

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 413 - L.D. 636

**An Act to Authorize the Department of Health and Human Services to License and Ensure the Quality of Personal Care Agencies**

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

**Sec. 1. 22 MRSA §1717**, as amended by PL 2015, c. 494, Pt. A, §15, is further amended by amending the section headnote to read:

**§1717. Registration Licensing of personal care agencies and placement agencies**

**Sec. 2. 22 MRSA §1717, sub-§1, ¶C**, as amended by PL 2015, c. 196, §2 and c. 299, §2, is further amended to read:

C. "Personal care agency" means a business entity or subsidiary of a business entity that is ~~not otherwise~~ licensed by the ~~Division of Licensing and Regulatory Services~~ 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 ~~assistance with activities of daily living and related tasks~~ 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.

**Sec. 3. 22 MRSA §1717, sub-§1, ¶C-1**, as enacted by PL 2007, c. 324, §2, is repealed.

**Sec. 4. 22 MRSA §1717, sub-§2**, as repealed and replaced by PL 2015, c. 494, Pt. A, §15, is amended to read:

**2. Registration of personal care agencies and placement agencies.** ~~Beginning August 1, 1998, Until June 30, 2024,~~ a personal care agency not otherwise licensed by the department shall register with the department. ~~Beginning January 1, 2008, a placement 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This subsection is repealed July 1, 2025.

**Sec. 5. 22 MRSA §1717, sub-§2-A** is enacted to read:

**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. 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.

B. 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.

**Sec. 6. 22 MRSA §1717, sub-§2-B** is enacted to read:

**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;

B. Quality measures;

C. Personnel qualifications;

D. Mandatory and minimum training requirements;

E. Home care services;

F. Services provided and coordination of services;

G. Supervision and organizational structure, including lines of authority;

H. Record-keeping and confidentiality practices;

I. Business records requirements;

J. Licensing fees that are no less than \$200 and no more than \$2,000; and

K. Other aspects of services provided by a personal care agency that may be necessary to protect the public.

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

**Sec. 7. 22 MRSA §1717, sub-§2-C** is enacted to read:

**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;

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

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.

**Sec. 8. 22 MRSA §1717, sub-§2-D** is enacted to read:

**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.

**Sec. 9. 22 MRSA §1717, sub-§2-E** is enacted to read:

**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.

B. 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.

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.

**Sec. 10. 22 MRSA §1717, sub-§3**, as amended by PL 2015, c. 196, §5 and repealed and replaced by c. 299, §5, is further amended to read:

**3. Prohibited employment based on disqualifying offenses.** A personal care agency ~~or a placement 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.

**Sec. 11. 22 MRSA §1717, sub-§3-A**, as enacted by PL 2015, c. 196, §6 and c. 299, §6, is amended to read:

**3-A. Verification of listing on the registry.** Prior to hiring a certified nursing assistant ~~or a direct care worker~~ or an immediate supervisor of a certified nursing assistant or direct care worker, a personal care agency ~~or a placement agency~~ shall check the Maine Registry of Certified Nursing Assistants and Direct Care Workers established pursuant to section 1812-G and verify that a the certified nursing assistant or 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.

**Sec. 12. 22 MRSA §1717, sub-§4**, as amended by PL 2015, c. 196, §7 and c. 299, §7, is further amended to read:

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

A. ~~A person who~~ An entity that operates a personal care agency ~~or placement 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.

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.

B. ~~A person who~~ An entity that operates a personal care agency ~~or placement 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.

**Sec. 13. 22 MRSA §1717, sub-§6**, as enacted by PL 2007, c. 324, §2, is amended to read:

**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.

**Sec. 14. 22 MRSA §1717, sub-§9**, as enacted by PL 2007, c. 324, §2, is amended to read:

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

A. An application for ~~registration~~ licensure of a personal care agency ~~or placement 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 personal care agency ~~or placement agency~~ registered 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.

C. To inspect a personal care agency ~~or placement agency~~ that the department knows or believes is being operated without being ~~registered~~ 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.

D. 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.

**Sec. 15. 22 MRSA §1717, sub-§10**, as enacted by PL 2007, c. 324, §2, is repealed and the following enacted in its place:

**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.

B. 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.

**Sec. 16. 22 MRSA §1717, sub-§11**, as enacted by PL 2007, c. 324, §2, is repealed and the following enacted in its place:

**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.

B. 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.

**Sec. 17. 22 MRSA §1717, sub-§13**, as enacted by PL 2007, c. 324, §2, is repealed and the following enacted in its place:

**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.

B. 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.

**Sec. 18. 22 MRSA §1717, sub-§13-A** is enacted to read:

**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.

B. 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.

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.

**Sec. 19. 22 MRSA §1717, sub-§13-B** is enacted to read:

**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.

B. The provisions of paragraph A apply to a registration during the time the registration is in effect.

This paragraph is repealed July 1, 2025.

**Sec. 20. 22 MRSA §1717, sub-§15** is enacted to read:

**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.

B. 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.

**Sec. 21. 22 MRSA §1812-G, sub-§1-B, ¶G-1** is enacted to read:

G-1. "Immediate supervisor" means an individual who directly supervises a certified nursing assistant or a direct care worker at a personal care agency licensed under section 1717.

**Sec. 22. 22 MRSA §1812-G, sub-§2-A**, as enacted by PL 2015, c. 196, §9, is amended to read:

**2-A. Registry listing.** All active certified nursing assistants employed in the State must be listed on the registry. The registry must contain a listing of certified nursing assistants ~~and~~ direct care workers and immediate supervisors that are ineligible for employment based on notations for disqualifying offenses. Direct care workers registered for training, education or compliance purposes may apply for registration and listing on the registry. Direct care workers who may be listed on the registry include but are not limited to the following:

- A. Behavior specialists;
- B. Behavioral health professionals;
- C. Certified residential care aides;
- D. Certified residential medication aides;
- E. Direct support professionals;
- F. Mental health rehabilitation technicians;
- G. Mental health support specialists;
- H. Other qualified mental health professionals;
- I. Personal care or support specialists;
- J. Registered medical assistants;
- K. Residential care specialists;
- L. Community health workers; and
- M. Other direct care workers described in rules adopted by the department pursuant to subsection 18.

**Sec. 23. 22 MRSA §1812-G, sub-§2-B**, as enacted by PL 2015, c. 196, §9, is amended to read:

**2-B. Individual information.** The registry must include information for each listed certified nursing assistant ~~and~~ direct care worker and immediate supervisor as required by rules adopted by the department pursuant to subsection 18.

**Sec. 24. 22 MRSA §1812-G, sub-§2-C**, as enacted by PL 2015, c. 196, §9, is amended to read:

**2-C. Registry notations.** The registry must include for a certified nursing assistant ~~and~~ a direct care worker and an immediate supervisor listed on the registry a notation of:

- A. Disqualifying criminal convictions;

B. Nondisqualifying criminal convictions, except that a notation is not required on the registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident;

C. Substantiated findings, including but not limited to the following information:

(1) Documentation of an investigation of a the certified nursing assistant ~~or a~~, direct care worker or immediate supervisor, including the nature of the allegation and evidence supporting a determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident;

(2) Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

(3) If the certified nursing assistant ~~or~~, direct care worker or immediate supervisor appealed the substantiated finding, the date of the hearing; and

(4) The statement of the certified nursing assistant ~~or~~, direct care worker or immediate supervisor disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the certified nursing assistant ~~or~~, direct care worker or immediate supervisor submitted such a statement; and

D. Petitions filed by a the certified nursing assistant ~~or~~, direct care worker or immediate supervisor for removal of an employment ban issued by the department that was based on a criminal conviction and the department's review and determination.

**Sec. 25. 22 MRSA §1812-G, sub-§4**, as amended by PL 2015, c. 196, §9, is further amended to read:

**4. Department verification of credentials and training.** The department may verify the credentials and training of certified nursing assistants ~~and~~, registered direct care workers and immediate supervisors listed on the registry.

**Sec. 26. 22 MRSA §1812-G, sub-§4-A**, as amended by PL 2015, c. 196, §9, is further amended to read:

**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 ~~or a~~ registered direct care worker's or an immediate supervisor's credentials and training. Providers may not pass the cost on to the individual certified nursing assistant ~~or~~, registered direct care worker or immediate supervisor. 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.

**Sec. 27. 22 MRSA §1812-G, sub-§6**, as repealed and replaced by PL 2015, c. 494, Pt. A, §16, is amended to read:

**6. Prohibited employment based on disqualifying offenses.** An individual with a disqualifying offense, including a substantiated complaint or a disqualifying criminal conviction, may not work as a certified nursing assistant ~~or a~~ direct care worker or an

immediate supervisor, and an employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

**Sec. 28. 22 MRSA §1812-G, sub-§6-A**, as amended by PL 2015, c. 494, Pt. A, §§17 and 18, is further amended to read:

**6-A. Background check.** Certified nursing assistants ~~and~~, direct care workers and immediate supervisors are subject to a background check as defined by rules adopted by the department and according to the following:

A. A training program for certified nursing assistants or direct care workers must secure or pay for a background check on each individual who applies for enrollment. The individual's current name and all previous names are subject to the background check. A copy of the background check is given to the individual who, upon successful completion of the training, submits it with an application to be listed on the registry as a certified nursing assistant or a registered direct care worker.

(1) Prior to enrolling an individual, a training program for certified nursing assistants or direct care workers must notify individuals that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a certified nursing assistant or a direct care worker.

B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 and 9005 and Title 34-B, section 1225, licensed, certified or registered providers shall secure and pay for a background check prior to hiring an individual who will work in direct contact with clients, patients or residents, including a certified nursing assistant ~~or~~, a direct care worker or an immediate supervisor.

C. The department may secure a background check on certified nursing assistants ~~and~~, registered direct care workers and immediate supervisors on the registry every 2 years.

D. A person or other legal entity that is not otherwise licensed by the department and that employs or places a certified nursing assistant or direct care worker to provide services allowing direct access shall secure and pay for a background check in accordance with state law and rules adopted by the department.

**Sec. 29. 22 MRSA §1812-G, sub-§6-B**, as enacted by PL 2015, c. 196, §9, is amended to read:

**6-B. Convictions within previous 10 years; impact on employment eligibility.** The department shall determine the effect of a criminal conviction within the previous 10 years on the employability of an individual as a certified nursing assistant ~~or~~, a direct care worker or an immediate supervisor based on rules adopted by the department pursuant to subsection 18.

**Sec. 30. 22 MRSA §1812-G, sub-§6-C**, as enacted by PL 2015, c. 196, §9, is amended to read:

**6-C. Table of crimes.** Department rules must include a table of crimes. Specific crimes listed on the table must be considered substantive offenses under Title 17-A, Part 2 or crimes identified in federal or state law that prohibit employment of an individual subject to this chapter. Convictions of specific crimes must be categorized in the table of crimes as disqualifying criminal convictions or nondisqualifying criminal convictions. Convictions

in other jurisdictions for similar crimes must be identified as disqualifying or nondisqualifying convictions.

A. A disqualifying criminal conviction within the previous 10 years prohibits employment as a certified nursing assistant  $\text{\textcircled{e}}$ , a direct care worker or an immediate supervisor.

(1) An individual with a disqualifying criminal conviction is subject to an employment ban of 10 or 30 years. The department shall adopt rules that specify disqualifying criminal convictions that prohibit employment for 10 years and disqualifying criminal convictions that prohibit employment for 30 years.

B. Nondisqualifying criminal convictions do not prohibit employment as a certified nursing assistant  $\text{\textcircled{e}}$ , a direct care worker or an immediate supervisor.

**Sec. 31. 22 MRSA §1812-G, sub-§6-D**, as enacted by PL 2015, c. 196, §9, is amended to read:

**6-D. Petition for removal of an employment ban; criminal conviction.** Prior to the expiration of an employment ban under subsection 6-C, paragraph A, subparagraph (1), an individual may petition the department for removal of an employment ban that is based on a disqualifying criminal conviction. Unless otherwise prohibited, removal of the employment ban allows the individual to work as a certified nursing assistant  $\text{\textcircled{e}}$ , a direct care worker or an immediate supervisor.

A. No sooner than 5 years after an individual is discharged from the legal restraints imposed by the criminal conviction, an individual may petition the department for removal of a 10-year employment ban.

B. No sooner than 15 years after an individual is discharged from the legal restraints imposed by the criminal conviction, an individual may petition the department for removal of a 30-year employment ban.

C. A successful petitioner must meet the criteria established by department rules for removal of an employment ban. Criteria must include but not be limited to an assessment of the risk of reoffending and the conduct of the petitioner since the conviction.

A petition for removal of an employment ban submitted by a certified nursing assistant  $\text{\textcircled{e}}$ , a registered direct care worker or an immediate supervisor must be denied if the conduct that led to the conviction would have resulted in a lifetime ban if that conduct had been investigated as a complaint that resulted in a substantiated finding under subsection 13.

D. When the department grants a petition for removal of an employment ban, the individual, unless otherwise prohibited, may work as a certified nursing assistant  $\text{\textcircled{e}}$ , a direct care worker or an immediate supervisor. The notation of the criminal conviction remains on the registry.

**Sec. 32. 22 MRSA §1812-G, sub-§10**, as enacted by PL 2015, c. 196, §9, is amended to read:

**10. Complaint investigation.** The department may investigate complaints and allegations against certified nursing assistants  $\text{\textcircled{e}}$ , registered direct care workers or

immediate supervisors of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident.

**Sec. 33. 22 MRSA §1812-G, sub-§12**, as enacted by PL 2015, c. 196, §9, is amended to read:

**12. Right to hearing; appeal.** In accordance with department rules, a certified nursing assistant ~~or~~ a registered direct care worker or an immediate supervisor may request an administrative hearing to appeal a substantiated finding under subsection 11.

**Sec. 34. 22 MRSA §1812-G, sub-§13**, as enacted by PL 2015, c. 196, §9, is amended to read:

**13. Substantiated finding; lifetime employment ban.** A certified nursing assistant ~~or~~ a registered direct care worker or an immediate supervisor with a notation of a substantiated finding on the registry is banned for life from employment as ~~either~~ a certified nursing assistant ~~or~~ a direct care worker or an immediate supervisor.

**Sec. 35. 22 MRSA §7931**, as amended by PL 1999, c. 384, §5, is further amended to read:

### **§7931. Policy**

It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of residents in long-term care facilities, clients of home health care providers and personal care agencies, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile.

**Sec. 36. 22 MRSA §7932, sub-§1-A**, as amended by PL 1999, c. 384, §6, is further amended to read:

**1-A. Client.** "Client" means a person who receives services from a home health agency, personal care agency, long-term care facility, general and specialty hospital, critical access hospital, ambulatory surgical facility, hospice agency or end-stage renal disease unit.

**Sec. 37. 22 MRSA §7932, sub-§5-A** is enacted to read:

**5-A. Personal care agency.** "Personal care agency" means an organization or other entity licensed under section 1717.

**Sec. 38. 22 MRSA §7933, sub-§1**, as amended by PL 1999, c. 384, §14, is further amended to read:

**1. Grounds for appointment.** The following circumstances are grounds for the appointment of a receiver to operate a long-term care facility, home health care provider, personal care agency, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units:

A. A long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice

agency or end-stage renal disease unit intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents or clients;

B. An emergency exists in a long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that threatens the health, security or welfare of residents or clients; or

C. A long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients.

This remedy is in addition to, and not in lieu of, the power of the department to revoke, suspend or refuse to renew a license under the Maine Administrative Procedure Act.

**Sec. 39. 22 MRSA §7934**, as amended by PL 1999, c. 384, §15, is further amended to read:

**§7934. Powers and duties of the receiver**

**1. Powers and duties.** A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents or clients and family that the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is placed in receivership. The owner and licensee are divested of possession and control of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the period of receivership under such conditions as the court specifies. With the court's approval, the receiver has specific authority to:

A. Remedy violations of federal and state regulations governing the operation of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit;

B. Hire, direct, manage and discharge any employees, including the administrator of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit;

C. Receive and expend in a reasonable and prudent manner the revenues of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency

or end-stage renal disease unit due during the 30-day period preceding the date of appointment and becoming due thereafter;

D. Continue the business of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and the care of residents or clients;

E. Correct or eliminate any deficiency of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and

F. Exercise such additional powers and perform such additional duties, including regular accountings, as the court considers appropriate.

**2. Revenues of the facility.** Revenues of the facility must be handled as follows.

A. The receiver shall apply the revenues of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment ~~where such~~ when the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, or ~~where~~ when payment of the debts will interfere with the purposes of the receivership. Priority must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings.

B. The receiver may correct or eliminate any deficiency of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the resident or client, if the total cost of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver.

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow

money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents or clients and to prevent the closure of long-term care facilities, home health care providers, personal care agencies, general hospitals, specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies or end-stage renal disease units that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

**3. Avoidance of preexisting leases, mortgages and contracts.** A receiver may not be required to honor a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit or was related to the licensee, the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit by a significant degree of common ownership or control at the time the agreement was made; or

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest.

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received such notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

**4. Closing of long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit.** The receiver may not close the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit without leave of the court. In ruling on the issue of closure, the court shall consider:

- A. The rights and best interests of the residents or clients;
- B. The availability of suitable alternative placements;
- C. The rights, interest and obligations of the owner and licensee;
- D. The licensure status of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; and
- E. Any other factors that the court considers relevant.

When a long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

**Sec. 40. 22 MRSA §7937**, as amended by PL 1999, c. 384, §16, is further amended to read:

**§7937. Court order to have effect of license**

An order appointing a receiver under section 7933 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the receivership, and a violation of regulations governing the conduct of the long-term care facility, home health care provider, personal care agency, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, if not promptly corrected, must be reported by the department to the court.

**Sec. 41. 22 MRSA §9053, sub-§14, ¶D**, as enacted by PL 2015, c. 299, §25, is repealed and the following enacted in its place:

- D. An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A; a worker who is placed with a provider by a temporary nurse agency; or a worker who is placed with a provider by a personal care agency registered or licensed pursuant to section 1717; and

**Sec. 42. 22 MRSA §9053, sub-§17**, as enacted by PL 2015, c. 299, §25, is amended to read:

**17. Employer.** "Employer" means a person or other legal entity that employs or places a direct access worker or otherwise provides direct access services. "Employer" includes a provider, a temporary nurse agency; and a personal care agency ~~and a placement agency~~.

**Sec. 43. 22 MRSA §9053, sub-§27,** as enacted by PL 2015, c. 299, §25, is amended to read:

**27. Personal care agency ~~and placement agency.~~** "Personal care agency," ~~and "placement agency" mean as it pertains to a registered entity, means an entity registered pursuant to section 1717, subsection 2.~~

This subsection is repealed July 1, 2025.

**Sec. 44. 22 MRSA §9053, sub-§27-A** is enacted to read:

**27-A. Personal care agency.** "Personal care agency" means an entity licensed pursuant to section 1717, subsection 2-A.

**Sec. 45. Effective date.** That section of this Act that enacts the Maine Revised Statutes, Title 22, section 9053, subsection 27-A takes effect July 1, 2024.