

26:2H-36 to 26:2H-46

LEGISLATIVE HISTORY CHECKLIST

NJSA 26:2H-36 to 26:2H-46

Laws of 1977 Chapter 238 (Standard for nursing homes temporary receivership)

Bill No. S1544

Sponsor(s) Fay

Date Introduced June 17, 1976

Committee: Assembly Institutions, Health & Welfare

Senate Institutions, Health & Welfare

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of passage: Assembly May 21, 1977

Senate October 7, 1976

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Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate ~~Yes~~ No

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

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SENATE, No. 1544

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1976

By Senator FAY

Referred to Committee on Institutions, Health and Welfare

AN ACT promoting the health, safety and welfare of residents in
certain health care facilities.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds:

2 a. Many senior citizens in the State are residing in boarding
3 homes or nursing homes. Their life, safety, health and welfare is
4 largely dependent upon the conditions and care provided in these
5 homes;

6 b. Some homes are providing inadequate medical and nursing
7 care, inadequate living conditions, and are in substantial or habitual
8 violation of Federal or State laws or regulations concerning health,
9 safety or resident care;

10 c. It is necessary in order to protect the public welfare and the
11 residents of the homes that a summary statutory procedure be
12 established to eliminate substantial or habitual deficiencies in
13 resident care or living conditions or violations of Federal or State
14 laws or regulations in these homes.

1 2. As used in this act, and unless the context otherwise requires:

2 a. "Boarding or nursing home" or "home" means a private
3 nursing home or convalescent home regulated under chapter 11 of
4 Title 30 of the Revised Statutes or a facility or institution, private
5 or public, regulated and licensed as an extended care facility,
6 skilled nursing home, nursing home or intermediate care facility
7 pursuant to P. L. 1971, c. 136 (C. 26:2H-1 to 26:2H-26) or a
8 boarding home, rest home or other home for sheltered care of
9 adult persons as defined in section 1 of P. L. 1953, c. 212
10 (C. 30:11A-1) or licensed pursuant to P. L. 1971, c. 136
11 (C. 26:2H-1 to 26:2H-26).

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

12 b. "Owner" means the holder or holders of the title in fee simple
13 to the property on which the home is located.

14 c. "Licensee" means the holder or holders of a license to operate
15 a boarding or nursing home pursuant to chapter 11 of Title 30 of
16 the Revised Statutes, P. L. 1953, c. 212 (C. 30:11A-1 to 30:11A-14)
17 or P. L. 1971, c. 136 (C. 26:2H-1 to 26:2H-26).

18 d. "Department" means the State Department of Health.

1 3. A proceeding by the State Department of Health, or any other
2 State governmental agency having an interest in the matter, a resi-
3 dent or residents or the guardian of a resident of a boarding or
4 nursing home for a judgment directing the appointment of a
5 receiver for the purposes of remedying a condition or conditions of
6 a home in substantial violation of the standards of health, safety
7 or resident care established under Federal or State law or regula-
8 tions or of remedying a pattern and practice of habitual violations
9 of the standards of health, safety or resident care established under
10 Federal or State law or regulations may be maintained in a court
11 of competent jurisdiction. If the action is not brought by the
12 department, a copy of the complaint shall be served upon it.

1 4. The complaint shall:

2 a. (1) Set forth material facts showing that there exists in the
3 boarding or nursing home a condition or conditions in substantial
4 violation of the standards of health, safety or resident care estab-
5 lished under Federal or State law or regulations or any other
6 conditions dangerous to life, health or safety or (2) that there
7 exists in the boarding or nursing home a pattern and practice
8 of habitual violation of the standards of health, safety or patient
9 care established under Federal or State law or regulations.

10 b. Set forth that the facts set forth in subsection a. of this section
11 have been brought to the attention of the owner and licensee of the
12 home and that the condition or conditions have not been remedied
13 within a reasonable period of time or that the condition or condi-
14 tions although periodically remedied habitually exists in the home
15 as pattern and practice.

16 c. Set forth a brief description of what is necessary to remedy the
17 condition and an estimate of the cost thereof.

18 d. State the relief sought.

1 5. It shall be a sufficient defense to the proceeding if the owner
2 or licensee establishes that the condition or conditions alleged in
3 the complaint do not in fact exist or that such condition or condi-
4 tions have been removed or remedied or that such condition or

5 conditions, although periodically remedied, have not habitually
6 existed as pattern and practice.

1 6. The court shall proceed in a summary manner and shall render
2 a judgment either:

3 a. Dismissing the complaint for failure to affirmatively establish
4 the allegations thereof or because of the affirmative establishment
5 by the owner or licensee of a defense specified in this act; or

6 b. Ordering the appointment of a receiver in accordance with the
7 provisions of this act; or

8 c. Granting such other and further relief as the court deems
9 just and proper.

1 7. a. The court is authorized and empowered to appoint as a
2 receiver any responsible person or persons except that no owner,
3 licensee or administrator of the home shall be appointed as receiver.

4 b. The receiver, in his discretion, may either (1) assume the role
5 of administrator or manager and take control of all day-to-day
6 operations, or (2) direct the administrator or manager on actions
7 and procedure to be taken to eliminate or rectify the conditions
8 specified in the complaint.

9 c. With the approval of the court the receiver shall have any
10 or all of the following powers:

11 (1) To hire any consultants or to undertake any studies of the
12 home he deems appropriate.

13 (2) To make any repairs, improvements or expenditures to
14 eliminate the conditions specified in the complaint and to direct
15 the method or procedures by which this shall be accomplished.

16 (3) To hire or discharge any employees including the admini-
17 strator or manager***["*, but excluding any administrator or man-*
17A *ager who is also owner of the home*"]***

18 (4) To receive or expend in a reasonable and prudent manner
19 the revenues of the home due on the date of the entry of such
20 judgment and to become due under such judgment.

21 (5) To continue the business of the home and the care of the
22 residents of the home in all its aspects.

23 (6) To do all acts necessary or appropriate to conserve the
24 property and promote the health, safety or resident care of the
25 residents in the home.

26 (7) To exercise such other powers as he deems necessary or
27 appropriate to implement the court order.

28 ***d. No provision in this section shall limit the right of any owner*
29 *to sell or mortgage any home subject to receivership under this*
30 *act.***

1 8. a. If, after a trial, the court shall determine that the evidence
2 warrants the granting of the relief sought and if the owner or
3 licensee of the home shall apply to the court to be permitted to
4 remove or remedy the conditions specified in the complaint and
5 shall demonstrate the ability to promptly undertake and complete
6 the work required, than the court, in lieu of rendering judgment
7 as provided in this act, may issue an order permitting such person
8 to perform the work in accordance with a time schedule and subject
9 to such conditions, including the posting of a bond as security for
10 the performance of the work, as may be fixed by the court.

11 b. If, after the issuance of an order pursuant to subsection a.
12 of this section, it shall appear that the person permitted to do the
13 same is not proceeding in accordance with the time schedule or in
14 accordance with the conditions imposed by the court, the plaintiff
15 may apply to the court on notice to those persons who have ap-
16 peared in the proceeding for a hearing to determine whether
17 judgment should be rendered immediately as provided in subsection
18 c. of this section.

19 c. If, upon a hearing authorized in subsection b. hereof, the court
20 shall determine the owner or licensee is not proceeding in accord-
21 ance with the time schedule or with the conditions imposed by the
22 court, the court shall issue a final judgment appointing a receiver
23 as authorized in the act. If the person has posted a bond to secure
24 completion of the work, the security or such part of the security as
25 is necessary may be used by the receiver to remedy the conditions.

1 9. The court shall require the filing, at periodic intervals, of
2 reports of action taken by the receiver and of accounts itemizing
3 the revenues and expenditures. The reports shall be open to
4 inspection to all parties to the case. Upon motion of the court or
5 the receiver or of the owner, or licensee, the court may require a
6 presentation or settlement of the accounts. Notice of a motion for
7 presentation or settlement of such accounts shall be served on the
8 owner, licensee and any party of record who appeared in the pro-
9 ceeding and any party in interest in such revenues and expendi-
10 tures.

1 10. The receiver, owner or licensee may make a motion to termi-
2 nate the receivership on grounds that the conditions complained of
3 have been eliminated or remedied. The court may immediately
4 terminate the receivership, or terminate the receivership subject to
5 such terms as the court feels necessary or appropriate to prevent
6 the condition or conditions complained of from recurring.

1 11. The court shall allow from the revenues of the home a reason-
2 able amount of compensation for the expenditures and services of
3 a receiver appointed under the provisions of this act. The receiver
4 so appointed may be required to furnish a bond, the amount and
5 form of which shall be approved by the court. The cost of such
6 bond shall be paid for by the home.

1 12. This act shall take effect immediately.

51544 (1977)

STATEMENT

The purpose of this bill is to establish a summary statutory procedure by which substantial or habitual deficiencies in resident care or living conditions or violations of Federal or State laws or regulations in boarding or nursing homes may be removed or remedied.

The traditional sanctions available to enforce minimum standards of health, safety or resident care in boarding or nursing homes have been license revocation and Medicaid decertification. License revocation stops a home from operating altogether. Decertification of a nursing home for the Medicaid program reduces the number of beds available to persons eligible for Medicaid. Under both sanctions, beds that are needed become unavailable and residents that must be transferred are subject to the increased risk of death and possible emotional trauma. There is a need for a sanction that will provide for the upgrading of the quality of services without denying the services altogether or endangering residents.

The sanction proposed in this bill would provide for the establishment of a temporary receivership for a boarding or nursing home that is in substantial violation of the standards of health, safety or resident care or that exhibits a pattern and practice of habitual violation of such standards. The purpose would be to put the home into the kind of condition that would bring it into compliance and thereby best serve the interest of the residents and the public welfare. The bill provides that if a complaint maintained in a court of competent jurisdiction is held to be valid, a receiver may be appointed by the court to remove or remedy the conditions specified in the complaint. The court shall determine the powers the receiver shall have. Reports of the actions of the receiver and of the accounts itemizing the revenues and expenditures of the home must be submitted periodically to the court. The receiver, owner or licensee may make a motion to terminate the receivership on the grounds that the conditions complained of have been eliminated or remedied. The home involved must pay for the cost of the receivership.

REFERENCE USE ONLY

ASSEMBLY INSTITUTIONS, HEALTH AND
WELFARE COMMITTEE

STATEMENT TO

SENATE, No. 1544

with Senate committee amendments and Senate amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1976

When standards of health, safety or resident care in nursing homes and boarding homes are substantially and persistently violated, the only present alternatives are to revoke the home's license—which closes the home and forces patients to undergo the trauma of movement to new quarters—or Medicaid decertification—which results in the loss of an already limited number of beds for Medicaid recipients.

This bill provides a third alternative—one which would neither impose hardship on residents of homes nor decrease the number of Medicaid beds. Under its provisions, a home determined to be deficient in standards and services would continue to operate, but under a temporary receivership which would provide for the improvement of services.

The Assembly Committee agreed with the intent of this bill and reported it without amendment.