

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2228


H.P. 1602

House of Representatives, February 24, 1998

**An Act to Implement the Recommendations of the Task Force on
Registration of In-home Personal Care and Support Workers.**

Reported by Representative MUSE for the Task Force on Registration of In-home Personal Care and Support Workers pursuant to Resolve 1997, chapter 29.

Reference to the Joint Standing Committee on Health and Human Services suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

Sec. 1. 22 MRSA §§1717 and 1718 are enacted to read:

§1717. Registration of personal care agencies

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

A. "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.

B. "Hires and employs" means recruits, selects, trains, declares competent, schedules, directs, defines the scope of the positions of, supervises or terminates individuals who provide personal care.

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing and Certification and 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.

D. "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.

2. Registration of personal care agencies. Beginning July 1, 1998, a personal care agency not otherwise licensed by the department shall register with the department. The annual registration fee is \$25.

3. Prohibited contracting and employment. A personal care agency may not hire under a long-term contract or employ permanently as unlicensed assistive personnel:

2 A. An individual who has been convicted of abuse, neglect or
misappropriation of funds in a health care setting; or

4 B. An individual who has worked as a certified nursing
assistant and has been the subject of a substantiated
6 complaint by the state survey agency of abuse, neglect or
misappropriation of funds in a health care setting.

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10 4. Policies. Beginning July 1, 1998, a personal care
agency shall adopt policies regarding the hiring and continued
12 employment of unlicensed assistive personnel who have been
convicted of crimes.

14 5. Penalty. Any person who operates a personal care agency
without registering with the department commits a civil violation
16 for which a forfeiture may be adjudged of \$500 per day of
operations.

18 **§1718. Criminal record check required**

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22 1. Requirement. Beginning July 1, 1998, a personal care
agency subject to section 1717 and a business entity licensed by
24 the Division of Licensing and Certification must request criminal
record checks on all unlicensed assistive personnel who are hired
26 on or after July 1, 1998, whether they are hired as employees or
as independent contractors, within 14 days of the beginning of
28 employment. Prior to hiring unlicensed assistive personnel, a
personal care agency or business entity licensed by the Division
30 of Licensing and Certification must provide written notice to the
individual applicants that criminal record checks will be
32 conducted. A personal care agency or business entity licensed by
the Division of Licensing and Certification may request criminal
34 record checks of unlicensed assistive personnel employed before
July 1, 1998. If a criminal record check reveals a record of
36 conviction, a personal care agency or business entity, licensed
by the Division of Licensing and Certification must inform the
applicant of the finding.

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40 2. Penalty. Failure to conduct criminal background checks
by either a registered personal care agency or an agency or
42 business licensed by the Division of Licensing and Certification
may be adjudged \$300 per omission.

44 **Sec. 2. Report required.** The Commissioner of Human Services
46 shall report to the joint standing committee of the Legislature
48 having jurisdiction over health and human services matters on or
50 before January 1, 1999 on the feasibility of establishing a
statewide system for checking the criminal histories of
unlicensed assistive personnel and a registry for maintaining
records of

2 criminal convictions and substantiated complaints of abuse,
neglect or misappropriation of funds in a health care setting by
4 the year 2000. The following characteristics must be
considered: the system for checking for criminal convictions
6 should be nationwide; the registry should be statewide; the cost
should be reasonable; there should be a single point of access
8 for the public; funding must be provided by the Department of
Human Services and the State Bureau of Identification within the
Department of Public Safety; and the Department of Human Services
10 shall adopt rules regarding the system and the registry.

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14 SUMMARY

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16 This bill requires personal care agencies that are not
otherwise licensed to register with the Division of Licensing and
Certification within the Department of Human Services if the
18 agency employs unlicensed assistive personnel to provide
assistance to others in activities of daily living. The bill
20 also requires that personal care agencies conduct criminal record
checks on unlicensed assistive personnel hired on or after July
22 1, 1998. The bill provides penalties for failure to register or
perform criminal background checks.

24

26 The bill also requires the Commissioner of Human Services to
report to the joint standing committee of the Legislature having
jurisdiction over health and human services matters on or before
28 January 1, 1999 on the feasibility of establishing a statewide
system for checking the criminal histories of unlicensed
30 assistive personnel and a registry for maintaining records of
criminal convictions and substantiated complaints of abuse,
32 neglect or misappropriation of funds in a health care setting by
the year 2000.