

MAINE STATE LEGISLATURE

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CHAPTER 610

S.P. 754 - L.D. 2032

**An Act Regarding Receivership
Authority for Protection of
Individuals Receiving Services from
the Department of Mental Health,
Mental Retardation and Substance
Abuse Services and the Department
of Human Services**

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

Whereas, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Human Services provide services to thousands of Maine citizens who are clients of the departments through contracts with community-based providers on a daily basis; and

Whereas, the services provided are necessary to the quality of life of the clients of the departments and others receiving services through the providers' organizations; and

Whereas, the financial, programmatic and management stability of the providers is critical to their continuous operation; and

Whereas, when providers experience financial, programmatic or management instability, that instability threatens the provision of services and the health, safety and welfare of the clients of the departments; 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 §7932, sub-§2, as amended by PL 1985, c. 770, §16, is further amended to read:

2. Facility. "Facility" means any boarding 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 and any private psychiatric hospital subject to licensure pursuant to chapter 405.

Sec. 2. 22 MRSA §7933, sub-§2, as enacted by PL 1983, c. 454, is amended to read:

2. Who may bring action. The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver. In an action brought regarding a private psychiatric hospital, prior to or at the time of bringing the action, the commissioner shall consult and work collaboratively with the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.

Sec. 3. 34-B MRSA c. 13 is enacted to read:

CHAPTER 13

APPOINTMENT OF RECEIVERS§13001. Policy

It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of individuals served or funded by the department. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

§13002. Definitions

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

1. Client. "Client" means a person who receives services from a provider.

2. Emergency. "Emergency" means a situation, physical condition, financial condition or one or more practices, methods or operations that present imminent danger of death or serious physical or mental harm to individuals served or funded by the department, including, but not limited to, imminent or actual abandonment of a facility or service.

3. Facility. "Facility" means any residential facility funded in whole or in part by the department but does not include hospitals licensed pursuant to Title 22, chapter 405.

4. Habitual violation. "Habitual violation" means a violation of state or federal law that, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

5. Licensee. "Licensee" means any person or any other legal entity, other than a receiver appointed under section 13003, who is licensed or required to be licensed to operate a facility or to provide services.

6. Owner. "Owner" means the holder of the title to the real estate in which the facility is maintained.

7. Provider. "Provider" means a business entity or subdivision of a business entity, whether public or

private, proprietary or nonprofit, engaged in providing services licensed or funded, in whole or in part, by the department but does not include a hospital licensed pursuant to Title 22, chapter 405.

8. Resident. "Resident" means any person who lives in and receives services or care in a facility.

9. Substantial violation. "Substantial violation" means a violation of state or federal law that presents a reasonable likelihood of serious physical or mental harm to residents.

10. Transfer trauma. "Transfer trauma" means the combination of medical and psychological reactions to abrupt physical transfer that may increase the risk of grave illness or death.

§13003. Appointment of receiver

1. Grounds for appointment. The following circumstances are grounds for the appointment of a receiver to operate a facility or a provider.

A. A facility or 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 provider that threatens the health, security or welfare of residents or clients.

C. A facility or provider is in substantial or habitual violation of the standards of health, safety or resident care established under state rules 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, any power of the department, including, but not limited to, the power to revoke, suspend or refuse to renew any license or the power of the Department of Human Services to bring an action pursuant to Title 22, chapter 1666-A.

2. Who may bring action. The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver.

3. Procedure for hearing. The procedure for a hearing is as follows.

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing must be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility or provider for not less than

3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility or provider that must be remedied immediately to ensure the health, safety and welfare of the clients or residents. The appointment of a temporary receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the receivership. On 2 days' notice to the temporary receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a temporary receiver that has been entered without notice, and in that event the court shall proceed to hear and determine the motion as expeditiously as possible.

4. Who may be appointed receiver. The court may appoint any person, except a state employee, considered appropriate by the court to act as receiver.

5. Compensation of receiver. The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with any surety the court requires. Any expenditures are paid from the revenues of the facility or provider.

§13004. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the facility or provider and to remedy the conditions 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 or provider property. The receiver shall make reasonable efforts to notify residents or clients and family that the facility or provider is placed in receivership. The owner and licensee are divested of possession and control of the facility or provider during the period of receivership under conditions as

the court specifies. With the court's approval, the receiver has specific authority to:

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

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

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

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

E. Correct or eliminate any deficiency of the facility or provider that endangers the safety or health of the residents or clients, 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 additional powers and perform additional duties, including regular accountings, the court considers appropriate.

2. Revenues of facility or provider. Revenues of the facility or provider must be handled as follows.

A. The receiver shall apply the revenues of the facility or 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 when those debts appear extraordinary, of questionable validity, unrelated to the normal and expected maintenance and operation of the facility or provider or when payment of the debts will interfere with the purposes of the receivership. Priority 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 or 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 or provider that endangers the safety or health of the residents or clients, if the total 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 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 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 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 or providers that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities 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 a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the facility or provider if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the facility or provider or was related to the licensee, the facility or the provider by 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 that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility or 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 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 an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received that notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

4. Closing of facility or provider. The receiver may not close the facility or 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 provider; and
- E. Any other factors that the court considers relevant.

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

§13005. Termination of receivership

The receivership terminates when the court certifies that the conditions that prompted the appointment are 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 may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

§13006. Liability of receiver

A person may not bring suit against a receiver appointed under section 13003 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, the receiver is liable in the receiver's official capacity only and any judgment rendered must be satisfied out of receivership assets.

§13007. Court order to have effect of license

An order appointing a receiver under section 13003 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the facility or provider during the receivership, and a violation of regulations governing the conduct of the facility or provider, if not promptly corrected, must be reported by the department to the court.

§13008. Rule-making authority to implement receivership law

The department may adopt rules as necessary to implement this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

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

Effective March 20, 1998.

CHAPTER 611

S.P. 775 - L.D. 2102

An Act to Update the Guide Dog Access Law

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

Sec. 1. 17 MRSA §1312, sub-§3, as enacted by PL 1971, c. 58, §1, is amended to read:

3. Guide and personal care dogs. Every totally or partially blind or otherwise physically disabled person ~~shall have~~ **has** the right to be accompanied by a guide or personal care dog, especially trained for the purpose, in any of the places listed in subsection 2 without being required to pay an extra charge for the guide or personal care dog, ~~provided that he shall be~~ ; **however, the person is** liable for any damage done to the premises or facilities by such dog.

Sec. 2. 17 MRSA §1312, sub-§4, as enacted by PL 1981, c. 584, §1, is amended to read:

4. Especially trained guide dog trainer or personal care dog trainer; access to public facilities; responsibilities. An especially trained guide dog trainer or personal care dog trainer, while engaged in the actual training process and activities of guide or personal care dogs, ~~shall have~~ **has** the same rights, privileges and responsibilities described in this section with respect to access to and use of public facilities as