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An Act To Amend Licensing, Certification and Registration Requirements for Health Care Providers and Other Facilities

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

Sec. 1. 22 MRSA §1723 is enacted to read:

§ 1723. Criminal background checks

Beginning October 1, 2009, a facility or health care provider subject to the licensing or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §2131, sub-§1, as enacted by PL 1989, c. 579, §4, is amended to read:

1. Registration; renewal.~~Effective January 1, 1990, every~~A temporary nurse agency shall register with the department ~~and renew the registration as required by rule thereafter.~~ For purposes of this chapter, unless the context otherwise indicates, "temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

Sec. 3. 22 MRSA §2131, sub-§4, as amended by PL 2001, c. 494, §2, is repealed and the following enacted in its place:

4. Penalty. The following penalties apply to violations of this chapter.

A. A person who operates a temporary nurse agency without registering or who fails to verify the inclusion of a certified nursing assistant on the Maine Registry of Certified Nursing Assistants established under section 1812-G before hiring that certified nursing assistant pursuant to subsection 1-A commits a civil violation for which a fine of not less than \$500 per day but not more than \$10,000 per day may be adjudged. Each day constitutes a separate violation.

B. A person who operates a temporary nurse agency in violation of the employment prohibitions in section 2138 commits a civil violation for which a fine of not less than \$500 per day but not more than \$10,000 per day may be adjudged. Each day constitutes a separate violation.

Sec. 4. 22 MRSA §2131, sub-§5 is enacted to read:

5. Rules. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 22 MRSA c. 417-A is enacted to read:

CHAPTER 417-A

BACKGROUND CHECKS FOR TEMPORARY NURSE AGENCIES

§ 2136. Definitions

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

1. Hire, employ or place. “Hire, employ or place” means to recruit, select, train, declare competent, schedule, direct, define the scope of the position of or supervise an individual who provides temporary care pursuant to chapter 417.

2. Temporary nurse agency. “Temporary nurse agency” means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.

§ 2137. Criminal background checks

Beginning October 1, 2009, a temporary nurse agency shall obtain, prior to hiring, employing or placing an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The temporary nurse agency shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 2138. Prohibited employment

A temporary nurse agency may not hire, employ or place an individual who:

1. Subject of notation. Has worked as a certified nursing assistant and has been the subject of a notation by the state survey agency for a substantiated complaint of abuse, neglect or misappropriation of property in a health care setting that was entered on the Maine Registry of Certified Nursing Assistants established under section 1812-G;

2. Convicted of crime involving abuse, neglect or misappropriation. Has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property; or

3. Other prior conviction. Has a prior criminal conviction within 10 years prior to application of:

A. A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred; or

B. A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

§ 2139. Complaints

1. Complaint investigation. The department is authorized to investigate complaints against a temporary nurse agency to ensure compliance with this chapter.

2. Injunctive relief. Notwithstanding any other remedies provided by law, the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

3. Enforcement. The Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this chapter.

4. Jurisdiction. The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this chapter.

5. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violation of this chapter occurred.

6. Right of entry. This subsection governs the department's right of entry with respect to temporary nurse agencies.

A. An application for registration of a temporary nurse agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules.

B. The department has the right to enter and inspect the premises of a temporary nurse agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules.

C. To inspect a temporary nurse agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection.

7. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered temporary nurse agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this chapter. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating a temporary nurse agency without being registered.

8. Noninterference. An owner or operator of an unregistered temporary nurse agency may not interfere with, impede or obstruct an investigation by the department, including, but not limited to, interviewing persons receiving services or persons with knowledge of the agency.

9. Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this chapter shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In any action brought by the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this chapter, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this chapter, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Attorney General and the costs of suit, including attorney's fees.

10. Suspension or revocation of registration. A temporary nurse agency found to be in violation of this chapter may have its registration to operate as a temporary nurse agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a temporary nurse agency.

11. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 22 MRSA §7704 is enacted to read:

§ 7704. Criminal background checks

Beginning October 1, 2009, a facility or health care provider subject to the licensing or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a hospice provider subject to chapter 1681 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The entity seeking to employ the individual shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 22 MRSA §7946, sub-§4, as enacted by PL 1987, c. 774, §4, is amended to read:

4. Income from penalties. Any income from penalties shall must be placed in a special revenue account and be used if needed and available when a receiver is appointed pursuant to section 7933, or for other costs associated with the protection of health or property of residents of long-term care facilities which are fined or sanctioned pursuant to this chapter by the department for purposes related to improving the quality of care for residents of long-term care facilities.

Sec. 8. 34-B MRSA §1224 is enacted to read:

§ 1224. Criminal background checks

Beginning October 1, 2009, a facility or health care provider subject to the licensing provisions of section 1203-A shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section.

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill requires licensed, certified or registered providers to secure a criminal background check prior to hiring or placing a person who will have direct contact with a consumer. Providers will pay for the criminal background checks. Some providers are currently required by statute to obtain criminal background checks, and this bill adds several more providers, including hospitals, nursing facilities, ambulatory surgical facilities, intermediate care facilities for persons with mental retardation, assisted housing programs, children's homes, end-stage renal disease facilities, drug treatment centers, child placing agencies, hospice programs, agencies and facilities providing mental health services, temporary nurse agencies and nursery schools.

This bill authorizes the Department of Health and Human Services to investigate complaints against temporary nurse agencies and provides enforcement mechanisms for violations.

This bill requires the department to use income from penalties to improve the quality of care for residents of long-term care facilities.