

MAINE STATE LEGISLATURE

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Date:

6/11/07

L.D. 1544

(Filing No. H-535)

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STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

123RD LEGISLATURE

8

FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1544, Bill, "An Act To Enact the Home Care Consumer and Worker Protection Act"

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Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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'Sec. 1. 22 MRSA §1717, as amended by PL 2003, c. 634, §§1 and 2 and c. 673, Pt. NN, §1, is further amended to read:

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§1717. Registration of personal care agencies and placement agencies

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

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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.

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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.

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B-1. "Home care services" means assistance with activities of daily living and related tasks.

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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~~ Regulatory Services and that hires and employs unlicensed assistive personnel to provide assistance with activities of daily living and related tasks 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, except when permitted by rule of the department.

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COMMITTEE AMENDMENT

1 C-1. "Placement agency" means any person or entity engaged for gain or profit in the
 2 business of securing or attempting to secure home care services work for an
 3 individual or of securing or attempting to secure a home care services worker for a
 4 consumer. "Placement agency" includes, but is not limited to, employment agencies,
 5 nurse registries and any other entity that places a home care services worker for hire
 6 by a consumer in that consumer's temporary or permanent residence for purposes of
 7 providing home care services.

8 D. "Unlicensed assistive personnel" means individuals employed to provide hands-
 9 on assistance with activities of daily living to individuals in homes, assisted living
 10 centers, residential care facilities, hospitals and other health care settings. Unlicensed
 11 assistive personnel does not include certified nursing assistants employed in their
 12 capacity as certified nursing assistants.

13 **2. Registration of personal care agencies and placement agencies.** Beginning
 14 August 1, 1998, a personal care agency not otherwise licensed by the department shall
 15 register with the department. The annual registration fee is- Beginning January 1, 2008, a
 16 placement agency not otherwise licensed by the department shall register with the
 17 department. The department shall adopt rules establishing the annual registration fee,
 18 which must be at least \$25.

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

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

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

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

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

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

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

36 A. A person who operates a personal care agency or placement agency without
 37 registering with the department as required by subsection 2 commits a civil violation
 38 for which a fine of not less than \$500 per day of operation but not more than \$10,000
 39 may be adjudged. Each day of violation constitutes a separate offense.

40 B. A person who operates a personal care agency or placement agency in violation
 41 of the employment prohibitions in subsection 3 commits a civil violation for which a
 42 fine of not less than \$500 per day of operation in violation but not more than \$10,000

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COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1544

per day may be adjudged, beginning on the first day that a violation occurs. Each day of violation constitutes a separate offense.

Sec. 2. Convening of work group. The Department of Health and Human Services shall convene a work group including, but not limited to, representatives of the long-term care ombudsman program established in the department by the Maine Revised Statutes, Title 22, section 5106, Legal Services for the Elderly, the Home Care and Hospice Alliance of Maine, Inc., the Service Employees International Union, Maine Personal Assistance Services Association, consumers, personal care agencies, placement agencies and other interested parties for the purpose of making recommendations regarding the regulation of personal care agencies and placement agencies and the development of procedures and methods that will clarify the rights and obligations of the agencies, workers and consumers. This section does not curtail or affect the authority of the Department of Health and Human Services to otherwise adopt rules affecting personal care or placement agencies. The Department of Health and Human Services shall report the findings and recommendations of this work group, including any proposed implementing legislation, on or before February 15, 2008 to the Joint Standing Committee on Labor.'

SUMMARY

This amendment strikes the bill and replaces it with language amending a section of the Maine Revised Statutes pertaining to the regulation of personal care agencies by adding placement agencies to the regulatory scheme. The amendment increases penalties for violations of the regulatory requirements of the section and adds an unallocated section that requires the Department of Health and Human Services to convene a work group to make recommendations regarding the regulation of personal care agencies and placement agencies.

FISCAL NOTE REQUIRED

(See attached)



123rd MAINE LEGISLATURE

LD 1544

LR 45(02)

An Act To Enact the Home Care Consumer and Worker Protection Act

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

Committee: Labor

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs to the Department of Health and Human Services to convene the required workgroup and issue the report of its findings can be absorbed by the department utilizing existing budget resources.