

# MAINE STATE LEGISLATURE

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L.D. 1753

DATE: 3-29-04

(Filing No. H-817)

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**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
121ST LEGISLATURE  
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1275, L.D. 1753, Bill, "An Act To Improve the Quality and Safety in the Delivery of Personal Care Services"

Amend the bill by striking out the title and substituting the following:

**'An Act To Improve Quality and Safety in Long-term Care'**

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

**'Sec. 1. 22 MRSA §1717, sub-§3, as enacted by PL 1997, c. 716, §1, is repealed and the following enacted in its place:**

**3. Prohibited employment. A personal care agency shall obtain criminal history record information about applicants for positions as unlicensed assistive personnel and may not hire an individual who:**

**A. Has worked as a certified nursing assistant and has been the subject of a notation by the state survey agency for a substantiated complaint of abuse, neglect or misappropriation of property in a health care setting that was entered on the Maine Registry of Certified Nursing Assistants;**

**B. Has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; or**

2           C. Has a prior criminal conviction within the last 10 years  
3           of:

4  
5                   (1) A crime for which incarceration of 3 years or more  
6                   may be imposed under the laws of the state in which the  
7                   conviction occurred; or

8  
9                   (2) A crime for which incarceration of less than 3  
10                   years may be imposed under the laws of the state in  
11                   which the conviction occurred involving sexual  
12                   misconduct or involving abuse, neglect or exploitation  
13                   in a setting other than a health care setting.

14  
15           **Sec. 2. 22 MRSA §1717, sub-§4**, as enacted by PL 1997, c. 716,  
16 §1, is repealed and the following enacted in its place:

17           **4. Penalties.** The following penalties apply to violations  
18 of this section.

19  
20                   A. A person who operates a personal care agency without  
21                   registering with the department as required by subsection 2  
22                   commits a civil violation for which a fine of \$500 per day  
23                   of operation may be adjudged.

24  
25                   B. A person who operates a personal care agency in  
26                   violation of the employment prohibitions in subsection 3  
27                   commits a civil violation for which a fine of \$500 per day  
28                   of operation in violation may be adjudged, beginning on the  
29                   first day that a violation occurs.

30  
31           **Sec. 3. 22 MRSA §1812-G, sub-§7**, as enacted by PL 2003, c.  
32 376, §2, is amended to read:

33           **7. Time limit on consideration of prior criminal**  
34 **conviction.** Except as otherwise provided in this section, an  
35 individual may not be employed in a hospital, nursing facility,  
36 home health agency or assisted housing program as a certified  
37 nursing assistant if that individual has a prior criminal  
38 conviction within the last 10 years of:

39  
40                   A. A crime for which incarceration of 3 years or more may  
41                   be imposed under the laws of the state in which the  
42                   conviction occurred; or

43  
44                   B. A crime for which incarceration of less than 3 years may  
45                   be imposed under the laws of the state in which the  
46                   conviction occurred involving sexual misconduct or involving  
47                   abuse, neglect or exploitation in a setting other than a  
48                   health care setting.  
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2 in section 1717, subsection 1, paragraph D an individual who is  
3 prohibited from employment as a certified nursing assistant  
4 pursuant to section 1812-G, subsection 6 or 7.

5 **Sec. 7. 22 MRSA §7942, sub-§3**, as amended by PL 2001, c. 596,  
6 Pt. B, §16 and affected by §25, is further amended to read:

7 **3. Long-term care facility.** "Long-term care facility"  
8 means an ~~assisted-living-facility-or~~ assisted living program or  
9 residential care facility subject to licensure pursuant to  
10 chapters 1663 and 1664 and a nursing or intermediate care  
11 facility or unit subject to licensure pursuant to chapter 405.

12 **Sec. 8. 22 MRSA §7942, sub-§7**, as amended by PL 1999, c. 384,  
13 §18, is further amended to read:

14 **7. State licensing rules.** "State licensing rules" refers  
15 to the department's rules governing the licensing and functioning  
16 of nursing facilities, intermediate care facilities for persons  
17 with mental retardation and assisted living programs or  
18 residential care facilities.

19 **Sec. 9. 22 MRSA §7944, sub-§1, ¶C**, as amended by PL 1999, c.  
20 99, §3, is further amended to read:

21 **C.** The department may impose a penalty upon a long-term  
22 care facility for operating without a license or for a  
23 violation of this chapter. The minimum penalty for  
24 operating without a license is \$500 per day. A penalty or a  
25 combination of penalties imposed on a facility may not be  
26 greater than a sum equal to \$10 times the total number of  
27 residents residing in the facility per violation, up to a  
28 maximum of \$10,000 for each instance in which the department  
29 issues a statement of deficiency to a skilled nursing or  
30 intermediate care facility, or \$6 times the total number of  
31 residents residing in the facility per violation, up to a  
32 maximum of \$6,000 in each instance in which the department  
33 issues a statement of deficiency to any assisted living  
34 program or residential care facility.

35 **Sec. 10. 22 MRSA §8606** is enacted to read:

36 **§8606. Prohibited employment**

37 **1. Criminal history record information.** An adult day care  
38 program shall obtain criminal history record information about  
39 applicants for positions as unlicensed assistive personnel as  
40 defined in section 1717, subsection 1, paragraph D and may not  
41 hire an individual who:

2 A. Has worked as a certified nursing assistant and has been  
3 the subject of a notation by the state survey agency for a  
4 substantiated complaint of abuse, neglect or  
5 misappropriation of property in a health care setting that  
6 was entered on the Maine Registry of Certified Nursing  
7 Assistants;

8 B. Has been convicted in a court of law of a crime  
9 involving abuse, neglect or misappropriation of property in  
10 a health care setting; or

11 C. Has a prior criminal conviction within the last 10 years  
12 of:

13 (1) A crime for which incarceration of 3 years or more  
14 may be imposed under the laws of the state in which the  
15 conviction occurred; or

16 (2) A crime for which incarceration of less than 3  
17 years may be imposed under the laws of the state in  
18 which the conviction occurred involving sexual  
19 misconduct or involving abuse, neglect or exploitation  
20 in a setting other than a health care setting.

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24 **Sec. 11. Study.** By March 1, 2005, the Long-term Care  
25 Oversight Committee, as established in the Maine Revised  
26 Statutes, Title 5, section 12004-I, subsection 47-F, shall report  
27 to the joint standing committee of the Legislature having  
28 jurisdiction over health and human services matters on the  
29 methods of conducting criminal history record checks for direct  
30 care workers. The report shall include recommendations for the  
31 standardization of requirements regarding criminal history record  
32 checks and employment restrictions for certified nursing  
33 assistants and unlicensed assistive personnel and strategies for  
34 the establishment of a registry for all unlicensed assistive  
35 personnel that can be self-supporting and easily accessible to  
36 users.'

#### 40 SUMMARY

41 This amendment replaces the bill and changes the title. It  
42 requires personal care agencies, home health care providers and  
43 adult day care programs to obtain criminal history record  
44 information about applicants for positions as unlicensed  
45 assistive personnel and prohibits these entities from hiring  
46 individuals who have worked as certified nursing assistants and  
47 have been the subject of a complaint of abuse, neglect or  
48 misappropriation of property that has been substantiated by the  
49 state survey agency or who have been convicted of certain  
50

COMMITTEE AMENDMENT "A" to H.P. 1275, L.D. 1753

2 crimes. It prohibits licensed assisted housing programs from  
3 hiring as unlicensed assistive personnel persons who are  
4 prohibited from employment as certified nursing assistants under  
5 the Maine Revised Statutes, Title 22, section 1812-G, subsections  
6 6 and 7. It provides penalties for a personal care agency that  
7 violates the employment requirements contained in the amendment.  
8 The amendment makes 3 corrections to long-term care facility law  
9 to update language on assisted living programs and residential  
10 care facilities. It directs the Long-term Care Oversight  
11 Committee to report by March 1, 2005 to the joint standing  
12 committee of the Legislature having jurisdiction over health and  
13 human services matters regarding conducting criminal history  
14 record checks for direct care workers and the establishment of a  
registry.

FISCAL NOTE REQUIRED  
(See attached)

**COMMITTEE AMENDMENT**

**121st Maine Legislature  
Office of Fiscal and Program Review**



**LD 1753**

**An Act To Improve the Quality and Safety in the Delivery of Personal  
Care Services**

**LR 2637(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - General Fund  
Minor revenue increase - General Fund

**Correctional and Judicial Impact Statements**

Establishes new civil violations

**Fiscal Detail and Notes**

Additional costs to the Departments of Human Services and Public Safety in implementing this legislation can be absorbed within existing budgetary resources.