to a public water system, if the variance will not result in an unreasonable risk to the public health, and if:

A. Because of the characteristics of the raw water sources reasonably available to the systems, the system ~~cannot~~ can not meet the maximum contaminant levels of ~~such~~ the drinking water regulation despite application of the best ~~feasible~~