Title 22: HEALTH AND WELFARE

Chapter 405: LICENSING OF HOSPITALS AND INSTITUTIONS

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§1811. LICENSE REQUIRED; DEFINITIONS

No person, partnership, association or corporation, nor any state, county or local governmental units, may establish, conduct or maintain in the State any hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility or other institution for the hospitalization or nursing care of human beings without first obtaining a license therefor. Hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility and other related institution, within the meaning of this chapter, means any institution, place, building or agency in which any accommodation is maintained, furnished or offered for the hospitalization of the sick or injured or care of any aged or infirm persons requiring or receiving chronic or convalescent care. Nothing in this chapter may apply to hotels or other similar places that furnish only board and room, or either, to their guests or to such homes for the aged or blind as may be subject to licensing under any other law. [1989, c. 136, §1 (AMD); 1989, c. 572, §1 (AMD); 1989, c. 878, Pt. A, §58 (RPR).]

SECTION HISTORY
1967, c. 231, §1 (AMD). 1989, c. 136, §1 (AMD). 1989, c. 572, §1 (AMD). 1989, c. 878, §A58 (RPR).

§1812. MATERNITY HOME OR HOSPITAL DEFINED

(REPEALED)

SECTION HISTORY
1967, c. 231, §2 (RP).

§1812-A. NURSING HOME DEFINED

A nursing home or nursing facility shall be defined as a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term "nursing home" or "nursing facility" is restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service. [2001, c. 666, Pt. A, §2 (AMD).]

SECTION HISTORY
1965, c. 403, (NEW). 2001, c. 666, §A2 (AMD).

§1812-B. HOSPITALS AND NURSING HOMES

The administration of medication in facilities licensed under section 1811, except group home intermediate care facilities for persons with intellectual disabilities, may be delegated to unlicensed personnel when such personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the State Board of Nursing. The administration of medication in group home intermediate care facilities for persons with intellectual disabilities may be performed by unlicensed personnel when these personnel have received appropriate training and instruction and the programs of training and instruction have been approved by the department. Delegation of the administration of

medication does not require the personal presence of the delegating professional nurse at the place where this service is performed, unless that personal presence is necessary to assure that medications are safely administered. The board shall issue such rules concerning delegation as it considers necessary to insure the highest quality of health care to the patient. The department shall issue such rules as it considers necessary to insure the highest quality of health care to residents of group home intermediate care facilities for persons with intellectual disabilities. [2011, c. 542, Pt. A, §28 (AMD).]

SECTION HISTORY
1977, c. 497, §3 (NEW). 1983, c. 284, §2 (AMD). 2011, c. 542, Pt. A, §28 (AMD).

§1812-C. NURSING STAFF IN NURSING HOMES; REIMBURSEMENT; DELEGATION OF DUTIES; AND POLICIES

1. **Reimbursement of nursing assistants.** Nursing homes shall be entitled to receive reimbursement under the department's principles of reimbursement, in accordance with approved staffing patterns, for long-term care facilities for nursing assistants enrolled in training programs.

[1985, c. 738, §1 (NEW) .]

2. **Training program expenses.** Nursing homes shall be entitled to receive reimbursement under the department's principles of reimbursement for long-term care facilities, for all reasonable expenses associated with carrying out a certified nursing assistant educational program, consistent with the department rules governing the licensing and functioning of skilled nursing facilities and intermediate care facilities.

[1985, c. 738, §1 (NEW) .]

3. **Delegation of nursing duties.** A registered nurse in a skilled nursing facility or an intermediate care facility may delegate the following functions to nursing assistants enrolled in training programs:

A. Distributing clean linens; [1985, c. 738, §1 (NEW).]

B. Making unoccupied beds; [1985, c. 738, §1 (NEW).]

C. Distributing food trays, water and nourishments; [1985, c. 738, §1 (NEW).]

D. Escorting selected patients within the facility; [1985, c. 738, §1 (NEW).]

E. Assisting patients with clothing; [1985, c. 738, §1 (NEW).]

F. Combing hair; [1985, c. 738, §1 (NEW).]

G. Assisting with feeding; and [1985, c. 738, §1 (NEW).]

H. Other similar functions that may be safely performed by a nursing assistant enrolled in a training program, provided that the nursing assistant in training has satisfactorily demonstrated the ability to perform the delegated tasks. [1985, c. 738, §1 (NEW).]

These functions may be limited to selected residents.

[1985, c. 738, §1 (NEW) .]

4. **Consistent policies.**

[1987, c. 195, §1 (RP) .]

5. **Rules; supervision of and delegation to nursing assistants.** The Department of Health and Human Services shall revise its rules or adopt rules concerning supervision of and delegation of tasks to certified nursing assistants and nursing assistants in training. The rules shall be developed and adopted jointly by the department and the State Board of Nursing and shall be consistent with other relevant rules.

[1987, c. 195, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

6. **Rules; maintenance of approved staffing pattern.** The department shall revise its rules or adopt rules to require documentation when any nursing home receives reimbursement for an approved staffing pattern which exceeds the minimum staffing level and fails to meet that approved staffing level for one year. Failure to meet the minimum staffing requirements as set forth in the Regulations Governing the Licensure of Long-Term Care Facilities shall be cause for licensure sanctions permitted under law and rules.

[1987, c. 195, §2 (NEW) .]

6-A. **Shared staffing.** The department shall permit staff in nursing facilities to be shared with facilities licensed to provide assisted living services as long as there is a clear, documented audit trail and the staffing in the nursing facilities remains adequate to meet the needs of residents. Staffing to be shared may be based on the average number of hours used per week or month within the assisted living program. In a facility licensed to provide assisted living services under section 7801 in which 2 or more staff are required to be awake and on duty during a night shift, one of the staff may be shared with a nursing facility located in the same building without prior approval from the department, subject to the following provisions.

A. Prior notice must be given to the department. [2003, c. 416, §2 (NEW).]

B. The assisted living program shall maintain its state minimum staffing ratio, and the nursing facility shall maintain its state minimum staffing ratio and its federal licensed nurse staffing requirement. [2003, c. 416, §2 (NEW).]

C. The assisted housing program and the nursing facility shall each post a notice informing the public that, although staffing is shared on the night shift, compliance with the minimum staffing requirements is maintained. [2003, c. 416, §2 (NEW).]

D. The department may suspend the facility's ability to share staffing under this subsection if the most recent survey for either level of care indicates deficiencies that are related to resident care and that arise from the sharing of staff. [2003, c. 416, §2 (NEW).]

[2003, c. 416, §2 (AMD) .]

7. **Health Occupations Training Project.**

[1987, c. 777, §6 (RP) .]

SECTION HISTORY
1985, c. 738, §1 (NEW). 1987, c. 195, §§1,2 (AMD). 1987, c. 777, §2 (AMD). 1995, c. 670, §B1 (AMD). 1995, c. 670, §D5 (AFF). 2003, c. 416, §2 (AMD). 2003, c. 689, §B6 (REV).

§1812-D. REIMBURSEMENT; GERIATRIC TRAINING PROGRAMS

(REPEALED)

SECTION HISTORY
1987, c. 830, §1 (NEW). 2003, c. 689, §B6 (REV). 2015, c. 397, §1 (RP).

§1812-E. AMBULATORY SURGICAL FACILITY

1. **Definition.** As used in this chapter, unless the context otherwise indicates, "ambulatory surgical facility" means a facility with a primary purpose of providing elective surgical care to a patient who is admitted to and discharged from the facility within the same day. In order to meet this primary purpose, a facility must at least administer anesthetic agents, maintain a sterile environment in a surgical suite and charge a facility fee separate from the professional fee. "Ambulatory surgical facility" does not include:

A. A facility that is licensed as part of a hospital; [1991, c. 752, §1 (NEW).]

B. A facility that provides services or accommodations for patients who stay overnight; [1991, c. 752, §1 (NEW).]

C. A facility existing for the primary purpose of performing terminations of pregnancies; or [1991, c. 752, §1 (NEW).]

D. The private office of a physician or dentist in individual or group practice, unless that facility or office is certified as a Medicare ambulatory surgical center. [1991, c. 752, §1 (NEW).]

[1991, c. 752, §1 (AMD) .]

2. **Standards.** The department shall establish standards for the licensure of ambulatory surgical facilities effective July 1, 1992. The standards must provide that ambulatory surgical facilities that are certified for the federal Medicare and Medicaid programs meet the requirements for state licensure.

[1991, c. 752, §1 (AMD) .]

3. **Annual inspection.** The department shall inspect annually ambulatory surgical facilities, except that state inspections need not be performed during a year when a Medicare inspection is performed.

[1991, c. 752, §1 (NEW) .]

SECTION HISTORY
1989, c. 572, §2 (NEW). 1991, c. 752, §1 (AMD).

§1812-F. NURSING HOMES; STAFFING FOR SOCIAL SERVICES AND PATIENT ACTIVITIES

1. **Minimum hours.** The department shall approve at least the following number of hours for the following services in nursing homes.

A. The department shall approve at least 1/2 hour per patient per week for social services. [1991, c. 327, (NEW).]

B. The department shall approve at least 20 hours per week in nursing homes of up to 30 beds, at least 30 hours per week in nursing homes of 31 to 60 beds and at least 40 hours per week in nursing homes of 61 beds or more for patient activities. [1991, c. 327, (NEW).]

[1991, c. 327, (NEW) .]

2. **Transfer of hours.** The department shall approve the transfer of previously approved nonnursing hours to social service or patient activity hours if the transfer does not increase the nursing home's per diem rate.

[1991, c. 327, (NEW) .]

SECTION HISTORY
RR 1991, c. 2, §76 (COR). 1991, c. 327, (NEW). 1991, c. 421, §1 (NEW).

§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 and make it accessible through a public website portal.

[2015, c. 196, §9 (AMD) .]

1-A. **Definitions.**

[2015, c. 196, §9 (RP) .]

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

A. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. [2015, c. 196, §9 (NEW).]

B. "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. [2015, c. 196, §9 (NEW).]

C. "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. [2015, c. 196, §9 (NEW).]

D. "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. [2015, c. 196, §9 (NEW).]

E. "Disqualifying offense" means a substantiation for abuse, neglect or exploitation, or a criminal conviction identified in rules adopted by the department that prohibits employment as a certified nursing assistant or a direct care worker in accordance with subsection 2-C. [2015, c. 196, §9 (NEW).]

F. "Employer" means a person or licensed, certified or registered provider or other entity that employs direct access workers, including certified nursing assistants and direct care workers, to provide direct contact services in home, community or other health care or direct access settings. An individual who employs an unlicensed person to provide care for that individual is not an employer for the purposes of this section, except when required by rules adopted by the department. [2015, c. 196, §9 (NEW).]

G. "Health care or direct access setting" means a setting in which individuals receive services that require direct access by a certified nursing assistant or a direct care worker or other employee in providing care and related services. [2015, c. 196, §9 (NEW).]

H. "Misappropriation of property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of a client's, patient's or resident's belongings or money without that person's consent. [2015, c. 196, §9 (NEW).]

I. "Neglect" means a threat to a person's health or welfare by failure to provide goods or services necessary to avoid physical or mental injury or impairment or the threat of injury or impairment. [2015, c. 196, §9 (NEW).]

J. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department pursuant to subsection 18 that is included as a notation on the registry but does not prohibit employment as a certified nursing assistant or a direct care worker. [2015, c. 196, §9 (NEW).]

K. "Registered direct care worker" means an individual listed on the registry for training, education or compliance purposes in accordance with rules adopted pursuant to this chapter. "Registered direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant or a direct care worker listed on the registry with notations for disqualifying offenses. [2015, c. 196, §9 (NEW).]

L. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers established in subsection 1, which identifies individuals qualified and eligible for employment as a certified nursing assistant or a registered direct care worker and individuals who are not eligible for employment as a certified nursing assistant or direct care worker due to notations for disqualifying offenses. [2015, c. 196, §9 (NEW).]

M. "Substantiated finding" means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident. [2015, c. 196, §9 (NEW).]

N. "Unsubstantiated finding" means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker that no evidence of abuse, neglect or misappropriation of property of a client, patient or resident was found to support a substantiated finding. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

2. **Contents.**

[2015, c. 196, §9 (RP) .]

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 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; [2015, c. 196, §9 (NEW).]

B. Behavioral health professionals; [2015, c. 196, §9 (NEW).]

C. Certified residential care aides; [2015, c. 196, §9 (NEW).]

D. Certified residential medication aides; [2015, c. 196, §9 (NEW).]

E. Direct support professionals; [2015, c. 196, §9 (NEW).]

F. Mental health rehabilitation technicians; [2015, c. 196, §9 (NEW).]

G. Mental health support specialists; [2015, c. 196, §9 (NEW).]

H. Other qualified mental health professionals; [2015, c. 196, §9 (NEW).]

I. Personal care or support specialists; [2015, c. 196, §9 (NEW).]

J. Registered medical assistants; [2015, c. 196, §9 (NEW).]

K. Residential care specialists; [2015, c. 196, §9 (NEW).]

L. Community health workers; and [2015, c. 196, §9 (NEW).]

M. Other direct care workers described in rules adopted by the department pursuant to subsection 18. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

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

[2015, c. 196, §9 (NEW) .]

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

A. Disqualifying criminal convictions; [2015, c. 196, §9 (NEW).]

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; [2015, c. 196, §9 (NEW).]

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

(1) Documentation of an investigation of a certified nursing assistant or a direct care worker, 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 appealed the substantiated finding, the date of the hearing; and

(4) The statement of the certified nursing assistant or direct care worker 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 submitted such a statement; and [2015, c. 196, §9 (NEW).]

D. Petitions filed by a certified nursing assistant or direct care worker for removal of an employment ban issued by the department that was based on a criminal conviction and the department's review and determination. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

3. **Eligibility requirements for listing; certified nursing assistant.** The State Board of Nursing shall adopt rules pursuant to the Maine Administrative Procedure Act defining eligibility requirements for listing on the registry as a certified nursing assistant, including rules regarding temporary listing of nursing assistants who have received training in another jurisdiction. The rules must permit certified nursing assistants to work under the supervision of a registered professional nurse in a facility providing assisted housing 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 certified nursing assistants in facilities providing assisted housing services are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2015, c. 196, §9 (AMD) .]

3-A. **Listing on the registry; direct care worker.** A direct care worker listed for purposes other than a disqualifying notation may be listed on the registry as a registered direct care worker for 2-year renewable periods. The department shall adopt routine technical rules regarding listing direct care workers on the registry, including but not limited to the following:

A. Direct care workers with disqualifying offenses must be listed on the registry; and [2015, c. 196, §9 (NEW).]

B. Direct care workers without disqualifying offenses who are registered for training, education or compliance purposes must comply with requirements for continued listing on the registry. [2015, c. 196, §9 (NEW).]

The rules may include provisions for direct care workers registered for training, education or compliance purposes including provisions for the temporary listing of direct care workers who received training in another jurisdiction.

A certified nursing assistant in good standing on the registry may qualify for registration as a direct care worker.

[2015, c. 196, §9 (NEW) .]

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

[2015, c. 196, §9 (AMD) .]

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 registered direct care worker's credentials and training. Providers may not pass the cost on to the individual certified nursing assistant or registered direct care worker. 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.

[2015, c. 196, §9 (AMD) .]

5. **Employment eligibility verification; certified nursing assistant.** An employer, including a health care institution, facility or other organization that employs an individual as a certified nursing assistant, shall verify that the certified nursing assistant is listed as active and has no disqualifying notations on the registry.

[2015, c. 196, §9 (AMD) .]

5-A. **Employment eligibility verification; direct care worker.** An employer, including a health care institution, facility or other organization that employs an individual as a direct care worker, shall verify that the direct care worker, if listed on the registry, has no disqualifying notations and has complied with the training or education requirements for registration, if applicable.

[2015, c. 196, §9 (NEW) .]

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

A. [2015, c. 494, Pt. A, §16 (RP).]

B. [2015, c. 494, Pt. A, §16 (RP).]

[2015, c. 494, Pt. A, §16 (RPR) .]

6-A. **Background check.** Certified nursing assistants and direct care workers 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. [2015, c. 196, §9 (NEW); 2015, c. 299, §10 (NEW).]

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. [2015, c. 494, Pt. A, §17 (RPR).]

C. The department may secure a background check on certified nursing assistants and registered direct care workers on the registry every 2 years. [2015, c. 196, §9 (NEW); 2015, c. 299, §10 (NEW).]

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. [2015, c. 494, Pt. A, §18 (RPR).]

[2015, c. 494, Pt. A, §§17, 18 (AMD) .]

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 direct care worker based on rules adopted by the department pursuant to subsection 18.

[2015, c. 196, §9 (NEW) .]

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 or a direct care worker.

(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. [2015, c. 196, §9 (NEW).]

B. Nondisqualifying criminal convictions do not prohibit employment as a certified nursing assistant or a direct care worker. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

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 or a direct care worker.

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. [2015, c. 196, §9 (NEW).]

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. [2015, c. 196, §9 (NEW).]

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 or a registered direct care worker 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. [2015, c. 196, §9 (NEW).]

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 or a direct care worker. The notation of the criminal conviction remains on the registry. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

7. **Time limit on consideration of prior criminal conviction.**

[2015, c. 196, §9 (RP) .]

8. **Exception; certified nursing assistant convictions prior to June 2, 2003.** The restrictions on employment based on criminal convictions prior to June 2, 2003 do not apply to an individual listed and active on the registry as a certified nursing assistant prior to June 2, 2003, as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely renewal as required by the rules.

[2015, c. 196, §9 (AMD) .]

9. **Notification.**

[2015, c. 196, §9 (RP) .]

10. **Complaint investigation.** The department may investigate complaints and allegations against certified nursing assistants or registered direct care workers of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident.

[2015, c. 196, §9 (NEW) .]

11. **Issue a decision.** After an investigation under subsection 10, the department shall issue a written decision that the allegation of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident is unsubstantiated or substantiated. Each allegation of abuse, neglect or misappropriation of property must be considered separately. A substantiated finding must be based on factors established by department rules. The written decision must include at least the following information:

A. Whether the allegation is unsubstantiated or substantiated; [2015, c. 196, §9 (NEW).]

B. A description of the factors supporting a substantiated finding; [2015, c. 196, §9 (NEW).]

C. If a notation of a substantiated finding is entered on the registry; [2015, c. 196, §9 (NEW).]

D. A description of the employment prohibition, if any; and [2015, c. 196, §9 (NEW).]

E. Notice of the right to appeal the department's decision pursuant to subsection 12. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

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

[2015, c. 196, §9 (NEW) .]

13. **Substantiated finding; lifetime employment ban.** A certified nursing assistant or a registered direct care worker 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.

[2015, c. 196, §9 (NEW) .]

14. **Registration requirements; direct care workers.** An individual registered by the department as a direct care worker for training, education or compliance purposes must comply with requirements established by department rules, including but not limited to the following:

A. Submission of a completed department-approved application form with required documents; [2015, c. 196, §9 (NEW).]

B. Successful completion of training requirements; and [2015, c. 196, §9 (NEW).]

C. Submission to a background check, if required. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

15. **Department review of application; decision.** After review of an application for an initial or renewed registration for a direct care worker for training, education or compliance purposes, the department shall render a written decision to either deny or approve the application. The decision must be based on factors established by department rules and the factors must be included in the written decision.

A. A department-issued registration for a direct care worker for training, education or compliance purposes is for a term of 2 years. The issued date and the expiration date must be on the registration. [2015, c. 196, §9 (NEW).]

[2015, c. 196, §9 (NEW) .]

16. **Renewal of registration.** Prior to expiration of a direct care worker's registration for training, education or compliance purposes, the direct care worker shall secure a department-issued renewed registration.

[2015, c. 196, §9 (NEW) .]

17. **Failure to renew registration prior to expiration.** Upon expiration of the 2-year registration under subsection 15, a direct care worker registered for training, education or compliance purposes pursuant to subsection 14 who fails to secure a department-issued renewed registration will receive a notation on the registry that may disqualify the direct care worker for employment in the capacity for which the training,

education or compliance purposes were required. A direct care worker who elects not to renew a registration remains eligible for employment as a direct care worker in a capacity that does not require registration-level training or education pursuant to subsection 14, paragraph B.

[2015, c. 196, §9 (NEW) .]

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

[2015, c. 196, §9 (NEW) .]

SECTION HISTORY
RR 1991, c. 2, §76 (RNU). 1991, c. 421, §1 (NEW). 1993, c. 247, §1 (AMD). 1995, c. 670, §B2 (AMD). 1995, c. 670, §D5 (AFF). 1997, c. 465, §§1,2 (AMD). 2001, c. 596, §B5 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 376, §§1,2 (AMD). 2003, c. 599, §4 (AMD). 2003, c. 599, §5 (AFF). 2003, c. 634, §3 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 215, §1 (AMD). 2009, c. 590, §2 (AMD). 2011, c. 257, §2 (AMD). 2015, c. 196, §9 (AMD). 2015, c. 299, §§9, 10 (AMD). 2015, c. 494, Pt. A, §§16-18 (AMD).

§1812-H. PARTICIPATION IN THE MEDICARE HEALTH INSURANCE FOR THE AGED PROGRAM

1. **Medicare.** Any nursing facility that participates in the Medicaid program must participate in the Medicare health insurance for the aged program as a skilled nursing facility.

[1993, c. 410, Pt. FF, §4 (AMD) .]

2. **Compliance.** Any nursing facility required to participate in the Medicare health insurance for the aged program shall:

A. File an application to become a Medicare provider by January 1, 1994; [1993, c. 410, Pt. FF, §5 (AMD).]

B. Follow required federal procedures for certification and become certified within 90 days of the department's recommendation for certification; [1991, c. 622, Pt. M, §10 (NEW).]

C. Submit an annual application for Medicare participation at the same time applications for licensure and Medicaid certification are due; and [1991, c. 622, Pt. M, §10 (NEW).]

D. Participate in the Medicare program by billing Medicare for care provided to eligible recipients prior to billing Medicaid. [1991, c. 622, Pt. M, §10 (NEW).]

[1993, c. 410, Pt. FF, §5 (AMD) .]

2-A. **Rules.** The department shall adopt rules to implement this section. The rules must consider the unique needs of different parts of the State. Nursing facilities in different parts of the State may be required to certify different numbers or percentages of beds depending on the number of Medicare recipients in those areas, the number of patients in hospitals who are waiting for nursing facility admission and other relevant demographic information. Nothing in this subsection prohibits the department from requiring all nursing facilities to certify all of their beds as Medicare skilled nursing facility beds.

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

[2007, c. 324, §3 (AMD) .]

2-B. **Implementation.** Notwithstanding any provision of this section to the contrary, a nursing facility may decline to admit a prospective resident after an evaluation of the person's clinical condition and related care needs and a determination that the facility lacks qualified staff to meet the level of care required for that person. A nursing facility is not subject to penalty or sanction for declining to admit a prospective resident under this subsection. Nothing in this subsection affects the obligation of a nursing facility to provide care specific to the needs of residents of the facility.

[2001, c. 600, §1 (NEW) .]

3. **Sanctions.** Failure to comply with any of the provisions listed in this section may result in the imposition of a penalty. The department may impose a penalty of not less than $100 per bed per day and not more than $5,000 per day for failure to comply with any of these provisions. This penalty must be imposed for each day a facility fails to comply with subsection 2, paragraph D. A repeated failure to comply with a provision results in fines of not less than $200 per bed per day and not more than $10,000 per day. The imposition and collection of these penalties are governed by section 7946.

[2007, c. 324, §3 (AMD) .]

SECTION HISTORY
1991, c. 622, §M10 (NEW). 1991, c. 671, §L2 (AMD). 1993, c. 410, §§FF4-7 (AMD). 2001, c. 600, §1 (AMD). 2007, c. 324, §3 (AMD).

§1812-I. CRITICAL ACCESS HOSPITAL DEFINED

For purposes of this chapter, "critical access hospital" has the same meaning as set out in section 7932, subsection 10. [2003, c. 673, Pt. HH, §1 (NEW).]

SECTION HISTORY
2003, c. 673, §HH1 (NEW).

§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. [2009, c. 215, §2 (NEW).]

A-1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. [2011, c. 257, §3 (NEW).]

A-2. "Disqualifying offense" means a substantiation of abuse, neglect or exploitation or a criminal conviction identified in rules adopted by the department that prohibit employment as an unlicensed assistive person. [2015, c. 299, §11 (AMD).]

A-3. "Health care and direct access services settings" means settings in which individuals receive services that require direct access by a certified nursing assistant or unlicensed assistive person or other employee in providing direct care and related services. [2015, c. 299, §11 (AMD).]

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. [2011, c. 257, §3 (NEW).]

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. [2011, c. 257, §3 (NEW).]

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. [2011, c. 257, §3 (NEW).]

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. [2011, c. 257, §3 (NEW).]

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 direct care workers registered for training, education or compliance purposes, or unlicensed assistive persons with notations and is established under section 1812-G. [2015, c. 299, §12 (AMD).]

C. "State survey agency" 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. [2011, c. 257, §3 (AMD).]

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. [2011, c. 257, §3 (NEW).]

D. "Unlicensed assistive person" means an unlicensed individual who by virtue of employment has direct access to and provides direct care or direct contact 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 access services settings. "Unlicensed assistive person" includes but is 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 access workers or direct care workers as described in rules adopted by the department. "Unlicensed assistive person" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant. [2015, c. 299, §13 (AMD).]

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. [2011, c. 257, §3 (NEW).]

F. "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. [2015, c. 299, §14 (NEW).]

[2015, c. 299, §§11-14 (AMD) .]

2. **Complaint investigation.** The department may investigate complaints and allegations of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident in a home or health care setting against unlicensed assistive persons.

[2015, c. 299, §15 (AMD) .]

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; [2011, c. 257, §4 (NEW).]

B. Make an indicated finding; or [2011, c. 257, §4 (NEW).]

C. Make an unsubstantiated finding. [2011, c. 257, §4 (NEW).]

[2011, c. 257, §4 (NEW) .]

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 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.

[2011, c. 257, §5 (AMD) .]

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.

[2011, c. 257, §6 (NEW) .]

4. **Registry listing.** The department shall list an unlicensed assistive person employed as a direct care worker with a disqualifying offense notation and may register an unlicensed assistive person or direct care worker for training, education and compliance purposes. Disqualifying notations must include but are 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, exploitation or misappropriation of property; [2015, c. 299, §16 (AMD).]

B. The date of the hearing, if the unlicensed assistive person chose to appeal the department finding that the complaint was substantiated; [2015, c. 299, §16 (AMD).]

C. The unlicensed assistive person's statement to the department disputing the allegation, if the unlicensed assistive person chose to submit one; and [2015, c. 299, §16 (AMD).]

D. Notations indicating the listed unlicensed assistive person is not in compliance with training or educational requirements. [2015, c. 299, §16 (NEW).]

[2015, c. 299, §16 (AMD) .]

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.

[2009, c. 215, §2 (NEW) .]

6. **Petition for removal of a substantiated finding of abuse, neglect or misappropriation of property.** No sooner than 12 months after the date 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, neglect or misappropriation of property.

[2011, c. 257, §7 (AMD) .]

7. **Prohibited employment based on disqualifying offenses.** An employer who employs an unlicensed assistive person to provide direct access services shall conduct a comprehensive background check 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. The employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

A. [2015, c. 299, §17 (RP).]

B. [2015, c. 299, §17 (RP).]

C. [2011, c. 257, §8 (RP).]

[2015, c. 494, Pt. D, §3 (AMD) .]

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.

[2009, c. 215, §2 (NEW) .]

SECTION HISTORY
2009, c. 215, §2 (NEW). 2011, c. 257, §§3-8 (AMD). 2015, c. 299, §§11-17 (AMD). 2015, c. 494, Pt. D, §3 (AMD).

§1812-K. INTERMEDIATE CARE FACILITY FOR PERSONS WITH INTELLECTUAL DISABILITIES

1. **Survey.** A state survey agency shall conduct a survey of each intermediate care facility for persons with intellectual disabilities not later than 15 months after the last day of the previous survey. The statewide average interval between surveys must be 12 months or less. The statewide average interval is computed at the end of each federal fiscal year by comparing the last day of the most recent survey for each participating facility to the last day of each facility’s previous survey. As used in this section, "state survey agency" 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.

[2013, c. 179, §5 (NEW) .]

2. **Rules.** The department shall adopt rules necessary to license intermediate care facilities for persons with intellectual disabilities in accordance with the Maine Administrative Procedure Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 588, Pt. A, §24 (AMD) .]

SECTION HISTORY
2013, c. 179, §5 (NEW). 2013, c. 588, Pt. A, §24 (AMD).

§1813. LICENSES FOR NEW AND EXISTING HOSPITALS

A person, partnership, association or corporation or any state, county or local governmental unit may not continue to operate an existing hospital, sanatorium, convalescent home, rest home, nursing home or ambulatory surgical facility or open a hospital, sanatorium, convalescent home, rest home, nursing home or ambulatory surgical facility unless the operation is approved and regularly licensed by the State. [1991, c. 104, (RPR).]

Notwithstanding any other provision of this Title, a state-operated mental health hospital subject to licensure may have its current conditional license extended until January 1, 1993. By January 1, 1993, the department shall adopt rules that apply specifically to the licensure of psychiatric and mental health hospitals. Until those rules are adopted, the department shall apply existing hospital licensure rules to psychiatric and mental health hospitals. [1991, c. 104, (RPR).]

For nursing facilities providing both nursing home and assisted living services, the department shall issue one license reflecting both levels of care. The commissioner shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1997, c. 488, §1 (NEW).]

SECTION HISTORY
1967, c. 231, §3 (AMD). 1989, c. 136, §2 (AMD). 1989, c. 572, §3 (AMD). 1989, c. 875, §E34 (RPR). 1989, c. 878, §A59 (RPR). 1991, c. 104, (RPR). 1997, c. 488, §1 (AMD).

§1814. APPLICATION

Any person, partnership, association or corporation, including state, county or local governmental units, desiring a license shall file with the department a verified application containing the name of the applicant desiring the license; whether the persons so applying are at least 18 years of age; the type of institution to be operated; the location; the name of the person in charge. Application on behalf of a corporation or association or governmental units shall be made by any 2 officers thereof or by its managing agents. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards of this chapter and all regulations adopted thereunder. [1989, c. 136, §3 (AMD).]

SECTION HISTORY
1969, c. 433, §44 (AMD). 1971, c. 598, §34 (AMD). 1989, c. 136, §3 (AMD).

§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 must be renewed annually, or for a term of years, as required by law upon payment of 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. [2011, c. 257, §9 (AMD).]

SECTION HISTORY

1967, c. 231, §4 (AMD). 1975, c. 491, §2 (AMD). 1981, c. 703, §A12 (AMD). 1989, c. 136, §4 (AMD). 1989, c. 572, §4 (AMD). 1989, c. 878, §A60 (RPR). 1991, c. 752, §2 (AMD). 2003, c. 20, §K4 (AMD). 2003, c. 507, §C1 (AMD). 2003, c. 507, §C4 (AFF). 2011, c. 257, §9 (AMD).

§1815-A. NURSING HOME SURCHARGE

In addition to the fee in section 1815, an application for a license to operate a nursing home must be accompanied by a nonrefundable surcharge of $5 for each bed contained within the facility. The surcharge must be deposited in the General Fund. [1991, c. 765, §1 (NEW).]

SECTION HISTORY
1991, c. 765, §1 (NEW).

§1816. INSPECTIONS

Every building, institution or establishment for which a license has been issued shall be periodically inspected by duly appointed representatives of the Bureau of Medical Services under the rules and regulations to be established by the department. No institution of any kind licensed pursuant to this chapter shall be required to be licensed or inspected under the laws of this State relating to hotels, restaurants, lodging houses, boardinghouses and places of refreshments. No such license shall be issued until the applicant has furnished the department with a written statement signed by the Commissioner of Public Safety or the proper municipal official designated in Title 25, chapters 313 to 321 to make fire safety inspections that the home and premises comply with said chapters 313 to 321 relating to fire safety. The department shall establish and pay reasonable fees to the municipal official or the Commissioner of Public Safety for each such inspection. Said written statement shall be furnished annually. [1981, c. 470, Pt. A, §71 (AMD).]

For nursing facilities providing both nursing home and assisted living services, the department shall ensure that a single coordinated licensing and life safety code inspection is performed. The commissioner shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1997, c. 488, §2 (NEW).]

A hospital licensed under this chapter is exempt from department inspection requirements under this chapter if the hospital is certified by the Centers for Medicare and Medicaid Services for participation in the federal Medicare program and holds full accreditation status by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services. If a hospital is certified to participate in the federal Medicare program and not accredited by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services, the department shall inspect the hospital every 3 years for compliance with the Centers for Medicare and Medicaid Services' conditions of participation. The provisions of this paragraph do not exempt a hospital from an inspection by the department in response to a complaint or suspected violation of this chapter or of the Centers for Medicare and Medicaid Services' conditions of participation or an inspection by another state agency or municipality for building code, fire code, life safety code or other purposes unrelated to health care facility licensing or accreditation. For purposes of this paragraph, "Centers for Medicare and Medicaid Services" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. [2007, c. 314, §1 (NEW); 2007, c. 314, §2 (AFF).]

SECTION HISTORY
1971, c. 592, §5 (AMD). 1975, c. 623, §27 (AMD). 1981, c. 470, §A71 (AMD). 1997, c. 488, §2 (AMD). 2007, c. 314, §1 (AMD). 2007, c. 314, §2 (AFF).

§1817. ISSUANCE OF LICENSES

The department is authorized to issue licenses to operate hospitals, sanatoriums, convalescent homes, rest homes, nursing homes, ambulatory surgical facilities and other related institutions that, after inspection, are found to comply with this chapter and any rules adopted by the department. An initial license may be issued for up to 12 months. A license may be renewed for up to 24 months. The fee for this temporary or conditional license is $15 and is payable at the time of issuance of the license regardless of the term. When an institution, upon inspection by the department, is found not to meet all requirements of this chapter or department rules, the department is authorized to issue either: [2007, c. 324, §4 (RPR).]

1. **Temporary license.** A temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department must be made by the institution for compliance with this chapter and departmental rules, if in the judgment of the commissioner the best interests of the public will be so served; or

[2007, c. 324, §4 (NEW) .]

2. **Conditional license.** A conditional license setting forth conditions that must be met by the institution to the satisfaction of the department.

[2007, c. 324, §4 (NEW) .]

Failure of the institution to meet any of the department's conditions immediately voids the temporary or conditional license by written notice by the department to the licensee or, if the licensee cannot be reached for personal service, by notice left at the licensed premises. A new application for a regular license may be considered by the department if, when and after the conditions set forth by the department at the time of the issuance of this temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department. The department may amend, modify or refuse to renew a license in conformity with the Maine Administrative Procedure Act, or file a complaint with the District Court requesting suspension or revocation of any license on any of the following grounds: violation of this chapter or the rules issued pursuant to this chapter; permitting, aiding or abetting the commission of any illegal act in that institution; or conduct of practices detrimental to the welfare of a patient. Whenever, on inspection by the department, conditions are found to exist that violate this chapter or department rules issued pursuant to this chapter that, in the opinion of the commissioner, immediately endanger the health or safety of patients in an institution or create an emergency, the department by its duly authorized agents may, under the emergency provisions of Title 4, section 184, subsection 6, request that the District Court suspend or revoke the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 324, §4 (NEW).]

SECTION HISTORY
1965, c. 453, (RPR). 1967, c. 231, §5 (AMD). 1973, c. 303, §3 (AMD). 1977, c. 694, §345 (RPR). 1989, c. 572, §5 (AMD). RR 1999, c. 2, §25 (AFF). RR 1999, c. 2, §24 (COR). 2007, c. 324, §4 (RPR).

§1818. APPEALS

Any person who is aggrieved by the decision of the department in refusing to issue a license or the renewal of a license may request a hearing as provided by the Maine Administrative Procedure Act, Title 5, chapter 375. [1981, c. 470, Pt. A, §72 (AMD).]

SECTION HISTORY
1973, c. 303, §3 (AMD). 1981, c. 470, §A72 (AMD).

§1819. INVESTMENT OF HOSPITAL TRUST FUNDS

Hospitals may treat any 2 or more trust funds as a single fund solely for the purpose of investment, if such investment is not prohibited by the instrument, judgment, decree or order creating such trust funds. Unless ordered by decree, the hospital so investing said funds is not required to render a court accounting with regard to such funds, but it, as accountant, or any interested person, may by petition to the Superior Court or the probate court in the county where said hospital is located secure approval of such accounting on such conditions as the court may establish.

§1819-A. FINANCIAL DISCLOSURE

Each hospital licensed under this chapter must annually publicly disclose: [2005, c. 249, §1 (NEW).]

1. **IRS Form 990.** The federal Internal Revenue Service Form 990, including all related disclosable schedules, for the hospital and for each tax-exempt entity related to the hospital that is required by federal law to file that form with the Internal Revenue Service; and

[2005, c. 249, §1 (NEW) .]

2. **IRS Form 1120.** The federal Internal Revenue Service Form 1120 for each for-profit entity in which the hospital has a controlling interest.

[2005, c. 249, §1 (NEW) .]

Information required to be disclosed under this section must be submitted by the hospital to the department within 5 months after the end of the hospital's fiscal year or within 5 months after the date on which the entity files the applicable form with the Internal Revenue Service. The department shall make available for public inspection and photocopying copies of all documents required by this section and shall post those documents on the department's publicly accessible website. The department shall post a chart on the website listing each hospital and providing a link to the documents filed pursuant to subsection 1. [2009, c. 350, Pt. C, §1 (AMD).]

SECTION HISTORY
2005, c. 249, §1 (NEW). 2009, c. 350, Pt. C, §1 (AMD).

§1820. STANDARDS

The department shall have the power to establish reasonable standards under this chapter which it finds to be necessary and in the public interest and may rescind or modify such regulations from time to time as may be in the public interest, in so far as such action is not in conflict with any of the provisions of said chapter. No standards, rules or regulations of the department pursuant to this chapter shall be adopted or enforced which would have the effect of denying a license to any hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein, provided such school or system of practice is recognized by the laws of this State.

§1820-A. RIGHT OF ENTRY AND INSPECTION OF NURSING HOMES AND BOARDING HOMES

The department and any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any nursing home licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with this chapter and any rules and regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the department has reason to believe is being operated or maintained as a nursing home without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the District Court authorizing the same. Any application for a nursing home license made

pursuant to this chapter shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with such application. [1975, c. 719, §3 (AMD).]

SECTION HISTORY
1967, c. 334, (NEW). 1975, c. 719, §3 (AMD).

§1821. VIOLATIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 231, §6 (AMD). 1987, c. 774, §2 (RP).

§1822. NOTICE WHEN NURSING HOME VOLUNTARILY CLOSED

Any person, including county or local government units, who is conducting, managing or operating any hospital, sanatorium, convalescent home, rest home, nursing home or institution within the meaning of this chapter, and who is properly licensed therefor in accordance with this chapter shall give at least 30 days' advance notice of the voluntary closing of such facility to the patients therein and to those persons, governmental units or institutions who are primarily responsible for the welfare of those patients who are being cared for by said hospital, sanatorium, convalescent home, rest home, nursing home or institution so that adequate preparation may be made for the orderly transfer of said patients to another qualified facility. [1971, c. 281, (NEW).]

Failure to provide such notice shall subject the offender to the same penalties provided in section 1821. [1971, c. 281, (NEW).]

SECTION HISTORY
1971, c. 281, (NEW).

§1822-A. NOTICE TO NURSING FACILITY APPLICANTS

If an applicant to a nursing facility has not received a preadmission assessment in accordance with section 3174-I, the nursing facility shall provide to the applicant and any relative or friend assisting the applicant a notice prepared by the department regarding preadmission assessment. The notice must indicate that preadmission assessment is required and that, if the applicant depletes the applicant's resources and applies for Medicaid in the future, the applicant may need to leave the nursing facility if an assessment conducted at that time finds that the applicant is not medically eligible for nursing facility services. [1995, c. 170, §1 (AMD).]

SECTION HISTORY
1993, c. 410, §FF8 (NEW). 1995, c. 170, §1 (AMD).

§1823. TREATMENT OF MINORS

Any hospital licensed under this chapter or alcohol or drug treatment facility licensed pursuant to section 7801 that provides facilities to a minor in connection with the treatment of that minor for venereal disease or abuse of drugs or alcohol or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of the provision of such facilities so long as such facilities have been provided at the direction of the person or persons referred to in Title 32, sections 2595, 3292, 3817, 6221 or 7004. The hospital shall notify and obtain the consent of that minor's parent or guardian if that hospitalization continues for more than 16 hours. [1999, c. 90, §2 (AMD).]

SECTION HISTORY

1973, c. 145, §6 (NEW). 1977, c. 78, §146 (AMD). 1979, c. 96, §1 (AMD). 1979, c. 127, §142 (AMD). 1979, c. 663, §134 (AMD). 1999, c. 90, §2 (AMD).

§1824. PERSONAL FUNDS OF RESIDENTS

The operator or agent of any skilled nursing or intermediate care facility, licensed pursuant to this chapter, who manages, holds or deposits the personal funds of any resident of the facility is subject to all the procedures and provisions included in section 7857. [2001, c. 596, Pt. B, §6 (AMD); 2001, c. 596, Pt. B, §25 (AFF).]

SECTION HISTORY
1975, c. 719, §4 (NEW). 2001, c. 596, §B6 (AMD). 2001, c. 596, §B25 (AFF).

§1825. SMOKING IN NURSING HOMES

(REPEALED)

SECTION HISTORY
1983, c. 293, (NEW). 2009, c. 300, §9 (RP).

§1826. NURSING HOME ADMISSION CONTRACTS

All contracts or agreements executed at the time of admission or prior to admission by a resident or legal representative and by any nursing home licensed pursuant to this chapter shall be subject to the requirements of this section. [1985, c. 291, §1 (NEW).]

1. **Required contract provisions.** Each contract or agreement shall contain the following provisions.

A. A resident may obtain medical care from any qualified institution, agency or person of his choice, as long as that health care provider complies with any applicable laws or rules concerning the provision of care to the resident. [1985, c. 291, §1 (NEW).]

B. A resident may obtain medication from any qualified pharmacy, as long as that pharmacy complies with any applicable state rules and federal regulations and with the reasonable policies of the facility concerning procurement of medication. [1985, c. 291, §1 (NEW).]

[1985, c. 291, §1 (NEW) .]

2. **Contract requirements.** Each contract or agreement is subject to the following requirements.

A. No contract or agreement may contain a provision for the discharge of a resident or the transfer of a resident to another facility or to another room within the same facility which is inconsistent with state law or rule. [1985, c. 291, §1 (NEW).]

B. Each contract or agreement must contain a complete copy of the department rules establishing residents' rights and must contain a written acknowledgement that the resident has been informed of those rights. If a resident is under full guardianship, there must be a written acknowledgement of the receipt of those rights by the guardian. If a resident is under limited guardianship, both the resident and the guardian must acknowledge receipt of the rights. All notices and information regarding rights must be written in language that is plain and understandable. No provision in the contract or agreement may negate, limit or otherwise modify any provision of the residents' rights. [2011, c. 542, Pt. A, §29 (AMD).]

C. No provision of a contract or agreement may require or imply a lesser standard of care or responsibility than is required by law or rule. [1985, c. 291, §1 (NEW).]

D. No provision in a contract or agreement may state or imply a lesser degree of responsibility for the personal property of a resident than is required by law or rule. [1985, c. 291, §1 (NEW).]

E. No contract or agreement may require the resident to sign a waiver of liability statement as a condition of discharge, even if the discharge is against medical advice. This does not prohibit a facility from attempting to obtain a written acknowledgement that the resident has been informed of the potential risk in being discharged against medical advice. [1985, c. 291, §1 (NEW).]

F. Each contract or agreement shall contain a provision which provides for at least 30 days' notice prior to any changes in rates and charges, responsibilities, services to be provided or any other items included in the contract or agreement. [1985, c. 291, §1 (NEW).]

G. No contract or agreement may require the resident to authorize the facility or its staff to manage, hold or otherwise control the income or other assets of a resident. [1985, c. 291, §1 (NEW).]

H. No contract or agreement may contain any provisions which restrict or limit the ability of a resident to apply for and receive Medicaid or which require a specified period of residency prior to applying for Medicaid. The resident may be required to notify the facility when an application for Medicaid has been made. No contract or agreement may require a deposit or other prepayment from Medicaid recipients. No contract or agreement may refuse to accept retroactive Medicaid benefits. [1985, c. 291, §1 (NEW).]

I. No contract or agreement may contain a provision that provides for the payment of attorney's fees or any other cost of collecting payments from the resident, except that attorney's fees and costs may be collected against any agent under a power of attorney who breaches the agent's duties as set forth in section 1826-A or Title 18-A, section 5-914 or against a conservator appointed under Title 18-A, section 5-404 for breach of the conservator's duties. [2015, c. 247, §1 (AMD).]

[2015, c. 247, §1 (AMD) .]

3. **Other contract provisions.** The contract or agreement may contain other provisions that do not violate state law or rule or federal law or regulation and that are specifically allowed by the standardized contract under subsection 4.

[1997, c. 329, §1 (AMD) .]

4. **Standardized contract.** The commissioner shall adopt rules to standardize nursing home contracts for all nursing home residents to clarify the rights and obligations of residents. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 329, §2 (NEW) .]

SECTION HISTORY
1985, c. 291, §1 (NEW). 1997, c. 329, §§1,2 (AMD). 2011, c. 542, Pt. A, §29 (AMD). 2015, c. 247, §1 (AMD).

§1827. PHOTOGRAPHS OF NURSING HOME RESIDENTS

A nursing home may require an identification photograph of each resident. Photographs may not be used for any other purpose without the permission of the resident for each specific use. The permission must indicate the specific purpose which the pictures are to be used for and, except for the identification photograph, may not be contained in the admission contract or agreement. [1985, c. 291, §1 (NEW).]

SECTION HISTORY
1985, c. 291, §1 (NEW).

§1828. RECORDS; DISCLOSURE

1. **Confidential information.** The following provisions apply to records that are made, acquired or retained by the department in connection with the administration of the Medicaid program and the licensing or certification of hospitals, nursing homes and other medical facilities and entities.

A. Except as provided in Title 5, section 9057 and in subsections 2 and 3, confidential information may not be released without a court order or a written release from the person whose privacy interest is protected by this section. [1989, c. 175, §2 (NEW).]

B. "Confidential information" means any information which directly or indirectly identifies:

(1) Any person who makes a complaint to the department;

(2) A resident or a recipient of services of any facility or provider licensed or certified by the department;

(3) Any recipient of a public welfare program, such as the United States Social Security Act, Title XIX; or

(4) Any medical or personal information concerning the individuals listed in subparagraphs (2) and (3). [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

2. **Optional disclosure.** The department may disclose relevant confidential information to the extent allowed by federal law and regulation to the following persons or agencies:

A. Employees of the department and legal counsel for the department in carrying out their official functions; [1989, c. 175, §2 (NEW).]

B. Professional and occupational licensing boards pursuant to chapter 857; [1989, c. 175, §2 (NEW).]

C. An agency or person investigating a report of abuse or neglect when the investigation is authorized by law or by an agreement with the department; [1989, c. 175, §2 (NEW).]

D. A physician treating an individual whom the physician reasonably suspects may have been abused or neglected; [1989, c. 175, §2 (NEW).]

E. The resident or recipient of services on whose behalf the complaint was made; or [1989, c. 175, §2 (NEW).]

F. A parent, guardian, spouse or adult child of a resident or recipient of services or any other person permitted by the resident or recipient to participate in decisions relating to the resident's or recipient's care. [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

3. **Mandatory disclosure.** The department shall disclose relevant confidential information to the extent allowed by federal law and regulations to the following:

A. A law enforcement agency investigating a report of abuse or neglect or the commission of a crime by an owner, operator or employee of a facility or provider; or [1989, c. 175, §2 (NEW).]

B. Appropriate state or federal agencies when disclosure is necessary to the administration of the Medicaid program. [1989, c. 175, §2 (NEW).]

[1989, c. 175, §2 (NEW) .]

4. **Further disclosure.** Information released pursuant to subsections 2 and 3 shall be used solely for the purpose for which it was provided and shall not be further disseminated.

[1989, c. 175, §2 (NEW) .]

SECTION HISTORY
1989, c. 175, §2 (NEW).

§1829. NOTICE TO MEDICAL UTILIZATION REVIEW ENTITY

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

A. "Medical utilization review entity" means a person, corporation, organization or other entity that provides medical utilization review services as defined in Title 24-A, section 2773. [1991, c. 548, Pt. A, §17 (RPR).]

B. "Emergency treatment" means treatment of a case involving accidental bodily injury or the sudden and unexpected onset of a critical condition requiring medical or surgical care for which a person seeks immediate medical attention within 24 hours of the onset. [1991, c. 548, Pt. A, §17 (RPR).]

[1991, c. 548, Pt. A, §17 (RPR) .]

2. **Notification requirement.** If a hospital provides emergency treatment to a person who is insured or otherwise covered under a policy or contract that requires review of hospitalization by a medical utilization review entity, the hospital must notify the medical utilization review entity covering that person, unless the person is:

A. Released from the hospital no more than 48 hours after admission; or [1991, c. 548, Pt. A, §17 (RPR).]

B. Covered under an insurance policy or contract that is not subject to Title 24, section 2302-B, Title 24-A, section 2749-A or Title 24-A, section 2847-A. [1993, c. 645, Pt. A, §2 (AMD).]

The notification must include the name of the person admitted, the general medical nature of the admission and the telephone number of the admitting physician or other health care provider treating the person.

[1993, c. 645, Pt. A, §2 (AMD) .]

3. **Timing of notification.** Notification must be made within 2 business days after the hospital determines the identity of the utilization review entity and receives written authorization to release the information by the patient or other person authorized to permit release of the information.

[1991, c. 548, Pt. A, §17 (RPR) .]

4. **Exemption.** The hospital is exempt from this requirement if:

A. The hospital receives a written confirmation from the admitting physician, the patient or a representative of the patient that the medical utilization review entity has been notified; or [1991, c. 548, Pt. A, §17 (RPR).]

B. The hospital is not able to obtain written authorization to release the information, following a good faith effort by the hospital to obtain that authorization. [1991, c. 548, Pt. A, §17 (RPR).]

[1991, c. 548, Pt. A, §17 (RPR) .]

5. **Immunity from liability for notification.** Neither the hospital nor any of its employees or representatives may be held liable for damages resulting from the notification required by this section.

[1991, c. 548, Pt. A, §17 (RPR) .]

SECTION HISTORY
1989, c. 767, §1 (NEW). 1989, c. 823, (NEW). 1991, c. 548, §A17 (RPR). 1993, c. 645, §A2 (AMD).

§1830. PHARMACEUTICAL SERVICES IN NURSING HOMES

1. **Notice.** Each nursing home shall post a notice in a place within the nursing home where notices for residents are ordinarily posted stating that each resident has the right to obtain medication from a pharmacy of the resident's choice as provided in section 1826, subsection 1.

[1991, c. 548, Pt. A, §18 (NEW) .]

SECTION HISTORY
1991, c. 548, §A18 (NEW).

§1831. PATIENT REFERRALS

1. **Provision of information.** In order to provide for informed patient or resident decisions, a hospital or nursing facility shall provide a standardized list of licensed providers of care and services and available physicians for all patients or residents prior to discharge for whom home health care, hospice care, acute rehabilitation care, a hospital swing bed as defined in section 328, subsection 15 or nursing care is needed. The list must include a clear and conspicuous notice of the rights of the patient or resident regarding choice of providers.

A. For all patients or residents requiring home health care or hospice care, the list must include all licensed home health care and hospice providers that request to be listed and any branch offices, including addresses and phone numbers, that serve the area in which the patient or resident resides. [2013, c. 214, §1 (AMD).]

B. For all patients or residents requiring nursing facility care or a hospital swing bed, the list must include all appropriate facilities that request to be listed that serve the area in which the patient or resident resides or wishes to reside and the physicians available within those facilities that request to be listed. [2013, c. 214, §1 (AMD).]

C. The hospital or nursing facility shall disclose to the patient or resident any direct or indirect financial interest the hospital or nursing facility has in the nursing facility or home health care provider. [1997, c. 337, §1 (NEW).]

[2013, c. 214, §1 (AMD) .]

2. **Rulemaking.** The department shall establish by rule guidelines necessary to carry out the purposes of this section, including but not limited to the standardized list referenced in subsection 1 and contact information for the long-term care ombudsman program under section 5107-A. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2013, c. 214, §1 (AMD) .]

SECTION HISTORY
1997, c. 337, §1 (NEW). 2013, c. 214, §1 (AMD).

§1832. SAFETY AND SECURITY IN HOSPITALS

A hospital licensed under this chapter shall, on an annual basis, adopt a safety and security plan to protect the patients, visitors and employees of the hospital from aggressive and violent behavior. The safety and security plan must include a process for hospitals to receive and record incidents and threats of violent behavior occurring at or arising out of employment at the hospital. The safety and security plan must prohibit a representative or employee of the hospital from interfering with a person making a report as provided in the plan. [2011, c. 254, §1 (NEW); 2011, c. 254, §2 (AFF).]

SECTION HISTORY
2011, c. 254, §1 (NEW). 2011, c. 254, §2 (AFF).

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