

## 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 Health and 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. [PL 1987, c. 774, §4 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW). PL 2003, c. 689, §B6 (REV).

#### §7942. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 774, §4 (NEW).]

**1. Department.** "Department" means the Department of Health and Human Services. [PL 1987, c. 774, §4 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

**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. [PL 1987, c. 774, §4 (NEW).]

**3. Long-term care facility.** "Long-term care facility" means an assisted living facility or residential care facility subject to licensure pursuant to chapters 1663 and 1664 and a nursing or intermediate care facility or unit subject to licensure pursuant to chapter 405. [PL 2023, c. 176, §34 (AMD).]

**4. Person.** "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit. [PL 1987, c. 774, §4 (NEW).]

**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. [PL 1987, c. 774, §4 (NEW).]

**6. Resident.** "Resident" means any person who lives in and receives services or care in a long-term care facility. [PL 1987, c. 774, §4 (NEW).]

**7. State licensing rules.** "State licensing rules" refers to the department's rules governing the licensing and functioning of nursing facilities, intermediate care facilities for persons with intellectual disabilities and assisted living facilities or residential care facilities. [PL 2023, c. 176, §35 (AMD).]

**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.

[PL 1987, c. 774, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW). PL 1993, c. 661, §21 (AMD). PL 1999, c. 99, §2 (AMD). PL 1999, c. 384, §§17,18 (AMD). PL 2001, c. 596, §B16 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2003, c. 634, §§7,8 (AMD). PL 2003, c. 689, §B6 (REV). PL 2011, c. 542, Pt. A, §47 (AMD). PL 2023, c. 176, §§34, 35 (AMD).

#### §7943. Violations

**1. License required.** It is a violation of this chapter for a person to manage or operate a long-term care facility as defined in this chapter without first obtaining a license to manage or operate a long-term care facility.

[PL 1993, c. 661, §22 (AMD).]

**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.

[PL 1987, c. 774, §4 (NEW).]

**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 [PL 1987, c. 774, §4 (NEW).]

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. [PL 1987, c. 774, §4 (NEW).]

[PL 1987, c. 774, §4 (NEW).]

**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 [PL 1987, c. 774, §4 (NEW).]

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. [PL 1987, c. 774, §4 (NEW).]

[PL 1987, c. 774, §4 (NEW).]

**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.

[PL 1987, c. 774, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW). PL 1993, c. 661, §22 (AMD).

#### §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 as defined in section 7852 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. [PL 1987, c. 774, §4 (NEW).]

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 are appropriate to ensure compliance with state licensing rules or to protect the residents of the long-term care facility. [PL 2007, c. 324, §11 (AMD).]

C. The department may impose a penalty upon a long-term care facility for a violation of this chapter. Each day of violation constitutes a separate offense. The minimum penalty for operating without a license is \$500 per day. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to \$10 times the total number of residents residing in the facility per violation, up to a maximum of \$10,000 for each instance in which the department issues a statement of deficiency to a long-term care facility. [PL 2007, c. 324, §11 (AMD).]

D. The department may direct a long-term care facility to transfer residents in that facility to other locations in an emergency that threatens the health, safety or welfare of the residents of the facility and shall assist the facility in making arrangements for transfers. [PL 1989, c. 747, §1 (NEW).]

The department may adopt rules as necessary for the implementation of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 324, §11 (AMD).]

**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. [PL 1987, c. 774, §4 (NEW).]

**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. [PL 1987, c. 774, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW). PL 1989, c. 747, §1 (AMD). PL 1993, c. 661, §23 (AMD). PL 1999, c. 99, §3 (AMD). PL 2003, c. 634, §9 (AMD). PL 2007, c. 324, §11 (AMD).

#### §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. [PL 1987, c. 774, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW).

#### §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.

[PL 1987, c. 774, §4 (NEW).]

**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 stays the collection of any penalties. All penalties are to be assessed for each day that the facility is or was out of compliance and are to be collected with interest accruing at the rate set by Title 14, section 1602-C. An appeal of the department's decision to penalize a long-term care facility does not stay the assessment of any penalties or interest as long as the long-term care facility continues to be in violation of any requirement of section 7943.

[PL 2003, c. 460, §12 (AMD).]

**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.

[PL 1987, c. 774, §4 (NEW).]

**4. Income from penalties.** Any income from penalties must be placed in a special revenue account and be used by the department for purposes related to improving the quality of care for residents of long-term care facilities.

[PL 2009, c. 621, §7 (AMD).]

**5. No limitation on right of action.**

[PL 1991, c. 637, §1 (RP).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW). PL 1989, c. 747, §2 (AMD). PL 1991, c. 637, §1 (AMD). PL 2003, c. 460, §12 (AMD). PL 2009, c. 621, §7 (AMD).

#### §7947. Rules

The department shall adopt rules for intermediate sanctions in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. [PL 1987, c. 774, §4 (NEW).]

#### SECTION HISTORY

PL 1987, c. 774, §4 (NEW).

#### §7948. Right of action

**1. Generally.** Any resident whose rights have been violated as described in this section may commence a civil action in the Superior Court on that resident's own behalf for injunctive and declaratory relief against any long-term care facility or provider of assisted living programs and services that is alleged to be in violation of any rule described in section 7853 or 7924 or in violation of the rights enumerated in 42 United States Code, Section 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the Superior Court must find that:

A. The plaintiff will suffer irreparable injury if the injunction is not granted; [PL 1991, c. 637, §2 (NEW).]

B. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant; [PL 1991, c. 637, §2 (NEW).]

C. The plaintiff has exhibited a likelihood of success on the merits of the case; and [PL 1991, c. 637, §2 (NEW).]

D. The public interest will not be adversely affected by granting the injunction. [PL 1991, c. 637, §2 (NEW).]

[PL 2001, c. 596, Pt. B, §17 (AMD); PL 2001, c. 596, Pt. B, §25 (AFF).]

**2. Right of action limited.** An action may not be commenced under this section until 15 days after the resident has given notice of the violation and an intention to bring suit under this chapter to the commissioner, the Attorney General and each party alleged to be violating the law or rule. The court may waive the 15-day notice requirement and issue a temporary restraining order when the plaintiff shows that the alleged violation presents an immediate threat to the plaintiff's health or safety. [PL 1991, c. 637, §2 (NEW).]

**3. Parties may intervene.** In any action brought by the Attorney General or the commissioner under this chapter, any resident who has a right of action under this section may intervene if that resident has a direct interest that is or may be adversely affected by the action and the disposition of the action may impair or impede the resident's ability to protect that interest. The Attorney General and the commissioner may intervene in any action brought by a resident under this section. This subsection does not affect the ability of any party to take action under Title 5, section 9054. [PL 1991, c. 637, §2 (NEW).]

**4. Service.** A copy of the complaint and other pleadings must be delivered to the commissioner and the Attorney General at the time of service on the defendant. Copies of all answers and other documents accompanying the answers must be delivered to the commissioner and the Attorney General at the time of service on the plaintiff.

[PL 1991, c. 637, §2 (NEW).]

**5. Dismissal of action.** The court may, on the motion of any party or on its own motion, dismiss any action brought under this section that alleges a de minimis violation of section 7924 or of 42 United States Code, Section 1396r, Subsection (c).

[PL 1991, c. 637, §2 (NEW).]

#### SECTION HISTORY

PL 1991, c. 637, §2 (NEW). PL 1997, c. 260, §3 (AMD). PL 2001, c. 596, §B17 (AMD). PL 2001, c. 596, §B25 (AFF).

#### §7949. No limitation on right of action

The remedies provided under section 7948 are in addition to those otherwise available under state or federal law and may not be construed as limiting any other remedies including any remedy available to an individual at common law. Exhaustion of any available administrative remedy is not required prior to commencement of an action under this section. [PL 1991, c. 637, §2 (NEW).]

#### SECTION HISTORY

PL 1991, c. 637, §2 (NEW).

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