

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
S.P. 768 - L.D. 1961

**An Act to Clarify the Laws Relating to the Licensure of Certain Facilities by
the Department of Health and Human Services**

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

PART A

Sec. A-1. 22 MRSA §1717, sub-§2-C, ¶C, as enacted by PL 2023, c. 309, §7, is amended to read:

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. A conditional license may be issued to an agency upon initial application if the agency has failed to comply with applicable laws and rules while operating under another license.

Sec. A-2. 22 MRSA §1813, 3rd ¶, as enacted by PL 1997, c. 488, §1, is amended to read:

For nursing facilities providing both nursing ~~home~~ facility and assisted ~~living~~ housing 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 ~~H-A~~ 2-A.

Sec. A-3. 22 MRSA §7701, sub-§2, as amended by PL 2001, c. 645, §2, is further amended to read:

2. Facility. As used in this subtitle, the word "facility" means any of the places described in section 7801 or defined in section 8001, 8101, 8201 or 8301-A, subsection 1-A, paragraph B.

Sec. A-4. 22 MRSA §7802, sub-§1, ¶C, as enacted by PL 1983, c. 386, §2, is amended to read:

C. A conditional license or approval may be issued by the department when the individual or agency fails to comply with applicable ~~law~~ laws and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval ~~shall~~ must specify when and what corrections must be made during the term of the conditional license or approval. A conditional license or approval may be issued upon initial application to an individual or agency that has failed to comply with applicable laws and rules while operating under another license.

Sec. A-5. 22 MRSA §7852, sub-§6, as amended by PL 2023, c. 176, §14, is further amended to read:

6. Independent housing with services program. "Independent housing with services program" means a program of supportive services provided to residents in private apartments ~~who receive~~ that receives funds through a written agreement with the department's office of aging and disability services.

Sec. A-6. 26 MRSA §683, sub-§1, ¶B, as amended by PL 2011, c. 657, Pt. AA, §72, is repealed.

Sec. A-7. 34-B MRSA §1203-A, sub-§2, ¶A, as enacted by PL 1989, c. 227, §1, is amended to read:

A. The commissioner may issue a conditional license to an agency or facility applying or reapplying for a provisional or full license, if:

- (1) The applicant fails to comply with applicable laws and rules; and
- (2) In the judgment of the commissioner, the best interests of the public would be served by issuance of a conditional license.

Sec. A-8. 34-B MRSA §1203-A, sub-§5, as enacted by PL 1989, c. 227, §1, is amended to read:

5. Monitoring for compliance. Regardless of the term of the license, the commissioner shall monitor the licensee, at least once ~~a year~~ every 2 years, for continued compliance with applicable laws and rules.

Sec. A-9. 34-B MRSA §1203-B, sub-§4, ¶A, as enacted by PL 2023, c. 89, §7, is amended to read:

A. The department may issue a conditional license to an agency applying for or renewing a provisional or full license if:

- (1) The applicant fails to comply with applicable laws and rules; and
- (2) In the judgment of the department, the best interests of the public would be served by issuance of a conditional license.

PART B

Sec. B-1. 22 MRSA §8752, sub-§1, as amended by PL 2009, c. 358, §1, is further amended to read:

1. Division. "Division" means the ~~Department of Health and Human Services, Division of Licensing and Regulatory Services~~ department's division of licensing and certification.

Sec. B-2. 22 MRSA §8752, sub-§2, as amended by PL 2011, c. 542, Pt. A, §48, is repealed and the following enacted in its place:

2. Health care facility. "Health care facility" or "facility" means a general or specialty hospital including all facilities under the hospital's license, an ambulatory surgical facility, an end-stage renal disease facility and a state institution as defined under Title 34-B, chapter 1, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664.

Sec. B-3. 22 MRSA §8752, sub-§3-A, as enacted by PL 2009, c. 358, §1, is repealed.

Sec. B-4. 22 MRSA §8752, sub-§4-A, as enacted by PL 2009, c. 358, §1, is amended to read:

4-A. Sentinel event. "Sentinel event" means:

A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility;

B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient or that occurs within 48 hours of treatment. If within 2 weeks of discharge from the facility, evidence is discovered that the major loss of function was not permanent, the health care facility is not required to submit a report pursuant to section 8753, subsection 2;

C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; ~~and~~

C-1. The suicide of a patient within 48 hours of receiving health care services in a health care facility; and

D. Other serious and preventable events as identified by using the most recent version of a nationally recognized quality forum ~~and determined in rules adopted by the department pursuant to section 8756.~~

Sec. B-5. 22 MRSA §8753, sub-§1, as amended by PL 2009, c. 358, §2, is repealed and the following enacted in its place:

1. Notification. Using the sentinel event notification process under this chapter, a health care facility shall notify the division of a sentinel event within 3 business days after the facility discovers that the event occurred.

Sec. B-6. 22 MRSA §8753, sub-§2, as amended by PL 2009, c. 358, §2, is further amended to read:

2. Reporting Written report. The health care facility shall file a written report no later than 45 days following the notification of the occurrence of a sentinel event pursuant to subsection 1. The written report must be signed by the chief executive officer of the facility and must contain the following information:

- A. Facility name and address;
- B. Name, title and phone number of the contact person for the facility;
- C. The date and time of the sentinel event and the sentinel event case number;
- D. The type of sentinel event and a ~~brief description~~ timeline of the sentinel event; and
- H. A thorough and credible root cause analysis. A root cause analysis is thorough and credible only in accordance with the following.

(1) A thorough root cause analysis must include: a determination of the human and other factors most directly associated with the sentinel event and the processes and systems related to its occurrence; an analysis of the underlying systems and processes to determine where redesign might reduce risk; an inquiry into all areas appropriate to the specific type of event; an identification of risk points and their potential contributions to the event; a determination of potential improvement in processes or systems that would tend to decrease the likelihood of such an event in the future or a determination, after analysis, that no such improvement opportunities exist; an action plan that identifies changes that can be implemented to reduce risks or formulates a rationale for not undertaking such changes; and, where improvement actions are planned, an identification of who is responsible for implementation, when the action will be implemented and how the effectiveness of the action will be evaluated.

(2) A credible root cause analysis must include participation by the leadership of the health care facility and by the individuals most closely involved in the processes and systems under review, is internally consistent without contradictions or unanswered questions, provides an explanation for all findings, including those identified as "not applicable" or "no problem," and includes the consideration of any relevant literature.

(3) The root cause analysis submitted to the division may exclude protected professional competence review information pursuant to the Maine Health Security Act.

Sec. B-7. 22 MRSA §8753, sub-§4, as amended by PL 2009, c. 358, §2, is further amended to read:

4. Immunity. A person who in good faith reports a ~~near miss~~, a suspected sentinel event or a sentinel event or provides a root cause analysis pursuant to this chapter is immune from any civil or criminal liability for the act of reporting or participating in the review by the division. "Good faith" does not include instances when a false report is made and the person reporting knows the report is false. This subsection may not be construed to bar civil or criminal action regarding perjury or regarding the sentinel event that led to the report.

Sec. B-8. 22 MRSA §8753, sub-§5, as enacted by PL 2009, c. 358, §2, is repealed.

Sec. B-9. 22 MRSA §8754, sub-§1, as amended by PL 2009, c. 358, §4, is further amended to read:

1. Initial review; other action. ~~Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division.~~ Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may ~~conduct on-site reviews of request~~ conduct on-site reviews of request medical records and may retain the services of consultants when necessary to the division.

~~A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.~~

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

Sec. B-10. 22 MRSA §8754, sub-§4, as amended by PL 2009, c. 358, §6, is further amended to read:

4. Report. The division shall submit an annual report by ~~February~~ April 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

Sec. B-11. 22 MRSA §8755, sub-§1, as enacted by PL 2009, c. 358, §7, is amended to read:

1. Oversight. The division shall place primary emphasis on ensuring effective corrective action by the facility. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

PART C

Sec. C-1. 22 MRSA §1812-G, sub-§2-C, as amended by PL 2023, c. 241, §7 and c. 309, §24, is repealed and the following enacted in its place:

2-C. Registry notations. The registry must include for a certified nursing assistant, 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; and

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

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

(4) The statement of the certified nursing assistant, 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, direct care worker or immediate supervisor submitted such a statement.

Sec. C-2. 22 MRSA §1812-G, sub-§3-B, as enacted by PL 2023, c. 241, §9, is amended to read:

3-B. Petition for removal of a substantiated finding of neglect or misappropriation of property. No sooner than 12 months after the date a substantiated finding of neglect or misappropriation of property is placed on the registry, a direct care worker may petition the department to remove the notation from the registry if the substantiated ~~complaint~~ finding is a one-time occurrence and there is no pattern of neglect or misappropriation of property.

Sec. C-3. 22 MRSA §1812-G, sub-§4, as amended by PL 2023, c. 241, §10 and c. 309, §25, is repealed and the following enacted in its place:

4. Department verification of credentials and training. The department may verify the credentials and training of certified nursing assistants listed on the registry.

Sec. C-4. 22 MRSA §1812-G, sub-§4-A, as amended by PL 2023, c. 241, §11 and c. 309, §26, is repealed and the following enacted in its place:

4-A. Provider verification fee. The department may establish a provider verification fee not to exceed \$25 annually per provider for verification of a certified nursing assistant's credentials and training. Providers may not pass the cost on to the individual certified nursing assistant. Provider verification fees collected by the department must be placed in a special revenue account to be used by the department to operate the registry, including but not limited to the cost of criminal history record checks. The department may adopt rules necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. C-5. 22 MRSA §1812-G, sub-§6, as amended by PL 2023, c. 241, §13 and c. 309, §27, is repealed and the following enacted in its place:

6. Prohibited employment based on disqualifying offenses. An individual with a disqualifying offense, including a substantiated finding or a disqualifying criminal conviction, may not work as a certified nursing assistant, 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. C-6. 22 MRSA §1812-G, sub-§6-A, as amended by PL 2023, c. 241, §14 and c. 309, §28, is repealed and the following enacted in its place:

6-A. Background check. Certified nursing assistants, 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, a direct care worker or an immediate supervisor.

C. The department may secure a background check on certified nursing assistants, 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. C-7. 22 MRSA §1812-G, sub-§6-B, as repealed by PL 2023, c. 241, §15 and amended by c. 309, §29, is repealed.

Sec. C-8. 22 MRSA §1812-G, sub-§6-C, ¶A, as amended by PL 2023, c. 241, §16 and c. 309, §30, is repealed and the following enacted in its place:

A. A disqualifying criminal conviction prohibits employment as a certified nursing assistant or a direct access worker.

(1) An individual with a disqualifying criminal conviction is subject to an employment ban of 5, 10 or 30 years. The department shall adopt rules that specify disqualifying criminal convictions that prohibit employment for 5 years, disqualifying criminal convictions that prohibit employment for 10 years and disqualifying criminal convictions that prohibit employment for 30 years.

Sec. C-9. 22 MRSA §1812-G, sub-§6-C, ¶B, as amended by PL 2023, c. 241, §17 and c. 309, §30, is repealed and the following enacted in its place:

B. Nondisqualifying criminal convictions do not prohibit employment as a certified nursing assistant, a direct care worker or an immediate supervisor.

Sec. C-10. 22 MRSA §1812-G, sub-§6-D, as repealed by PL 2023, c. 241, §18 and amended by c. 309, §31, is repealed.

Sec. C-11. 22 MRSA §1812-G, sub-§10, as amended by PL 2023, c. 241, §20 and c. 309, §32, is repealed and the following enacted in its place:

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

Sec. C-12. 22 MRSA §1812-G, sub-§13, as amended by PL 2023, c. 241, §22 and c. 309, §34, is repealed and the following enacted in its place:

13. Substantiated finding; lifetime employment ban. A certified nursing assistant, 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 a certified nursing assistant, a direct care worker or an immediate supervisor.