



61 Winthrop Street • Augusta, ME 04330
1-800-499-0229 • Fax 207-621-0509
MLTCOP@MaineOmbudsman.org

TESTIMONY

In Support of

LD 958, Resolve, Directing the Department of Health and Human Services To Conduct a Review of Rules Governing In-home Personal Care Assistance Services

Patricia Thorsen Maine Long-Term Care Ombudsman Program

Before the Joint Standing Committee on Health and Human Services

April 5, 2021

Senator Claxton, Representative Meyer and committee members, my name is Patricia Thorsen and I am the Ombudsman Program Manager. The Maine Long-Term Care Ombudsman Program is a statewide non-profit organization that provides advocacy for older adults and adults with disabilities who receive long-term services and supports in all settings. We serve residents in nursing homes, assisted housing including residential care and assisted living facilities, adult day programs and recipients of home care services. Additionally, we serve patients in hospitals who experience barriers in accessing long-term services and supports.

We are pleased to provide testimony in support of this resolve that requires the Department of Health and Human Services to review rules that relate to direct care services provided in the home to assist individuals with the activities of daily living and the instrumental activities of daily living. The review must examine how entities providing direct care services to affected individuals provide information, such as advance notice of staff absences, termination of services and training requirements, and ensure supervision and quality of care and protection of vulnerable people receiving care. The department is required to submit its findings and recommendations to the Joint Standing Committee on Health and Human Services no later than January 1, 2023.

The rule chapters listed in the legislation have program eligibility ranging from someone who may only require limited assistance with bathing, dressing and light housekeeping to individuals who are nursing home level of care, require extensive assistance with activities of daily living, and may have complex medical needs. For this reason we believe that it is important to review

the various rule chapters and implement consistency in provider agency expectations. For example, in Section 20, Home and Community-Based Services for Adults with Other Related Conditions as well as in Section 18, Home and Community-Based Services for Adults with Brain Injury, the rules state under Provider Qualifications and Requirements: *Once a provider has been authorized to provide services, the provider cannot terminate the member's services without written authorization from DHHS.*” In comparison, Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities has no requirement for the provider agency to provide notice of termination of their services. The same individual eligible for services on Section 18 or Section 20 may receive services on Section 19 if they are unable to access Section 18 or Section 20 due to a waiting list for funding or services.

Another example is the requirement in Home and Community-Based Services (HCBS) Sections 18, 20, 21 and 29 that direct care staff must receive training on reportable events and this is not required in HCBS Section 19.

Additionally, Chapter 129, Rules and Regulations Governing In-Home and Personal Care and Support Workers have not been updated since they were promulgated in January 1999. These rules do not include protections for home care consumers. We have attached a copy for your reference.

We are aware of many consumers who do well at home, in spite of extensive medical needs, when given the right kind of support. We want to point out that there are many dedicated caregivers working in home care who provide excellent services.

Having said that, we do receive complaints about personal care agencies from home care consumers and their family members. The most common complaint is regarding personal care assistants not reporting to work at the scheduled time and no one notifying the consumer about the absence. Without adequate notice of the loss of staffing, consumers are frequently left without services, increasing their risk for institutionalization.

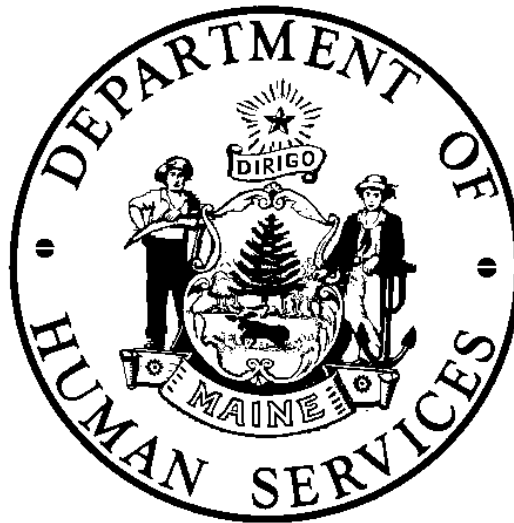
We believe there is a need to review each of these rule chapters and ensure a basic level of requirements, including but not limited to a requirement that provider agencies provide information to the consumer on their rights and protections, provide advance notice of staff absences and termination of services and provide training to direct care staff on completing reportable event forms.

Thank you for your consideration.

STATE OF MAINE

10-144

**DEPARTMENT OF HUMAN SERVICES
BUREAU OF MEDICAL SERVICES
DIVISION OF LICENSING AND CERTIFICATION**



Chapter 129:

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE
AND SUPPORT WORKERS**

EFFECTIVE DATE: January 1, 1999

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

TABLE OF CONTENTS

CHAPTER 1

STATUTORY BASIS AND GENERAL DEFINITIONS..... 1

CHAPTER 2

LICENSING APPLICATION PROCEDURES 3

A. Requirements 3

B. Application Procedure..... 3

C. Fees..... 4

CHAPTER 3

PROHIBITED CONTRACTING AND EMPLOYMENT..... 5

A. Prohibited Contracting and Employment 5

B. Hiring 5

C. Penalty..... 5

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

CHAPTER I

STATUTORY BASIS AND GENERAL DEFINITIONS

Effective 1/1/99

1.A. STATUTORY BASIS

The following rules and regulations are promulgated by the Maine Department of Human Services by virtue of Sec. 1. 22 MRSA §1717.

1. Established. A list of registered personal care agencies is established pursuant to Sec. 1. 22 MRSA §1717 requirements. The Department of Human Services shall maintain the list.
2. Contents. All registered personal care agencies.

1.B. DEFINITIONS

1. Activities of Daily Living: means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to mobility; transfers in position among sitting, standing and prone positions; dressing; eating, toileting; bathing; and personal hygiene assistance.
2. Certified Nursing Assistant (CNA): means a person whose duties are assigned by a registered professional nurse and who:
 - a. Has successfully completed a training program or course for Nursing Assistants with a curriculum meeting the requirements prescribed by the Maine State Board of Nursing, holds a certificate of training from that program or course, has successfully completed a nurse aide competency test and is listed on the Maine Registry of Certified Nursing Assistants; or
 - b. Holds a certificate before September 29, 1987 and is listed on the Maine Registry of Certified Nursing Assistants.
3. Department: means the Maine Department of Human Services.
4. Hires and employs: means doing any of the following acts: recruiting, selecting, training, declaring competent, scheduling, directing, defining the scope of the positions of supervising or terminating individuals who provide personal care.

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

CHAPTER I

STATUTORY BASIS AND GENERAL DEFINITIONS

Effective 1/1/99

5. Maine Registry of Certified Nursing Assistants (the "Registry"): is a component of the Department of Human Services, established and maintained in accordance with Maine and Federal statutes and regulations. The Registry contains the list of qualified CNAs. Additional information maintained by the Registry will include any conviction of abuse, neglect, mistreatment or misappropriation of property in a health care setting, or documented finding of the same by the State Survey Agency.
6. Personal Care Agency: means an individual or entity, not otherwise licensed by the Division of Licensing and Certification, engaged in a business that hires and employs unlicensed assistive personnel to provide assistance with activities of daily living to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs unlicensed assistive personnel to provide care for that individual is not a personal care agency.
7. State Survey Agency: is the agency designated for licensing health care institutions in the State and for certifying health care institutions for Medicare and/or Medicaid pursuant to 42 U.S.C. §§1395 aa and 1396. The State Survey Agency is the Division of Licensing and Certification in the Bureau of Medical Services, Department of Human Services.
8. Unlicensed Assistive Personnel: means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living centers, residential care facilities, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants.

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

CHAPTER 2

LICENSING APPLICATION PROCEDURES

Effective 1/1/99

2.A. REQUIREMENTS

1. No personal care agency may provide personal care services without being registered with the Department before authorizing such services or operation.
2. The applicant shall comply with all applicable Maine Statutes and rules and regulations.
3. No personal care agency shall accept any remuneration for hiring or employing unlicensed assistive personnel or delivering personal care services without first registering with the Department.

2.B. APPLICATION PROCEDURE

1. Filing of Application

Prior to acting as a personal care agency, a person or entity intending to engage in business as a personal care agency shall file an application with the Department. Individuals shall submit applications on their own behalf. Applications made by a business entity shall be submitted by a person or persons legally authorized to act in its behalf. All applicants shall comply with the rules and regulations adopted pursuant to Title 22 MRSA §1717.

2. Contents of Application

Each application shall contain:

- a. The legal name of the individual or entity wishing to engage in business as a Personal Care Services Provider and, if different, the name under which it shall conduct business;
- b. A description of all facilities utilized by the Personal Care Services Provider. This will include the address(es), telephone number(s), and name of the owner(s) of all buildings utilized by the Personal Care Services Provider. All branches and subunits must be identified by address(es), telephone number(s), and identifying names;

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

CHAPTER 2

LICENSING APPLICATION PROCEDURES

Effective 1/1/99

- c. A listing of specific personal care services provided by the agency;
- d. For proprietary corporations: the full name and address of each person, firm or corporation having (directly or indirectly) an ownership interest of 5% or more in the agency;
- e. For business entities with one (1) owner or business partnerships: the full name and address of each partner;
- f. For not-for-profit organizations: the full name and address of the President of the Board of Directors or appropriate municipal government representative; and
- g. The name, home address, home telephone number and office telephone number of the individual designated by the applicant as the administrator of the Personal Care Services Provider.

2.C. FEES

- 1. Each application under this chapter shall be accompanied by an annual fee of \$25.00.
- 2. Registration shall be renewed annually upon payment of the appropriate fee and demonstration of continued compliance with these rules and regulations.
- 3. No such fee shall be refunded.

**RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS**

CHAPTER 3

PROHIBITED CONTRACTING AND EMPLOYMENT

Effective 1/1/99

3.A. PROHIBITED CONTRACTING AND EMPLOYMENT

A personal care agency may not continue to employ, as an unlicensed assistive personnel, an individual who has worked as a certified nursing assistant and has been the subject of an annotation by the State Survey Agency for a substantiated complaint or conviction of abuse, neglect, or misappropriation of funds in a health care setting.

3.B. HIRING

Prior to hiring an individual, the agency must contact the Maine Registry of Certified Nursing Assistant to ascertain if the individual has worked as a certified nursing assistant; and if the individual has been the subject of an annotation for a substantiated complaint or conviction of abuse, neglect, or misappropriation of funds in a health care setting. A Personal Care Services Provider may employ an individual for at least the length of time that is required to complete a Registry check.

3.C. PENALTY

A person who operates a personal care agency without registering with the Department commits a civil violation for which a forfeiture may be adjudged of \$500 per day of operations.

10-144
Chapter 129:
RULES AND REGULATIONS GOVERNING
IN-HOME PERSONAL CARE AND SUPPORT WORKERS

STATUTORY AUTHORITY: 22 MRSA §1717

EFFECTIVE DATE: January 1, 1999