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An Act To Add Unlicensed Assistive Persons with Notations to the Maine Registry of Certified Nursing Assistants

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

Sec. 1. 22 MRSA §1812-G, as amended by PL 2003, c. 376, §§1 and 2 and c. 599, §4 and affected by §5 and amended by c. 634, §3 and c. 689, Pt. B, §6, is further amended to read:

§ 1812-G. Maine Registry of Certified Nursing Assistants

1. Established. The Maine Registry of Certified Nursing Assistants is established in compliance with federal and state requirements. The Department of Health and Human Services shall maintain the registry.

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

A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry.

B. "Registry" means the Maine Registry of Certified Nursing Assistants established in subsection 1, which is a list of certified nursing assistants, with notations if applicable, and a list of unlicensed assistive persons with notations.

C. "Unlicensed assistive person" means an individual employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care settings. "Unlicensed assistive person" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

2. Contents. ~~The Maine Registry of Certified Nursing Assistants registry must contain a listing of certified nursing assistants who have successfully completed a nursing assistant training program, hold a certificate of training and meet the eligibility requirements established by the State Board of Nursing. The listing must include, for any certified nursing assistant listed, a notation of:~~

A. Any criminal convictions, except for Class D and Class E convictions over 10 years old that did not involve as a victim of the act a patient, client or resident of a health care entity; and

B. Any specific documented findings by the state survey agency of abuse, neglect or misappropriation of property of a resident, client or patient. For purposes of this section, "state survey agency" means the agency specified under 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs.

The registry must also contain a listing of any unlicensed assistive persons who have notations pursuant to section 1812-J.

3. Eligibility requirements for listing. The State Board of Nursing shall adopt rules pursuant to the Maine Administrative Procedure Act defining eligibility requirements for listing on the ~~Maine Registry of Certified Nursing Assistants~~ registry, including rules regarding temporary listing of nursing assistants who have received training in another jurisdiction. The rules must permit nursing assistants to work under the supervision of a registered professional nurse in a facility providing assisted living services as defined in chapter 1664 and must recognize work in those facilities for the purpose of qualifying for and continuing listing on the registry. Rules adopted regarding the work of nursing assistants in facilities providing assisted living services are routine technical rules as defined by Title 5, chapter 375, subchapter H-A2-A.

4. Verification of credentials and training. The department shall verify the credentials and training of all certified nursing assistant applicants to the ~~Maine Registry of Certified Nursing Assistants~~ registry.

5. Verifying certified nursing assistant listing. A health care institution, facility or organization that employs a certified nursing assistant shall, before hiring a certified nursing assistant, verify with the ~~Maine Registry of Certified Nursing Assistants~~ registry that the certified nursing assistant is listed on the ~~Maine Registry of Certified Nursing Assistants~~ registry.

6. Registry notations. Except as otherwise provided in this section:

A. An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

B. An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

(1) Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the ~~Maine Registry of Certified Nursing Assistants~~ registry; or

(2) Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the ~~Maine Registry of Certified Nursing Assistants~~ registry.

7. Time limit on consideration of prior criminal conviction. Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years 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.

8. Exception. The restrictions on employment under subsections 6 and 7 do not apply to an individual listed and active on the ~~Maine Registry of Certified Nursing Assistants~~ registry prior to the effective date of this subsection, as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely reregistration as required by the rules.

9. Notification. A nursing assistant training program must notify applicants to that program of the restrictions under subsections 6 and 7 prior to the acceptance of any applicant.

Sec. 2. 22 MRSA §1812-J is enacted to read:

§ 1812-J. Unlicensed assistive persons

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

- A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry.
- B. "Registry" means the Maine Registry of Certified Nursing Assistants, which is a list of certified nursing assistants, with notations if applicable, and a list of unlicensed assistive persons with notations and is established under section 1812-G.
- C. "State survey agency" has the same meaning as in section 1812-G, subsection 2, paragraph B.
- D. "Unlicensed assistive person" means an individual employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care settings. "Unlicensed assistive person" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

2. Complaint investigation. The department may investigate complaints of abuse, neglect or misappropriation of property of a client, patient or resident in a home or health care setting against unlicensed assistive persons employed or placed by a licensed, certified or registered agency or facility.

3. Substantiated complaint; registry listing. When a complaint against an unlicensed assistive person is substantiated by the department and the unlicensed assistive person must be listed on the registry pursuant to subsection 4, the department's decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

4. Registry listing. The registry listing for an unlicensed assistive person with a notation must include but is not limited to the following information:

A. Documentation of the department's investigation, including the nature of the allegation and the evidence that led the department to substantiate the allegation of abuse, neglect or misappropriation of property;

B. The date of the hearing, if the unlicensed assistive person chose to appeal the department finding that the complaint was substantiated; and

C. The unlicensed assistive person's statement to the department disputing the allegation, if the unlicensed assistive person chose to submit one.

5. Right to hearing. The department shall notify the unlicensed assistive person of the right to request a hearing to contest the finding that the complaint under subsection 3 was substantiated.

6. Petition for removal of a finding of neglect. No sooner than 12 months after the date a neglect finding is placed on the registry, an unlicensed assistive person may petition the department to remove a notation from the registry if the substantiated complaint of neglect is a one-time occurrence and there is no pattern of neglect.

7. Prohibited employment. The following unlicensed assistive persons may not be employed or placed by a licensed, certified or registered agency or facility:

A. An unlicensed assistive person listed on the registry with a notation;

B. An unlicensed assistive person who, while working as a certified nursing assistant, had a notation on the registry for a complaint that was substantiated by the state survey agency for abuse or neglect;
or

C. An unlicensed assistive person who, while working as a certified nursing assistant, had a notation on the registry for a complaint that was substantiated by the state survey agency for misappropriation of property in a health care setting.

8. 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.

Effective September 12, 2009