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H.P. 413

House of Representatives, February 14, 2023

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

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative CRAVEN of Lewiston.

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

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

4 **§1717. Registration Licensing of personal care agencies and placement agencies**

5 **Sec. 2. 22 MRSA §1717, sub-§1, ¶C**, as amended by PL 2015, c. 196, §2 and c.
6 299, §2, is further amended to read:

7 C. "Personal care agency" means a business entity or subsidiary of a business entity
8 that is not otherwise licensed by the ~~Division of Licensing~~ department's division of
9 licensing and Regulatory Services certification and that hires and employs direct access
10 personnel or individuals who work in direct contact with clients, patients or residents
11 to provide ~~assistance with activities of daily living and related tasks~~ home care services
12 to individuals in the places in which they reside, either permanently or temporarily. An
13 individual who hires and employs direct access personnel or individuals who work in
14 direct contact with clients, patients or residents to provide care for that individual is not
15 a personal care agency, except when permitted by rule of the department. "Personal
16 care agency" does not include a home health care provider licensed under chapter 419.

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18 repealed.

19 **Sec. 4. 22 MRSA §1717, sub-§2**, as repealed and replaced by PL 2015, c. 494, Pt.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

21 **2. Registration of personal care agencies and placement agencies.** Beginning
22 August 1, 1998, Until June 30, 2024, a personal care agency not otherwise licensed by the
23 department shall register with the department. Beginning January 1, 2008, a placement
24 agency not otherwise licensed by the department shall register with the department. The
25 department shall adopt rules establishing the annual registration fee, which must be
26 between \$25 and \$250. Rules adopted pursuant to this subsection are routine technical
27 rules as defined in Title 5, chapter 375, subchapter 2-A.

28 This subsection is repealed July 1, 2025.

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

30 **2-A. Licensing of personal care agencies.** Beginning July 1, 2024, an entity may not
31 provide home care services without a personal care agency license issued by the department
32 in accordance with this section. All application fees for a license under this section are
33 nonrefundable and are due upon submission of the application. The department shall adopt
34 rules establishing the licensing process in accordance with subsection 2-B, including
35 application fees. Notwithstanding Title 5, section 8071, subsection 3, paragraph B, rules
36 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
37 375, subchapter 2-A.

38 A. A personal care agency that holds an unexpired registration issued in accordance
39 with subsection 2 may continue to provide home care services until the registration
40 expires.

41 This paragraph is repealed July 1, 2025.

1 B. A personal care agency holding an unexpired registration issued in accordance with
2 subsection 2 is not required to obtain a license until the expiration of the registration.

3 This paragraph is repealed July 1, 2025.

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

5 **2-B. Licensing standards for personal care agencies.** The department shall adopt
6 rules to establish standards for the licensing of personal care agencies. The licensing
7 standards must include, but are not limited to:

8 A. General licensing requirements;

9 B. Quality measures;

10 C. Personnel qualifications;

11 D. Mandatory and minimum training requirements;

12 E. Home care services;

13 F. Services provided and coordination of services;

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

15 H. Record-keeping and confidentiality practices;

16 I. Business records requirements; and

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

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

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

22 **2-C. Types of licenses; terms.** Pursuant to subsection 2-A, the department may issue
23 licenses to personal care agencies in accordance with this subsection. The department may
24 issue:

25 A. A provisional license for an applicant that:

26 (1) Has not previously operated as a personal care agency;

27 (2) Complies with all applicable laws and rules, except those that can only be
28 complied with once clients, patients or residents are served by the applicant; and

29 (3) Demonstrates the ability to comply with all applicable laws and rules by the
30 end of the provisional license term.

31 A provisional license may be issued for a period of time of at least 3 months and not
32 more than 12 months;

33 B. A full license for an applicant that has operated a personal care agency or for an
34 applicant renewing a license that complies with all applicable laws and rules. A full
35 license may be issued for a period of time not more than 24 months; and

36 C. A conditional license for a personal care agency with a provisional or a full license
37 that fails to comply with applicable laws and rules when, in the judgment of the
38 commissioner, issuing a conditional license is in the best interest of the public. The

1 conditional license must specify what corrections the personal care agency is required
2 to make during the term of the conditional license and a timeline for those corrections.
3 The conditional license may be issued for a period of time not more than 12 months or
4 the remaining period of the personal care agency's full license, whichever the
5 commissioner determines is appropriate considering the laws and rules violated.

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

7 **2-D. Licenses not assignable or transferable.** A personal care agency may not assign
8 or transfer a license issued under subsection 2-C. A license is immediately void if
9 ownership or control of the personal care agency changes.

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

11 **2-E. Quality assurance and technical assistance for personal care agencies.** This
12 subsection governs quality assurance and technical assistance for personal care agencies.

13 A. The department may conduct the following activities to ensure that quality home
14 care services are provided by personal care agencies:

15 (1) Issue notices of deficiency for a personal care agency's failure to comply with
16 applicable federal or state laws, rules or regulations;

17 (2) Require personal care agencies to submit acceptable plans of corrective action
18 to remedy deficiencies identified under subparagraph (1);

19 (3) Direct personal care agencies to comply with plans of corrective action issued
20 under subparagraph (2);

21 (4) Apply sanctions in accordance with subsection 13-A, paragraph E; or

22 (5) Condition, suspend, revoke or refuse to renew a personal care agency's license
23 issued under subsection 2-C on the basis of the agency's noncompliance with plans
24 of corrective action.

25 B. The provisions of paragraph A apply to a personal care agency that holds a
26 registration during the time the registration is in effect.

27 This paragraph is repealed July 1, 2025.

28 The department shall adopt rules to implement this subsection. Rules adopted pursuant to
29 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
30 2-A.

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

33 **3. Prohibited employment based on disqualifying offenses.** A personal care agency
34 ~~or a placement agency~~ shall conduct a comprehensive background check for direct access
35 ~~personnel and immediate supervisors of direct access personnel~~ in accordance with state
36 law and rules adopted by the department and is subject to the employment restrictions set
37 out in section 1812-G and other applicable federal and state laws when hiring, employing
38 or placing direct access personnel, including, but not limited to, a certified nursing assistant
39 or a direct care worker, and immediate supervisors of direct access personnel.

40 **Sec. 11. 22 MRSA §1717, sub-§3-A**, as enacted by PL 2015, c. 196, §6 and c. 299,
41 §6, is amended to read:

1 **3-A. Verification of listing on the registry.** Prior to hiring a certified nursing
2 assistant ~~or~~, a direct care worker or an immediate supervisor of a certified nursing assistant
3 or direct care worker, a personal care agency ~~or a placement agency~~ shall check the Maine
4 Registry of Certified Nursing Assistants and Direct Care Workers established pursuant to
5 section 1812-G and verify that a the certified nursing assistant or direct care worker or
6 immediate supervisor of a certified nursing assistant or direct care worker listed on the
7 registry has no disqualifying notations.

8 The department may adopt rules necessary to implement this subsection. Rules adopted
9 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
10 subchapter 2-A.

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

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

14 A. ~~A person who~~ An entity that operates a personal care agency ~~or placement agency~~
15 without registering with the department as required by subsection 2 commits a civil
16 violation for which a fine of not less than \$500 per day of operation but not more than
17 \$10,000 may be adjudged. Each day of violation constitutes a separate offense.

18 This paragraph is repealed July 1, 2025.

19 A-1. An entity that operates a personal care agency without obtaining a license from
20 the department as required by subsection 2-A commits a civil violation for which a fine
21 of not less than \$500 per day of operation but not more than \$10,000 may be adjudged.
22 Each day of violation constitutes a separate offense.

23 B. ~~A person who~~ An entity that operates a personal care agency ~~or placement agency~~
24 in violation of the employment prohibitions in subsection 3 or 3-A commits a civil
25 violation for which a fine of not less than \$500 per day of operation in violation but
26 not more than \$10,000 per day may be adjudged, beginning on the first day that a
27 violation occurs. Each day of violation constitutes a separate offense.

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

30 **6. Enforcement actions by the Office of the Attorney General.** The Office of the
31 Attorney General may file a complaint with the District Court seeking civil penalties or
32 injunctive relief or both for violations of this section.

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

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

36 A. An application for ~~registration~~ licensure of a personal care agency ~~or placement~~
37 ~~agency~~ constitutes permission for entry and inspection to verify compliance with
38 applicable laws and rules.

39 B. The department has the right to enter and inspect the premises of a personal care
40 agency ~~or placement agency registered~~ licensed by the department at a reasonable time
41 and, upon demand, has the right to inspect and copy any books, accounts, papers,

1 records and other documents in order to determine the state of compliance with
2 applicable laws and rules.

3 C. To inspect a personal care agency ~~or placement agency~~ that the department knows
4 or believes is being operated without being ~~registered~~ licensed, the department may
5 enter only with the permission of the owner or person in charge or with an
6 administrative inspection warrant issued pursuant to the Maine Rules of Civil
7 Procedure, Rule 80E by the District Court authorizing entry and inspection.

8 D. The provisions of paragraphs A, B and C apply to a personal care agency that holds,
9 is applying for or does not hold a registration during the time registration may be
10 required.

11 This paragraph is repealed July 1, 2025.

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

14 **10. Administrative inspection warrant.** This subsection governs administrative
15 inspection warrants.

16 A. The department and a duly designated officer or employee of the department have
17 the right to enter upon and into the premises of an unlicensed personal care agency with
18 an administrative inspection warrant issued pursuant to the Maine Rules of Civil
19 Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have
20 the right to inspect and copy any books, accounts, papers, records and other documents
21 in order to determine the state of compliance with this section. The right of entry and
22 inspection may extend to any premises and documents of a person, firm, partnership,
23 association, corporation or other entity that the department has reason to believe is
24 operating without being licensed.

25 B. The provisions of paragraph A apply to a personal care agency that does not hold a
26 registration during the time registration may be required.

27 This paragraph is repealed July 1, 2025.

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

30 **11. Noninterference.** This subsection prohibits interfering with department
31 investigations.

32 A. An owner or operator of an unlicensed personal care agency may not interfere with,
33 impede or obstruct an investigation by the department, including but not limited to
34 interviewing persons receiving home care services or persons with knowledge of the
35 agency.

36 B. The provisions of paragraph A apply to an owner or operator of a personal care
37 agency that does not hold a registration during the time registration may be required.

38 This paragraph is repealed July 1, 2025.

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

1 **13. Suspension or revocation.** This subsection governs suspension or revocation of
2 licenses for personal care agencies.

3 A. A personal care agency found to be in violation of this section may have its license
4 to operate as a personal care agency suspended or revoked. The department may file a
5 complaint with the District Court requesting suspension or revocation of a license to
6 operate a personal care agency.

7 B. The provisions of paragraph A apply to a personal care agency that holds a
8 registration during the time the registration is in effect.

9 This paragraph is repealed July 1, 2025.

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

11 **13-A. Enforcement actions by the department.** This subsection governs the
12 department's enforcement authority.

13 A. If a personal care agency fails to comply with applicable laws and rules, the
14 department may:

15 (1) Refuse to issue or renew a license;

16 (2) Issue a conditional license in accordance with subsection 2-C;

17 (3) File a complaint with the District Court in accordance with Title 4, section 184
18 or the Maine Administrative Procedure Act to suspend or revoke a license pursuant
19 to subsection 13;

20 (4) Petition the Superior Court to appoint a receiver to operate the personal care
21 agency in accordance with chapter 1666-A; and

22 (5) Impose one or more of the following sanctions as necessary and appropriate to
23 ensure compliance with applicable laws and rules or to protect an individual served
24 by the personal care agency:

25 (a) Direct a personal care agency to stop admissions or intake of new clients,
26 patients or residents regardless of payment source, until the department
27 determines that the personal care agency has taken corrective action;

28 (b) Direct a personal care agency to correct any deficiencies in a manner and
29 within a time frame that the department determines appropriate to ensure
30 compliance with applicable laws and rules or to protect an individual served
31 by a personal care agency; or

32 (c) In addition to the penalties imposed pursuant to subsection 4, impose a
33 penalty upon a personal care agency for a violation of this section or rules
34 adopted pursuant to this section. The department shall by rule establish a
35 schedule of penalties according to the nature of the violation. Each day of a
36 violation constitutes a separate offense. Rules adopted pursuant to this
37 subparagraph are routine technical rules as defined in Title 5, chapter 375,
38 subchapter 2-A.

39 B. The provisions of paragraph A apply to a personal care agency that holds, is applying
40 for or does not hold a registration during the time registration may be required.

41 This paragraph is repealed July 1, 2025.

1 The department shall engage in monitoring activities on at least a biennial basis to ensure
2 that a personal care agency, regardless of its licensure status, is in compliance with
3 applicable laws and rules.

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

5 **13-B. Appeals.** This subsection governs appeals of certain department decisions.

6 A. An entity aggrieved by the department's decisions on any of the following actions
7 may request an administrative hearing as provided by the Maine Administrative
8 Procedure Act:

9 (1) Denial of or refusal to renew a full license;

10 (2) Denial of a provisional license;

11 (3) Issuance of a conditional license;

12 (4) Amendment or modification of a license; or

13 (5) Imposition of sanctions.

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

16 This paragraph is repealed July 1, 2025.

17 **Sec. 20. 22 MRSA §1717, sub-§14**, as enacted by PL 2007, c. 324, §2, is amended
18 to read:

19 **14. Rules.** The Except as otherwise provided in this section, the department may adopt
20 rules to implement this section. Rules adopted pursuant to this subsection are routine
21 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. 21. 22 MRSA §1717, sub-§15** is enacted to read:

23 **15. Confidentiality of records.** This subsection governs confidentiality.

24 A. A department record that contains personally identifiable information or health
25 information and that is created or obtained in connection with the department's
26 licensing or quality assurance activities under this section is confidential, with the
27 exceptions of a notice of deficiency, a plan of corrective action and a final action under
28 subsection 2-E with respect to a licensing or quality assurance activity.

29 B. The provisions of paragraph A apply to a department record that contains personally
30 identifiable information or health information and that is created or obtained in
31 connection with the department's registration activities.

32 This paragraph is repealed July 1, 2025.

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

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

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

1 **2-A. Registry listing.** All active certified nursing assistants employed in the State
2 must be listed on the registry. The registry must contain a listing of certified nursing
3 assistants ~~and~~, direct care workers and immediate supervisors that are ineligible for
4 employment based on notations for disqualifying offenses. Direct care workers registered
5 for training, education or compliance purposes may apply for registration and listing on the
6 registry. Direct care workers who may be listed on the registry include but are not limited
7 to the following:

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

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

24 **2-B. Individual information.** The registry must include information for each listed
25 certified nursing assistant ~~and~~, direct care worker and immediate supervisor as required by
26 rules adopted by the department pursuant to subsection 18.

27 **Sec. 25. 22 MRSA §1812-G, sub-§2-C**, as enacted by PL 2015, c. 196, §9, is
28 amended to read:

29 **2-C. Registry notations.** The registry must include for a certified nursing assistant
30 ~~and~~, a direct care worker and an immediate supervisor listed on the registry a notation of:

- 31 A. Disqualifying criminal convictions;
- 32 B. Nondisqualifying criminal convictions, except that a notation is not required on the
33 registry for Class D and Class E criminal convictions over 10 years old that did not
34 involve as a victim of the act a patient, client or resident;
- 35 C. Substantiated findings, including but not limited to the following information:
 - 36 (1) Documentation of an investigation of a the certified nursing assistant ~~or a~~,
37 direct care worker or immediate supervisor, including the nature of the allegation
38 and evidence supporting a determination that substantiates the allegation of abuse,
39 neglect or misappropriation of property of a client, patient or resident;

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

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

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

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

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

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

18 **Sec. 27. 22 MRSA §1812-G, sub-§4-A**, as amended by PL 2015, c. 196, §9, is
19 further amended to read:

20 **4-A. Provider verification fee.** The department may establish a provider verification
21 fee not to exceed \$25 annually per provider for verification of a certified nursing assistant's
22 ~~or~~, a registered direct care worker's or an immediate supervisor's credentials and training.
23 Providers may not pass the cost on to the individual certified nursing assistant ~~or~~, registered
24 direct care worker or immediate supervisor. Provider verification fees collected by the
25 department must be placed in a special revenue account to be used by the department to
26 operate the registry, including but not limited to the cost of criminal history record checks.
27 The department may adopt rules necessary to implement this subsection. Rules adopted
28 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
29 subchapter 2-A.

30 **Sec. 28. 22 MRSA §1812-G, sub-§6**, as repealed and replaced by PL 2015, c. 494,
31 Pt. A, §16, is amended to read:

32 **6. Prohibited employment based on disqualifying offenses.** An individual with a
33 disqualifying offense, including a substantiated complaint or a disqualifying criminal
34 conviction, may not work as a certified nursing assistant ~~or~~, a direct care worker or an
35 immediate supervisor, and an employer is subject to penalties for employing a disqualified
36 or otherwise ineligible person in accordance with applicable federal or state laws.

37 **Sec. 29. 22 MRSA §1812-G, sub-§6-A**, as amended by PL 2015, c. 494, Pt. A,
38 §§17 and 18, is further amended to read:

39 **6-A. Background check.** Certified nursing assistants ~~and~~, direct care workers and
40 immediate supervisors are subject to a background check as defined by rules adopted by
41 the department and according to the following:

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

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

12 B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 and 9005 and Title
13 34-B, section 1225, licensed, certified or registered providers shall secure and pay for
14 a background check prior to hiring an individual who will work in direct contact with
15 clients, patients or residents, including a certified nursing assistant ~~or~~ a direct care
16 worker or an immediate supervisor.

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

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

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

25 **6-B. Convictions within previous 10 years; impact on employment eligibility.** The
26 department shall determine the effect of a criminal conviction within the previous 10 years
27 on the employability of an individual as a certified nursing assistant ~~or~~ a direct care worker
28 or an immediate supervisor based on rules adopted by the department pursuant to
29 subsection 18.

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

32 **6-C. Table of crimes.** Department rules must include a table of crimes. Specific
33 crimes listed on the table must be considered substantive offenses under Title 17-A, Part 2
34 or crimes identified in federal or state law that prohibit employment of an individual subject
35 to this chapter. Convictions of specific crimes must be categorized in the table of crimes as
36 disqualifying criminal convictions or nondisqualifying criminal convictions. Convictions
37 in other jurisdictions for similar crimes must be identified as disqualifying or
38 nondisqualifying convictions.

39 A. A disqualifying criminal conviction within the previous 10 years prohibits
40 employment as a certified nursing assistant ~~or~~ a direct care worker or an immediate
41 supervisor.

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

1 disqualifying criminal convictions that prohibit employment for 10 years and
2 disqualifying criminal convictions that prohibit employment for 30 years.

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

5 **Sec. 32. 22 MRSA §1812-G, sub-§6-D**, as enacted by PL 2015, c. 196, §9, is
6 amended to read:

7 **6-D. Petition for removal of an employment ban; criminal conviction.** Prior to the
8 expiration of an employment ban under subsection 6-C, paragraph A, subparagraph (1), an
9 individual may petition the department for removal of an employment ban that is based on
10 a disqualifying criminal conviction. Unless otherwise prohibited, removal of the
11 employment ban allows the individual to work as a certified nursing assistant or a direct
12 care worker or an immediate supervisor.

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

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

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

23 A petition for removal of an employment ban submitted by a certified nursing assistant
24 or a registered direct care worker or an immediate supervisor must be denied if the
25 conduct that led to the conviction would have resulted in a lifetime ban if that conduct
26 had been investigated as a complaint that resulted in a substantiated finding under
27 subsection 13.

28 D. When the department grants a petition for removal of an employment ban, the
29 individual, unless otherwise prohibited, may work as a certified nursing assistant or a
30 direct care worker or an immediate supervisor. The notation of the criminal conviction
31 remains on the registry.

32 **Sec. 33. 22 MRSA §1812-G, sub-§10**, as enacted by PL 2015, c. 196, §9, is
33 amended to read:

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

38 **Sec. 34. 22 MRSA §1812-G, sub-§12**, as enacted by PL 2015, c. 196, §9, is
39 amended to read:

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

1 **Sec. 35. 22 MRSA §1812-G, sub-§13**, as enacted by PL 2015, c. 196, §9, is
2 amended to read:

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

7 **Sec. 36. 22 MRSA §7931**, as amended by PL 1999, c. 384, §5, is further amended
8 to read:

9 **§7931. Policy**

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

17 **Sec. 37. 22 MRSA §7932, sub-§1-A**, as amended by PL 1999, c. 384, §6, is further
18 amended to read:

19 **1-A. Client.** "Client" means a person who receives services from a home health
20 agency, personal care agency, long-term care facility, general and specialty hospital,
21 critical access hospital, ambulatory surgical facility, hospice agency or end-stage renal
22 disease unit.

23 **Sec. 38. 22 MRSA §7932, sub-§5-A** is enacted to read:

24 **5-A. Personal care agency.** "Personal care agency" means an organization or other
25 entity licensed under section 1717.

26 **Sec. 39. 22 MRSA §7933, sub-§1**, as amended by PL 1999, c. 384, §14, is further
27 amended to read:

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

32 A. A long-term care facility, home health care provider, personal care agency, general
33 hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice
34 agency or end-stage renal disease unit intends to close but has not arranged at least 30
35 days prior to closure for the orderly transfer of its residents or clients:

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

40 C. A long-term care facility, home health care provider, personal care agency, general
41 hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice
42 agency or end-stage renal disease unit is in substantial or habitual violation of the

1 standards of health, safety or resident care established under state or federal regulations
2 to the detriment of the welfare of the residents or clients.

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

5 **Sec. 40. 22 MRSA §7934**, as amended by PL 1999, c. 384, §15, is further amended
6 to read:

7 **§7934. Powers and duties of the receiver**

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

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

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

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

33 C. Receive and expend in a reasonable and prudent manner the revenues of the long-
34 term care facility, home health care provider, personal care agency, general hospital,
35 specialty hospital, critical access hospital, ambulatory surgical center, hospice agency
36 or end-stage renal disease unit due during the 30-day period preceding the date of
37 appointment and becoming due thereafter;

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

42 E. Correct or eliminate any deficiency of the long-term care facility, home health care
43 provider, personal care agency, general hospital, specialty hospital, critical access
44 hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit

1 that endangers the safety or health of the residents or clients, if the total cost of the
2 correction does not exceed \$3,000. The court may order expenditures for this purpose
3 in excess of \$3,000 on application from the receiver; and

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

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

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

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

32 C. In the event that the receiver does not have sufficient funds to cover expenses
33 needed to prevent or remove jeopardy to the residents or clients, the receiver may
34 petition the court for permission to borrow for these purposes. Notice of the receiver's
35 petition to the court for permission to borrow must be given to the owner, the licensee
36 and the department. The court may, after hearing, authorize the receiver to borrow
37 money upon specified terms of repayment and to pledge security, if necessary, if the
38 court determines that the long-term care facility, home health care provider, personal
39 care agency, general hospital, specialty hospital, critical access hospital, ambulatory
40 surgical center, hospice agency or end-stage renal disease unit should not be closed and
41 that the loan is reasonably necessary to prevent or remove jeopardy or if it determines
42 that the long-term care facility, home health care provider, personal care agency,
43 general hospital, specialty hospital, critical access hospital, ambulatory surgical center,
44 hospice agency or end-stage renal disease unit should be closed and that the
45 expenditure is necessary to prevent or remove jeopardy to residents or clients for the
46 limited period of time that they are awaiting transfer. The purpose of this provision is

1 to protect residents or clients and to prevent the closure of long-term care facilities,
2 home health care providers, personal care agencies, general hospitals, specialty
3 hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies or
4 end-stage renal disease units that, under proper management, are likely to be viable
5 operations. This section may not be construed as a method of financing major repair
6 or capital improvements to facilities that have been allowed to deteriorate because the
7 owner or licensee has been unable or unwilling to secure financing by conventional
8 means.

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

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

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

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

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

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

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

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

12 **Sec. 41. 22 MRSA §7937**, as amended by PL 1999, c. 384, §16, is further amended
13 to read:

14 **§7937. Court order to have effect of license**

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

24 **Sec. 42. 22 MRSA §9053, sub-§14, ¶D**, as enacted by PL 2015, c. 299, §25, is
25 repealed and the following enacted in its place:

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

30 **Sec. 43. 22 MRSA §9053, sub-§17**, as enacted by PL 2015, c. 299, §25, is amended
31 to read:

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

35 **Sec. 44. 22 MRSA §9053, sub-§27**, as enacted by PL 2015, c. 299, §25, is amended
36 to read:

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

40 This subsection is repealed July 1, 2025.

41 **Sec. 45. 22 MRSA §9053, sub-§27-A** is enacted to read:

