

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1129 - L.D. 1537

**An Act To Amend Licensing and Certification Laws Administered by the
Department of Health and Human Services**

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

Sec. 1. 22 MRSA §1717, sub-§3, ¶A, as enacted by PL 2003, c. 634, §1, is amended to read:

A. 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 and Direct Care Workers;

Sec. 2. 22 MRSA §1812-G, as amended by PL 2009, c. 590, §2, is further amended to read:

§1812-G. Maine Registry of Certified Nursing Assistants and Direct Care Workers

1. Established. The Maine Registry of Certified Nursing Assistants and Direct Care Workers 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 and Direct Care Workers 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" or "direct care worker" means an individual employed to provide hands-on assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities,

hospitals and other health care and direct care settings. "Unlicensed assistive person" and "direct care worker" include but are not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct care workers as described in rules adopted by the department. "Unlicensed assistive person" ~~does~~ and "direct care worker" do not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

2. Contents. The registry must contain a listing of certified nursing assistants. 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 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 2-A.

4. Verification of credentials and training. The department shall verify the credentials and training of all certified nursing assistant applicants to the registry.

4-A. Provider verification fee. The department may establish a provider verification fee not to exceed \$25 annually per provider for verification of a certified nursing assistant's credentials and training. Providers may not pass the cost on to the individual certified nursing assistant. Provider verification fees collected by the department must be placed in a special revenue account to be used by the department to operate the registry, including but not limited to the cost of criminal history record checks. 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.

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 registry that the certified nursing assistant is listed on the 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 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 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 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. 3. 22 MRSA §1812-J, sub-§1, as enacted by PL 2009, c. 215, §2, is amended to read:

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.

A-1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

A-2. "Disqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that prohibit employment as an unlicensed assistive person.

A-3. "Health care and direct care settings" means settings in which a certified nursing assistant or unlicensed assistive person is providing direct care in that assistant's or person's capacity as a certified nursing assistant or an unlicensed assistive person.

A-4. "High severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for a substantiated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident.

A-5. "Indicated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of low to moderate severity based on criteria established by the department by rule and that the person is not prohibited from employment as an unlicensed assistive person.

A-6. "Low to moderate severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for an indicated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident.

A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that is included as a notation on the registry but does not prohibit employment as an unlicensed assistive person.

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, 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~~ means the agency specified in 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 and authorized to investigate and substantiate complaints against certified nursing assistants.

C-1. "Substantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of high severity based on criteria established by the department by rule.

D. "Unlicensed assistive person" or "direct care worker" means an individual employed to provide hands-on assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct care settings. "Unlicensed assistive person" and "direct care worker" include but are not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct care workers as described in rules adopted by the department. "Unlicensed assistive person" ~~does~~ and "direct care worker" do not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

E. "Unsubstantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that no abuse, neglect or misappropriation of property of a client, patient or resident was found to support an indicated finding or a substantiated finding of abuse, neglect or misappropriation of property of a client, patient or resident.

Sec. 4. 22 MRSA §1812-J, sub-§2-A is enacted to read:

2-A. Department decision after investigation of complaint. Based on criteria established by rule, the department, after investigation of a complaint of abuse, neglect or misappropriation of property of a client, patient or resident, shall:

- A. Make a substantiated finding;
- B. Make an indicated finding; or
- C. Make an unsubstantiated finding.

Sec. 5. 22 MRSA §1812-J, sub-§3, as enacted by PL 2009, c. 215, §2, is amended to read:

3. Substantiated finding of complaint; registry listing. When a complaint against an unlicensed assistive person is substantiated by the department and the unlicensed assistive person ~~must be~~ is 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. The department shall notify the employer of the unlicensed assistive person that a substantiated finding of a complaint has been listed as a notation on the registry.

Sec. 6. 22 MRSA §1812-J, sub-§3-A is enacted to read:

3-A. Indicated finding of complaint; no registry listing. An indicated finding by the department of a complaint against an unlicensed assistive person does not prohibit employment and is not listed as a notation on the registry. The department's complaint investigation decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

Sec. 7. 22 MRSA §1812-J, sub-§6, as enacted by PL 2009, c. 215, §2, is amended to read:

6. Petition for removal of a substantiated finding of abuse, neglect or misappropriation of property. No sooner than 12 months after the date a an abuse, neglect or misappropriation of property substantiated 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 abuse, neglect or misappropriation of property is a one-time occurrence and there is no pattern of abuse ~~or~~, neglect or misappropriation of property.

Sec. 8. 22 MRSA §1812-J, sub-§7, as enacted by PL 2009, c. 215, §2, is amended to read:

7. Prohibited employment based on substantiated complaint. 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 for a substantiated finding; or

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 finding of a complaint by the state survey agency for abuse ~~or~~, neglect; or misappropriation of property of a client, patient or resident.

~~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.~~

An employment ban based on a substantiated finding of a complaint is a lifetime employment ban.

Sec. 9. 22 MRSA §1815, as amended by PL 2003, c. 507, Pt. C, §1 and affected by §4, is further amended to read:

§1815. Fees

Each application for a license to operate a hospital, convalescent home or nursing home must be accompanied by a nonrefundable fee. Hospitals shall pay \$40 for each bed contained within the facility. Nursing and convalescent homes shall pay \$26 for each bed contained within the facility. Each application for a license to operate an ambulatory surgical facility must be accompanied by the fee established by the department. The department shall establish the fee for an ambulatory surgical facility, not to exceed \$500, on the basis of a sliding scale representing size, number of employees and scope of

operations. All licenses ~~issued~~ must be renewed annually, or for a term of years, as required by law upon payment of a like fee a renewal fee. Hospitals shall pay a \$40 renewal fee for each bed contained within the facility. Nursing and convalescent homes shall pay a \$26 renewal fee for each bed contained within the facility. In the case of a license renewal that is valid for more than one year, the renewal fee must be multiplied by the number of years in the term of the license. The State's share of all fees received by the department under this chapter must be deposited in the General Fund. A license granted may not be assignable or transferable. State hospitals are not required to pay licensing fees.

Sec. 10. 22 MRSA §2041, sub-§5, as enacted by PL 1997, c. 658, §1, is amended to read:

5. ESRD facility. "ESRD facility" ~~includes a renal transplantation center,~~ means a renal dialysis center or, a renal dialysis facility, a self-dialysis unit or a special-purpose renal dialysis facility.

Sec. 11. 22 MRSA §2041, sub-§6, as enacted by PL 1997, c. 658, §1, is repealed.

Sec. 12. 22 MRSA §2041, sub-§9, as enacted by PL 1997, c. 658, §1, is amended to read:

9. Self-dialysis unit. "Self-dialysis unit" means a unit that is part of an approved ~~renal transplantation center,~~ renal dialysis center or renal dialysis facility and furnishes self-dialysis services.

Sec. 13. 22 MRSA §2042, sub-§7, as enacted by PL 1997, c. 658, §1, is amended to read:

7. Minimum survey requirement. An ESRD facility is not eligible for licensure or renewal of licensure unless the ESRD facility has had a Medicare survey or a state licensure survey within the previous ~~year~~ 36 months.

Sec. 14. 22 MRSA §2131, sub-§1-A, as enacted by PL 2001, c. 494, §1, is amended to read:

1-A. Verifying certified nursing assistant eligibility. A health care institution, facility or organization, including a temporary nurse agency employing a certified nursing assistant, shall, before hiring a certified nursing assistant, verify that the certified nursing assistant is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers established under section 1812-G with no annotations to prohibit the hiring of that individual according to state and federal regulations.

Sec. 15. 22 MRSA §2131, sub-§4, ¶A, as enacted by PL 2009, c. 621, §3, is amended to read:

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 and Direct Care Workers 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.

Sec. 16. 22 MRSA §2138, sub-§1, as enacted by PL 2009, c. 621, §5, is amended to read:

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 and Direct Care Workers established under section 1812-G;

Sec. 17. 22 MRSA §2149-A, sub-§2, ¶A, as enacted by PL 2003, c. 634, §4, is amended to read:

A. 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 and Direct Care Workers;

Sec. 18. 22 MRSA §8606, sub-§1, ¶A, as enacted by PL 2003, c. 634, §10, is amended to read:

A. 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 and Direct Care Workers;

Sec. 19. 32 MRSA §2102, sub-§8, ¶A, as amended by PL 1993, c. 600, Pt. A, §112, is further amended to read:

A. Has successfully completed a training program or course with a curriculum prescribed by the board, holds a certificate of training from that program or course and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers; or

Sec. 20. 32 MRSA §2102, sub-§8, ¶B, as enacted by PL 1991, c. 421, §2, is amended to read:

B. Was certified before September 29, 1987 and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers.

Sec. 21. 32 MRSA §2102, sub-§9, as corrected by RR 2001, c. 2, Pt. A, §42, is amended to read:

9. Maine Registry of Certified Nursing Assistants and Direct Care Workers. "Maine Registry of Certified Nursing Assistants and Direct Care Workers" has the same meaning as in Title 22, section 1812-G.

Sec. 22. 32 MRSA §2104, sub-§4, as amended by PL 2009, c. 628, §3, is further amended to read:

4. Approval and monitoring of nursing assistant training curriculum and faculty. An educational institution or health care facility desiring to conduct an educational program for nursing assistants to prepare individuals for a certificate of training and subsequent listing on the Maine Registry of Certified Nursing Assistants and Direct Care Workers must apply to the Department of Health and Human Services and submit evidence:

- A. That it is prepared to carry out the curriculum for nursing assistants as prescribed by the board;
- B. That it is prepared to meet those standards established by the board;
- C. That it is prepared to meet those standards for educational programming and faculty as established by the Department of Health and Human Services; and
- D. With respect to an application by a health care facility, that an educational institution cannot provide a nursing assistant training program within 30 days of the application date.

The Department of Health and Human Services shall issue a notice of approval to an educational institution or health care facility that meets the requirements of this subsection.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor