

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

The Commissioner of Public Safety, with the advice and consent of the Governor and subject to review by the ~~Joint Standing Committee on State Government~~ joint standing committee of the Legislature having jurisdiction over criminal justice matters and to confirmation by the Legislature, shall appoint a Chief of the State Police, as heretofore appointed, to serve for a term of 4 years unless removed for cause. ~~Such~~ The appointment ~~shall~~ must be made from the commissioned officer ranks of the State Police. ~~He~~ The Chief of the State Police may be removed by impeachment or by the Governor on the address of both branches of the Legislature.

Sec. 2. 25 MRSA §2901, as repealed and replaced by PL 1993, c. 349, §54, is amended to read:

§2901. Department; commissioner

There is created and established the Department of Public Safety to coordinate and efficiently manage the law enforcement and public safety responsibilities of the State, to consist of the Commissioner of Public Safety, in this chapter called "commissioner," who is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~state and local government~~ criminal justice matters and to confirmation by the Legislature, to serve at the pleasure of the Governor, and the following: the Bureau of State Police, the Bureau of Liquor Enforcement, the Office of the State Fire Marshal, the Maine Criminal Justice Academy, the Maine Highway Safety Commission, the Bureau of Highway Safety and the Maine Drug Enforcement Agency.

See title page for effective date.

CHAPTER 658

H.P. 1529 - L.D. 2151

An Act to Regulate the Functioning of End-stage Renal Disease Facilities

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

Sec. 1. 22 MRSA c. 412 is enacted to read:

CHAPTER 412

LICENSING OF END-STAGE RENAL DISEASE FACILITIES

§2041. Definitions

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

1. Agreement. "Agreement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to assume responsibility for furnishing specified services to patients and for obtaining reimbursement for those services.

2. Arrangement. "Arrangement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to furnish specified services to patients but the ESRD facility retains responsibility for those services and for obtaining reimbursement for them.

3. Dialysis. "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The 2 types of dialysis that are in common use are hemodialysis and peritoneal dialysis.

4. End-stage renal disease or ESRD. "End-stage renal disease" or "ESRD" means that stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

5. ESRD facility. "ESRD facility" includes a renal transplantation center, a renal dialysis center or a renal dialysis facility.

6. Renal transplantation center. "Renal transplantation center" means a hospital unit that is approved to furnish directly transplantation and other medical and surgical specialty services required for the care of ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

7. Renal dialysis center. "Renal dialysis center" means a hospital unit that is approved to furnish the full spectrum of diagnostic, therapeutic and rehabilitative services required for the care of ESRD dialysis patients, including inpatient dialysis furnished directly or under arrangement. A hospital need not provide renal transplantation to qualify as a renal dialysis center.

8. Renal dialysis facility. "Renal dialysis facility" means a unit that is approved to furnish dialysis services directly to ESRD patients. "Renal dialysis facility" includes a self-dialysis unit or a special-purpose renal dialysis facility.

9. Self-dialysis unit. "Self-dialysis unit" means a unit that is part of an approved renal transplantation center, renal dialysis center or renal dialysis facility and furnishes self-dialysis services.

10. Special-purpose renal dialysis facility. "Special-purpose renal dialysis facility" means a renal dialysis facility that is approved to furnish dialysis at special locations on a short-term basis to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either special rehabilitative locations, including vacation locations, serving ESRD patients temporarily residing at those locations or locations in need of ESRD facilities under emergency circumstances.

§2042. Licensing of facilities

1. Licensing and certification required. The following licensing and certification requirements apply to ESRD facilities.

A. Beginning January 1, 1999, a person, partnership, association or corporation may not represent itself as an ESRD facility, operate as an ESRD facility or otherwise provide ESRD services unless the person, partnership, association or corporation has obtained a license from the department.

B. Beginning January 1, 1999, an ESRD facility, other than an acute care hospital, must be Medicare-certified and meet Medicare requirements to be eligible for licensure as an ESRD facility.

2. Licenses. If, after receiving an application for a license under this chapter, the department finds that all other conditions of licensure are met, it shall issue a license to the applicant for a period of one year. If the department finds less than full compliance with the conditions of licensure, it may issue a conditional license.

The department may issue a conditional license if the applicant fails to comply with applicable laws and rules but the best interest of the public would be served by issuing a conditional license. The conditional license must specify when and what corrections must be made during the term of the conditional license.

When an applicant fails to comply with applicable laws and rules, the department may refuse to issue or renew a license.

3. Appeals. An applicant for a license under this chapter who is denied a license or whose application is not acted upon with reasonable promptness has the right of appeal to the commissioner. The commissioner shall provide the appellant with reasonable notice and opportunity for a fair hearing. The commissioner or a member of the department designated and authorized by the commissioner shall hear all evidence pertinent to the matter at issue and render a decision within a reasonable period after the date of hearing. The hearing must conform to the procedures

detailed in this subsection. Review of any action or failure to act under this chapter must be pursuant to Title 5, chapter 375, subchapter VII. An action relative to the denial of a license provided under this chapter must be communicated to the applicant in writing and must include the specific reason or reasons for that action and must state that the person affected has a right to a hearing.

4. Right of entry and inspection. A duly designated employee of the department may enter the premises of any ESRD services provider who has applied for a license or who is licensed pursuant to this chapter or rules adopted pursuant to this chapter. These employees may inspect relevant documents of the ESRD services provider to determine whether the provider is in compliance with this chapter and rules adopted pursuant to this chapter. The right of entry and inspection extends to any premises and documents of a provider the department has reason to believe is providing ESRD services without a license. An entry or inspection must be made with the permission of the owner or person in charge unless a warrant is first obtained from the District Court authorizing that entry or inspection under section 2148.

5. Application fee. An application for a license under this chapter must be accompanied by a fee established by the department based on the cost of survey and enforcement. All fees collected under this subsection must be deposited into the General Fund.

6. Compliance. An ESRD facility must meet all appropriate state rules and federal regulations.

7. Minimum survey requirement. An ESRD facility is not eligible for licensure or renewal of licensure unless the ESRD facility has had a Medicare survey or a state licensure survey within the previous year.

8. Rules. The department shall adopt rules governing the specific requirements for licensure under this chapter. These rules are routine technical rules in accordance with Title 5, chapter 375, subchapter II-A. The rules must include at least the following.

A. The ESRD facility must be in compliance with applicable federal, state and local laws and regulations.

B. The ESRD facility must meet all Medicare certification requirements.

C. All ESRD facilities must be required to have a backup emergency generator. The emergency generator must be made operational for a period of at least 1/2 hour each month.

9. Sanctions. A person who violates this chapter commits a civil violation for which a forfeiture not to exceed \$100 per day of violation may be adjudged.

See title page for effective date.

CHAPTER 659

S.P. 797 - L.D. 2155

An Act to Encourage Hospitality Industry Development in the State

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

Sec. 1. 28-A M.R.S.A. §707-A is enacted to read:

§707-A. Exceptions to indebtedness or operations limitations

1. Certain financial interests permitted. Notwithstanding section 707, if the requirements of subsection 2 are met, section 707 does not prohibit:

A. A person that owns or has a financial interest in a holder of a retail license issued in conjunction with and as part of the operations of a hotel from owning or having a financial interest in a certificate of approval holder; or

B. A person that owns or has a financial interest in a certificate of approval holder from owning or having a financial interest in the holder of a retail license issued in conjunction with and as part of the operations of a hotel.

2. Requirements. The exceptions to section 707 set out in subsection 1 apply only if each of the following requirements is met.

A. The hotel must have at least 100 adequate sleeping rooms and the relationship between the occupants of those rooms and the owner or operator of the establishment is that of guest and innkeeper.

B. The hotel may not purchase any malt liquor and wine products sold by the certificate of compliance holder to Maine wholesale licensees, nor may the certificate of compliance holder require any brand of liquor product to be purchased or sold by the hotel.

C. Neither the certificate of approval holder nor the retail licensee may directly or indirectly own or have any interest in a Maine wholesale licensee.

D. The certificate of compliance holder and the retail licensees must be separate entities and may not have any common directors.

3. Construction. The exceptions to section 707 set out in subsection 1 must be construed narrowly and be limited to the express terms contained in subsection 1. The exceptions contained in subsection 1 may not be construed to undermine the general prohibition against tied interests contained in section 707.

See title page for effective date.

CHAPTER 660

H.P. 1564 - L.D. 2197

An Act to Implement Recommendations of the Joint Standing Committee on Banking and Insurance Relating to the Review of the Bureau of Insurance, the Bureau of Banking and the Securities Division within the Department of Professional and Financial Regulation under the State Government Evaluation Act

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

PART A

Sec. A-1. 9-B M.R.S.A. §232, as amended by PL 1997, c. 182, Pt. C, §§1 to 7, is further amended by amending the headnote to read:

§232. Removal or prohibition of officer or director

Sec. A-2. 9-B M.R.S.A. §232, first ¶, as amended by PL 1997, c. 182, Pt. C, §1, is further amended to read:

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section. The superintendent may prohibit an officer or director of a financial institution, financial institution holding company or branch of an out-of-state financial institution from participating in any manner in the conduct of the affairs of a financial institution, financial institution holding company or branch of an out-of-state financial institution if the superintendent determines that such action is necessary for the protection of the public, the financial institution, financial institution holding company or