

§1717. Licensing of personal care agencies**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Activities of daily living" means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to, mobility; transfers in position among sitting, standing and prone positions; dressing; eating; toileting; bathing; and personal hygiene assistance. [PL 1997, c. 716, §1 (NEW).]

A-1. "Direct access" means access to the property, personally identifiable information, financial information or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other individual served by a provider subject to this chapter. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

A-2. "Direct access personnel" means individuals employed in positions that have direct access. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

A-3. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

B. "Hires and employs" means recruits, selects, trains, declares competent, schedules, directs, defines the scope of the positions of, supervises or terminates individuals who provide personal care. [PL 1997, c. 716, §1 (NEW).]

B-1. "Home care services" means assistance with activities of daily living and related tasks. [PL 2007, c. 324, §2 (NEW).]

C. "Personal care agency" means a business entity or subsidiary of a business entity that is licensed by the department's division of licensing and certification and that hires and employs direct access personnel or individuals who work in direct contact with clients, patients or residents to provide home care services to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs direct access personnel or individuals who work in direct contact with clients, patients or residents to provide care for that individual is not a personal care agency, except when permitted by rule of the department. "Personal care agency" does not include a home health care provider licensed under chapter 419. [PL 2023, c. 309, §2 (AMD).]

C-1. [PL 2023, c. 309, §3 (RP).]

D. [PL 2015, c. 196, §3 (RP); PL 2015, c. 299, §3 (RP).]
[PL 2023, c. 309, §§2, 3 (AMD).]

2. (TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25) Registration of personal care agencies. Until June 30, 2024, a personal care agency not otherwise licensed by the department shall register with the department. The department shall adopt rules establishing the annual registration fee, which must be between \$25 and \$250. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

This subsection is repealed July 1, 2025.
[PL 2023, c. 309, §4 (AMD).]

2-A. Licensing of personal care agencies. Beginning July 1, 2024, an entity may not provide home care services without a personal care agency license issued by the department in accordance with

this section. All application fees for a license under this section are nonrefundable and are due upon submission of the application.

A. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** A personal care agency that holds an unexpired registration issued in accordance with subsection 2 may continue to provide home care services until the registration expires.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §5 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** A personal care agency holding an unexpired registration issued in accordance with subsection 2 is not required to obtain a license until the registration expires.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §5 (NEW).]
[PL 2023, c. 309, §5 (NEW).]

2-B. Licensing standards for personal care agencies. The department shall adopt rules to establish standards and fees for the licensing of personal care agencies. The licensing standards must include, but are not limited to:

A. General licensing requirements; [PL 2023, c. 309, §6 (NEW).]

B. Quality measures; [PL 2023, c. 309, §6 (NEW).]

C. Personnel qualifications; [PL 2023, c. 309, §6 (NEW).]

D. Mandatory and minimum training requirements; [PL 2023, c. 309, §6 (NEW).]

E. Home care services; [PL 2023, c. 309, §6 (NEW).]

F. Services provided and coordination of services; [PL 2023, c. 309, §6 (NEW).]

G. Supervision and organizational structure, including lines of authority; [PL 2023, c. 309, §6 (NEW).]

H. Record-keeping and confidentiality practices; [PL 2023, c. 309, §6 (NEW).]

I. Business records requirements; [PL 2023, c. 309, §6 (NEW).]

J. Licensing fees that are no less than \$200 and no more than \$2,000; and [PL 2023, c. 309, §6 (NEW).]

K. Other aspects of services provided by a personal care agency that may be necessary to protect the public. [PL 2023, c. 309, §6 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 309, §6 (NEW).]

2-C. Types of licenses; terms. Pursuant to subsection 2-A, the department may issue licenses to personal care agencies in accordance with this subsection. The department may issue:

A. A provisional license for an applicant that:

(1) Has not previously operated as a personal care agency;

(2) Complies with all applicable laws and rules, except those that can only be complied with once clients, patients or residents are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term.

A provisional license may be issued for a period of time of at least 3 months and not more than 12 months; [PL 2023, c. 309, §7 (NEW).]

B. A full license for an applicant that has operated a personal care agency or for an applicant renewing a license that complies with all applicable laws and rules. A full license may be issued for a period of time not more than 24 months; and [PL 2023, c. 309, §7 (NEW).]

C. A conditional license for a personal care agency with a provisional or a full license that fails to comply with applicable laws and rules when, in the judgment of the commissioner, issuing a conditional license is in the best interest of the public. The conditional license must specify what corrections the personal care agency is required to make during the term of the conditional license and a timeline for those corrections. The conditional license may be issued for a period of time not more than 12 months or the remaining period of the personal care agency's full license, whichever the commissioner determines is appropriate considering the laws and rules violated. [PL 2023, c. 309, §7 (NEW).]

[PL 2023, c. 309, §7 (NEW).]

2-D. Licenses not assignable or transferable. A personal care agency may not assign or transfer a license issued under subsection 2-C. A license is immediately void if ownership or control of the personal care agency changes.

[PL 2023, c. 309, §8 (NEW).]

2-E. Quality assurance and technical assistance for personal care agencies. This subsection governs quality assurance and technical assistance for personal care agencies.

A. The department may conduct the following activities to ensure that quality home care services are provided by personal care agencies:

(1) Issue notices of deficiency for a personal care agency's failure to comply with applicable federal or state laws, rules or regulations;

(2) Require personal care agencies to submit acceptable plans of corrective action to remedy deficiencies identified under subparagraph (1);

(3) Direct personal care agencies to comply with plans of corrective action issued under subparagraph (2);

(4) Apply sanctions in accordance with subsection 13-A, paragraph A, subparagraph (5); or

(5) Condition, suspend, revoke or refuse to renew a personal care agency's license issued under subsection 2-C on the basis of the agency's noncompliance with plans of corrective action. [PL 2023, c. 309, §9 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a personal care agency that holds a registration during the time the registration is in effect.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §9 (NEW).]

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

[PL 2023, c. 309, §9 (NEW).]

3. Prohibited employment based on disqualifying offenses. A personal care agency shall conduct a comprehensive background check for direct access personnel and immediate supervisors of direct access personnel in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker, and immediate supervisors of direct access personnel.

A. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]

B. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]

C. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]
[PL 2023, c. 309, §10 (AMD).]

3-A. Verification of listing on the registry. Prior to hiring a certified nursing assistant, a direct care worker or an immediate supervisor of a certified nursing assistant or direct care worker, a personal care agency shall check the Maine Registry of Certified Nursing Assistants and Direct Care Workers established pursuant to section 1812-G and verify that the certified nursing assistant, direct care worker or immediate supervisor of a certified nursing assistant or direct care worker listed on the registry has no disqualifying notations.

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

[PL 2023, c. 309, §11 (AMD).]

4. Penalties. The following penalties apply to violations of this section.

A. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** An entity that operates a personal care agency without registering with the department as required by subsection 2 commits a civil violation for which a fine of not less than \$500 per day of operation but not more than \$10,000 may be adjudged. Each day of violation constitutes a separate offense.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §12 (AMD).]

A-1. An entity that operates a personal care agency without obtaining a license from the department as required by subsection 2-A commits a civil violation for which a fine of not less than \$500 per day of operation but not more than \$10,000 may be adjudged. Each day of violation constitutes a separate offense. [PL 2023, c. 309, §12 (NEW).]

B. An entity that operates a personal care agency in violation of the employment prohibitions in subsection 3 or 3-A commits a civil violation for which a fine of not less than \$500 per day of operation in violation but not more than \$10,000 per day may be adjudged, beginning on the first day that a violation occurs. Each day of violation constitutes a separate offense. [PL 2023, c. 309, §12 (AMD).]

[PL 2023, c. 309, §12 (AMD).]

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

[PL 2007, c. 324, §2 (NEW).]

6. Enforcement actions by the Office of the Attorney General. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this section.

[PL 2023, c. 309, §13 (AMD).]

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

[PL 2007, c. 324, §2 (NEW).]

8. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of this section occurred.

[PL 2007, c. 324, §2 (NEW).]

9. Right of entry. This subsection governs the department's right of entry.

A. An application for licensure of a personal care agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules. [PL 2023, c. 309, §14 (AMD).]

B. The department has the right to enter and inspect the premises of a personal care agency licensed 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. [PL 2023, c. 309, §14 (AMD).]

C. To inspect a personal care agency that the department knows or believes is being operated without being licensed, 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. [PL 2023, c. 309, §14 (AMD).]

D. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraphs A, B and C apply to a personal care agency that holds, is applying for or does not hold a registration during the time registration may be required.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §14 (NEW).]
[PL 2023, c. 309, §14 (AMD).]

10. Administrative inspection warrant. This subsection governs administrative inspection warrants.

A. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed personal care 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 section. 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 without being licensed. [PL 2023, c. 309, §15 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a personal care agency that does not hold a registration during the time registration may be required.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §15 (NEW).]
[PL 2023, c. 309, §15 (RPR).]

11. Noninterference. This subsection prohibits interfering with department investigations.

A. An owner or operator of an unlicensed personal care agency may not interfere with, impede or obstruct an investigation by the department, including but not limited to interviewing persons receiving home care services or persons with knowledge of the agency. [PL 2023, c. 309, §16 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to an owner or operator of a personal care agency that does not hold a registration during the time registration may be required.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §16 (NEW).]
[PL 2023, c. 309, §16 (RPR).]

12. Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section 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 Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, 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 Office of the Attorney General and the costs of suit, including attorney's fees.

[PL 2007, c. 324, §2 (NEW).]

13. Suspension or revocation. This subsection governs suspension or revocation of licenses for personal care agencies.

A. A personal care agency found to be in violation of this section may have its license to operate as a personal care agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a license to operate a personal care agency. [PL 2023, c. 309, §17 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a personal care agency that holds a registration during the time the registration is in effect.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §17 (NEW).]
[PL 2023, c. 309, §17 (RPR).]

13-A. Enforcement actions by the department. This subsection governs the department's enforcement authority.

- A. If a personal care agency fails to comply with applicable laws and rules, the department may:
- (1) Refuse to issue or renew a license;
 - (2) Issue a conditional license in accordance with subsection 2-C;
 - (3) File a complaint with the District Court in accordance with Title 4, section 184 or the Maine Administrative Procedure Act to suspend or revoke a license pursuant to subsection 13;
 - (4) Petition the Superior Court to appoint a receiver to operate the personal care agency in accordance with chapter 1666-A; and
 - (5) Impose one or more of the following sanctions as necessary and appropriate to ensure compliance with applicable laws and rules or to protect an individual served by the personal care agency:
 - (a) Direct a personal care agency to stop admissions or intake of new clients, patients or residents regardless of payment source, until the department determines that the personal care agency has taken corrective action;
 - (b) Direct a personal care agency to correct any deficiencies in a manner and within a time frame that the department determines appropriate to ensure compliance with applicable laws and rules or to protect an individual served by a personal care agency; or
 - (c) In addition to, or in lieu of, the penalties imposed pursuant to subsection 4, impose a penalty upon a personal care agency for a violation of this section or rules adopted pursuant to this section. The department shall by rule establish a schedule of penalties according to the nature of the violation that are no less than \$500 per day of operation but not more than \$10,000 per day. Each day of a violation constitutes a separate offense. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 309, §18 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a personal care agency that holds, is applying for or does not hold a registration during the time registration may be required.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §18 (NEW).]

The department shall engage in monitoring activities on at least a biennial basis to ensure that a personal care agency, regardless of its licensure status, is in compliance with applicable laws and rules.

[PL 2023, c. 309, §18 (NEW).]

13-B. Appeals. This subsection governs appeals of certain department decisions.

A. An entity aggrieved by the department's decisions on any of the following actions may request an administrative hearing as provided by the Maine Administrative Procedure Act:

- (1) Denial of or refusal to renew a full license;
- (2) Denial of a provisional license;
- (3) Issuance of a conditional license;
- (4) Amendment or modification of a license; or
- (5) Imposition of sanctions. [PL 2023, c. 309, §19 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a registration during the time the registration is in effect.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §19 (NEW).]
[PL 2023, c. 309, §19 (NEW).]

14. 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.

[PL 2007, c. 324, §2 (NEW).]

15. Confidentiality of records. This subsection governs confidentiality.

A. A department record that contains personally identifiable information or health information of clients, patients or residents created or obtained in connection with the department's licensing or quality assurance activities under this section is confidential. [PL 2023, c. 309, §20 (NEW).]

B. **(TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25)** The provisions of paragraph A apply to a department record that contains personally identifiable information or health information of clients, patients or residents created or obtained in connection with the department's registration activities.

This paragraph is repealed July 1, 2025. [PL 2023, c. 309, §20 (NEW).]
[PL 2023, c. 309, §20 (NEW).]

SECTION HISTORY

PL 1997, c. 716, §1 (NEW). PL 2003, c. 634, §§1,2 (AMD). PL 2003, c. 673, §NN1 (AMD). PL 2007, c. 324, §2 (AMD). PL 2011, c. 257, §1 (AMD). PL 2015, c. 196, §§1-7 (AMD). PL 2015, c. 299, §§1-7 (AMD). PL 2015, c. 494, Pt. A, §15 (AMD). PL 2023, c. 309, §§1-20 (AMD).

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