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Testimony of the Division of Licensing and Certification
Maine Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

In opposition to LD 1442, *Resolve, Regarding Personal Care Agency Licensing Rules*

Sponsor: Senator Baldacci
Hearing Date: April 17, 2025

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services, my name is Bill Montejo, and I serve as the Director of the Division of Licensing and Certification (DLC) in the Maine Department of Health and Human Services. I am here today to testify in opposition to LD 1442, *Resolve, Regarding Personal Care Agency Licensing Rules*.

This resolve requires the Department of Health and Human Services, within 60 days of the effective date of this resolve, to make changes to its rule Chapter 129: Personal Care Agency Licensing Rule. These changes include removal of the requirement that a personal care agency have a physical site located in the State; additional options for required training of direct care staff; changes to supervision requirements and to reporting requirements; and changes to requirements for clients to sign certain changes to the clients' service plans.

The Department opposes this bill because it seeks to change and undo some of the recent changes made during the repeal and replacement of 10-144 CMR Ch. 129, Personal Care Agency Licensing Rule, effective date August 20, 2024. This rule was drafted collaboratively, with feedback obtained from providers and advocates through listening sessions as well as with input from the Office of Aging and Disability Services.

New rulemaking within 60 days is difficult, and likely impossible, because of APA timelines, and the decisions of the Office of the Attorney General. The required formal comment period could show that these changes are not supported or opposed by those other than personal care service providers. The Department might also need to weigh multiple perspectives.

The bill language removes a requirement for the person/guardian receiving the services to approve changes in the plan for the services prior to those changes being implemented which is inconsistent with acceptable practice related to informed consent for services and raises concerns about client input into the services that they are provided.

DLC is also opposed to changes to supervision requirements, which could allow new employees to continue to work in people's homes for up to one year before their competency could be fully

observed and assessed, as opposed to the three-month timeframe in current rule. DLC is aware that some providers are opposed to the requirement that personal care agencies that provide services to Maine residents must have a site located within Maine. DLC believes that this requirement is necessary to ensure consistency with MaineCare requirements, home health agency standards, and to ensure effective oversight of services being provided to Maine residents.

The current rule, which became effective August 20, 2024, contains provisions which will allow for new Department developed training and credential for staff providing direct care. DLC would advise against putting specific training programs or credentials, that are still in development, into statute. Additionally, the Department determined during the rulemaking process that utilizing a standard training program and credential was essential in setting a minimum standard to ensure that all employees providing personal care services demonstrate competencies necessary to provide safe and effective care. Given that the rules for licensing of Personal Care Agencies were so recently adopted, and that providers were given a transition period for compliance, it is not yet known if the rule is sufficient to ensure the health and safety of individuals receiving the services, or if further revision is needed.

For these reasons, DLC is opposed to the proposed changes to personal care agency licensing standards. The recently adopted exiting rule contains flexibilities which allow for new training programs, contains a waiver process, and has not been fully enforced, making revisions to the rule premature at this time.

Thank you for your time and attention. I would be happy to answer any questions you may have and to make myself available for questions at the work session.

PERSONAL CARE AGENCY LICENSING: ROLLOUT

IMPORTANT

Compliance: The Division of Licensing and Certification understands that it will take time for your agency to come into compliance with the new rule, 10-144 CMR Ch 129, Personal Care Agency Licensing Rule (effective date: 8/19/24.) Please take the time to read the new rule, as you will be expected to understand and comply with this rule, and many changes were made to the proposed rule in response to public comments. This document is a guideline that will highlight important timeframes to help you and your agency come into compliance. If you have questions, reach out to AH-PCA.dlc@maine.gov.

Background Checks: Personal Care Agency (PCA) use of the Maine Background Check Center (MBCC) has been mandatory since 10-144 CMR Ch 60, Maine Background Check Center Rule, became effective on 10/17/2018. If you are not currently in compliance, please reach out to the MBCC by email: MBCC-Admin.DHHS@maine.gov.

Supervision: Per Section 5(D)(1)(b) SUPERVISION: any new hire must have on-site supervision at least once every 30 days, for the first three (3) months of employment. All new hires are expected to follow this standard from the date the rule is adopted.

30 days for Compliance

Per Section 6(A) REPORTING REQUIREMENTS: All PCAs must have a written policy and procedure to address the reporting of abuse, neglect, and/or misappropriation of property no later than **30 days** after effective date of the rule. This is to ensure the safety and wellbeing of Maine's most vulnerable population.

60 days for Compliance

Per Section 4(A)(1)(c) QUALIFICATIONS: An individual who will provide specific direct care duties and does not meet part (a) or (b) must be enrolled in a Personal Support training program within **60 days** of hire. All new hires will be expected to follow this standard. Existing staff will have one (1) year to complete training.

90 days for Compliance

Per Section 2(A)(6) GENERAL REQUIREMENTS: A PCA must have a physical site in Maine. PCA's that do not currently have a physical location in Maine will have **90 days** after the effective date of the rule to come into compliance.

Per Section 9(A-D) RECORDS: PCAs must maintain either paper or electronic records for all clients, owner, employee and business within **90 days** of the effective date of the rule.

180 days for Compliance

Per Section 8 SERVICES: All clients must have a service plan. All current and new clients must have a service plan within **180 days** after the adoption of the rule.

One (1) year for Compliance

Per Section 5 QUALITY MEASURES: All PCAs must have an operations manual completed one (1) year after the adoption of this rule.