

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1393

H.P. 995

House of Representatives, February 18, 1999

An Act Concerning Due Process Regarding Certified Nursing Assistants.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.
Cosponsored by Senator CATHCART of Penobscot and
Representatives: BROOKS of Winterport, CHIZMAR of Lisbon, FULLER of Manchester,
HATCH of Skowhegan, O'NEAL of Limestone, PIEH of Bremen, Senator: KILKELLY of
Lincoln.

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

Sec. 1. 22 MRSA §1812-G, sub-§2-A is enacted to read:

2-A. Due process; rules. The department shall adopt rules providing certain due process rights to a certified nursing assistant who is confronted with specific documented findings of abuse, neglect or misrepresentation as provided in subsection 2, paragraph B. These rules must:

A. Clarify the definition of abuse;

B. Require that a finding of noncriminal abuse be proved by clear and convincing evidence;

C. Provide the certified nursing assistant with the right to representation during any employer or outside agency investigation or hearing under this section;

D. Require an employer or agency to inform a certified nursing assistant of a right to representation before the start of any questioning relating to an investigation or in any hearing under this section;

E. Establish a right to independent binding arbitration for a certified nursing assistant charged under this section; and

F. Establish a certified nursing assistant's right to discover specific charges, documents and witnesses relating to a proceeding under this section.

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

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SUMMARY

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This bill requires the Department of Human Services to adopt rules providing certain due process rights to a certified nursing assistant who is confronted with specific documented findings of abuse, neglect or misappropriation of property under the Maine Revised Statutes, Title 22, section 1812-G. The Department of Human Services is required to:

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1. Clarify the definition of abuse;

2. Prove noncriminal abuse by clear and convincing evidence;

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3. Provide a right to representation;

2 4. Inform a certified nursing assistant of a right to
representation before any questioning relating to an
investigation;

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6 5. Establish a right to independent binding arbitration for
a certified nursing assistant confronting charges under Title 22,
section 1812-G; and

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10 6. Establish a certified nursing assistant's right to
discover the specific charges, documents and witnesses relating
to a proceeding under Title 22, section 1812-G.