

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1567

H.P. 1167

House of Representatives, March 13, 2001

An Act to Require Registration of Unlicensed Assistive Personnel.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: BRANNIGAN of Portland, COLWELL of Gardiner, HUTTON of
Bowdoinham, KANE of Saco, LOVETT of Scarborough, O'BRIEN of Augusta, Senator:
TURNER of Cumberland.

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

Sec. 1. 22 MRSA §1718 is enacted to read:

§1718. Employment as unlicensed assistive staff person

Beginning October 1, 2001, a person may not be employed for pay as an unlicensed assistive staff person, as defined in section 1812-G, subsection 2-A, paragraph B, in a home, assisted living center, residential care facility, hospital or other health care setting licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services who is not listed in good standing on the Maine Registry of Certified Nursing Assistants and Unlicensed Assistive Personnel. This section does not prohibit from employment an unlicensed assistive staff person for whom a criminal history record check has been requested within 120 days of the beginning of employment. This provision does not apply to the continued employment by a nursing facility, residential care facility, assisted living center, hospital or home care agency of a person already employed by that facility or agency on October 1, 2001. A person who violates the provisions of this section commits a civil violation for which a forfeiture of \$100 may be assessed.

The requirements of this section do not apply to a person employing an individual through a consumer-directed personal care assistance program.

Sec. 2. 22 MRSA §1812-G, as amended by PL 1997, c. 465, §§1 and 2, is further amended to read:

§1812-G. Maine Registry of Certified Nursing Assistants and Unlicensed Assistive Personnel

1. Established. The Maine Registry of Certified Nursing Assistants and Unlicensed Assistive Personnel, referred to in this section as the "registry," is established in compliance with federal and state requirements. The Department of Human Services shall maintain the registry.

2. Contents. The Maine--Registry--of--Certified--Nursing Assistants registry must contain a listing of nursing assistants who have successfully completed a nursing assistant training program, hold a certificate of training and meet the eligibility requirements established by the State Board of Nursing, and unlicensed assistive personnel. The listing must include, for any nursing assistant or unlicensed assistive personnel listed, a notation of:

2 A. Any criminal convictions, except for Class D and Class E
convictions over 10 years old that did not involve as a
4 victim of the act a patient, client or resident of a health
care entity; and

6 B. Any specific documented findings by the state survey
agency of abuse, neglect or misappropriation of property of
8 a resident, client or patient. For purposes of this
section, "state survey agency" means the agency specified
10 under 42 United States Code, Sections 1395aa and 1396
responsible for determining whether institutions and
12 agencies meet requirements for participation in the State's
Medicare and Medicaid programs; and

14 C. Identifying information, date of birth, social security
16 number, employment history and training history.

18 2-A. Definitions. As used in this section, unless the
context otherwise indicates, the following terms have the
20 following meanings.

22 A. "Certified nursing assistant" means an individual whose
duties are assigned by a registered professional nurse and
24 who:

26 (1) Has successfully completed a training program or
course with a curriculum prescribed by the State Board
28 of Nursing, holds a certificate of training from that
program or course and is listed on the registry; or

30 (2) Was certified as a certified nursing assistant
32 before September 29, 1987 and is listed on the registry.

34 B. "Unlicensed assistive staff person" means a person
employed for pay to provide hands-on assistance with
36 activities of daily living to individuals in homes, assisted
living centers, residential care facilities, hospitals or
38 other health care settings licensed by the Department of
Mental Health, Mental Retardation and Substance Abuse
40 Services. "Unlicensed assistive staff person" does not
include a certified nursing assistant employed as a
42 certified nursing assistant or a person providing nursing
services in accordance with the practice of religious
44 principles or tenets of a church or denomination that relies
upon prayer or spiritual means alone for healing.

46 **3. Eligibility requirements for listing for nursing
48 assistants.** The State Board of Nursing shall adopt rules
pursuant to the Maine Administrative Procedure Act defining
50 eligibility requirements for listing on the ~~Maine-Registry-of~~

2 Certified-Nursing-Assistants registry, including rules regarding
temporary listing of nursing assistants who have received
4 training in another jurisdiction. The rules must permit nursing
assistants to work under the supervision of a registered
6 professional nurse in a facility providing assisted living
services as defined in chapter 1665 and must recognize work in
8 those facilities for the purpose of qualifying for and continuing
listing on the registry. Rules adopted pursuant to this
10 subsection regarding the work of nursing assistants in facilities
providing assisted living services are routine technical rules as
12 defined by Title 5, chapter 375, subchapter II-A.

14 **4. Eligibility for listing in good standing.** The
department--shall--verify--the--credentials--and--training--of--all
16 certified-nursing-assistants. The following requirements apply
for listing in good standing on the registry.

18 A. For an applicant for listing on the registry or a person
listed on the registry who is a certified nursing assistant,
20 the department shall verify the credentials and training,
conduct criminal history record checks in accordance with
22 subsection 6 and investigate allegations of abuse, neglect
or misappropriation of property in a health care setting.

24 B. For an applicant for listing on the registry or a person
26 listed on the registry who is an unlicensed assistive staff
person:

28 (1) Criminal history record checks must be conducted
30 by the department in accordance with subsection 6; and

32 (2) Allegations of abuse, neglect or misappropriation
of property in a health care setting must be
34 investigated and findings and determinations must be
made:

36 (a) By the Department of Mental Health, Mental
38 Retardation and Substance Abuse Services if the
person is or was working or has applied to work in
40 a setting in which services are funded by that
department; and

42 (b) By the department if the person is or was
44 working or has applied to work in a setting
licensed by or in which services are funded by the
46 department or is or was working or has applied to
work in the home of an individual.

48 C. The department has access to all records and information
50 relevant to the investigation conducted by an employer or a

2 client of a person listed or applying for listing or renewal
3 on the registry.

4 D. The following persons are ineligible for listing in good
5 standing on the registry:

6 (1) A person who has a substantiated, documented
7 finding of abuse, neglect or misappropriation of
8 property of a resident, client or patient;

9 (2) A person who has been convicted of a crime that
10 involves as a victim of the act a patient, client or
11 resident of a health care entity;

12 (3) A person who has been assessed a forfeiture under
13 section 1718 and who has not paid that forfeiture; and

14 (4) A person who has been convicted of a crime that
15 involves drug trafficking.

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21 **5. Verifying eligibility for employment.** A health care
22 institution, hospital, facility or organization employing a
23 certified nursing assistant shall, before hiring a certified
24 nursing assistant, verify with the ~~Maine-Registry-of-Certified~~
25 ~~Nursing-Assistants~~ registry that the certified nursing assistant
26 is listed in good standing on the ~~Maine-Registry-of-Certified~~
27 ~~Nursing-Assistants~~ registry.

28 Beginning October 1, 2001, a health care institution, hospital,
29 facility or organization employing unlicensed assistive personnel
30 shall, within 120 days of the beginning of employment of an
31 unlicensed assistive staff person, verify with the registry that
32 the person is listed in good standing on the registry. The
33 department shall develop rules phasing in the registry
34 requirements for the continued employment of unlicensed assistive
35 personnel by a health care institution, hospital, facility or
36 organization for personnel employed by that facility or
37 organization on October 1, 2001.

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39 The requirements of this subsection do not apply to a person
40 employing an individual through a consumer-directed personal care
41 assistance program.

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43 **6. Provisions regarding identification and criminal history**
44 **record checks.** All applicants for listing or renewal on the
45 registry shall submit to criminal history record check procedures
46 established by the department in accordance with this subsection.
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2 A. The criminal history record check procedures must
3 include a name-based check, until these procedures are
4 replaced by fingerprint identification checking.

5 B. Beginning January 1, 2003, the criminal history record
6 check procedures must include a phased-in schedule for
7 fingerprint identification and checking, including
8 fingerprint identification checks for all persons applying
9 for listing or renewal of listing. By January 1, 2004,
10 fingerprint identification checking must be the only method
11 of conducting a criminal history record check.

12 **7. Electronic information.** Beginning January 1, 2003, the
13 department shall post on the department's publicly accessible
14 site on the Internet information regarding the registry and a
15 listing of persons who are in good standing on the registry.

16 **8. Outdated entries.** In accordance with the requirements
17 of federal law and regulations, the department shall adopt rules
18 to remove from the registry outdated entries regarding certified
19 nursing assistants and unlicensed assistive personnel.

20 **9. Rulemaking.** The department and the Department of Mental
21 Health, Mental Retardation and Substance Abuse Services shall
22 adopt rules and standards for the operation of the registry.
23 Rules adopted pursuant to this section are routine technical
24 rules as defined in Title 5, chapter 375, subchapter II-A.

25 **Sec. 3. 32 MRSA §2102, sub-§9,** as enacted by PL 1991, c. 421,
26 §3, is amended to read:

27 **9. Maine Registry of Certified Nursing Assistants and**
28 **Unlicensed Assistive Personnel.** "Maine Registry of Certified
29 Nursing Assistants and Unlicensed Assistive Personnel" has the
30 same meaning as in Title 22, section 1812-F 1812-G.

31 **Sec. 4. Report.** By January 1, 2002, the Commissioner of Human
32 Services shall report to the Joint Standing Committee on Health
33 and Human Services on the status of the Maine Registry of
34 Certified Nursing Assistants and Unlicensed Assistive Personnel
35 as established in the Maine Revised Statutes, Title 22, section
36 1812-G, including the status of the department's publicly
37 accessible site on the Internet for the registry planning and
38 development. The report must include a proposal for adopting
39 fingerprint identification criminal history record checks to be
40 phased in beginning January 1, 2002. Fingerprint identification
41 will be the only method of conducting criminal history record
42 checks no later than January 1, 2003.

SUMMARY

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4 This bill adds unlicensed assistive personnel to the Maine
Registry of Certified Nursing Assistants and renames the registry
6 accordingly. Beginning October 1, 2001, the bill requires
unlicensed assistive personnel to be registered within 120 days
8 of being employed in a health care setting and declares a
violation of this provision to be a civil violation for which a
forfeiture of \$100 may be assessed. The bill provides for
10 name-based criminal background checks beginning October 1, 2001
for new employees who are unlicensed assistive personnel until
12 January 1, 2003, when the system will change to fingerprint-based
checks for unlicensed assistive personnel and certified nursing
14 assistants.