

MAINE STATE LEGISLATURE

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No. 1544

H.P. 1069

House of Representatives, March 20, 2007

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

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative RICHARDSON of Warren.
Cosponsored by Representative: CEBRA of Naples.

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

2 **Sec. 1. 26 MRSA c. 37** is enacted to read:

3 **CHAPTER 37**

4 **HOME CARE CONSUMER AND WORKER PROTECTION ACT**

5 **§3211. Short title**

6 This chapter may be known and cited as "the Home Care Consumer and Worker
7 Protection Act."

8 **§3212. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 **1. Activities of daily living.** "Activities of daily living" means eating, dressing,
12 grooming, bathing, use of the toilet, transferring or personal hygiene, including
13 preparation and cleanup related to any of those activities.

14 **2. Companion services.** "Companion services" means those services that provide
15 fellowship, care and protection for an individual. "Companion services" includes, but is
16 not limited to, transportation, letter writing, mail reading and escort services.

17 **3. Commissioner.** "Commissioner" means the Commissioner of Labor.

18 **4. Consumer.** "Consumer" means either an individual who receives home care
19 services in that individual's temporary or permanent residence through a home care
20 services worker or an individual who pays for and directs the services, if not the person
21 receiving services.

22 **5. Consumer notice.** "Consumer notice" means the notice provided to a consumer
23 that must include, at a minimum, the following information:

24 **A.** A description of the duties, responsibilities, obligations and legal liabilities of the
25 placement agency to the home care services worker and to the consumer. The
26 description must clearly set forth the consumer's responsibility, if any, for:

27 **(1) Day-to-day supervision of the home care services worker;**

28 **(2) Assigning duties to the home care services worker;**

29 **(3) Hiring, firing and disciplining the home care services worker;**

30 **(4) Provision of equipment or materials for use by the home care services**
31 **worker;**

32 **(5) Performing a criminal background check on the home care services worker;**

33 **(6) Checking home care services worker references; and**

1 (7) Ensuring credentials and appropriate licensure or certification of a home care
2 services worker;

3 B. A statement identifying the placement agency as an employer, joint employer,
4 leasing employer or nonemployer, as applicable, of the home care services worker
5 along with the responsibility the placement agency will assume, if any, for the
6 payment of the home care services worker's wages, including overtime pay for hours
7 worked in excess of 40 hours in a workweek, taxes, social security, Medicare and
8 workers' compensation and unemployment compensation payments;

9 C. A statement that, regardless of the placement agency's status, the consumer may
10 be considered an employer under various state and federal employment laws, and
11 that, if this is the case, the consumer may be held responsible for the payment of the
12 home care services worker's federal, state and local taxes, social security, Medicare,
13 overtime and minimum wages and unemployment and workers' compensation
14 insurance payments;

15 D. A list of the forms that the consumer may be required by law to complete and
16 submit as an employer;

17 E. The penalties that may be assessed against the consumer in the event that the
18 consumer is determined to be an employer but has not fulfilled the consumer's
19 obligations as an employer; and

20 F. The department's telephone number and address, in the event the consumer has
21 questions concerning the content of the notice.

22 **6. Department.** "Department" means the Department of Labor.

23 **7. Home care aide.** "Home care aide" means an individual working for hire in a
24 person's temporary or permanent place of residence to assist with activities of daily
25 living.

26 **8. Home care services.** "Home care services" means skilled or nonskilled care, or
27 both, provided to an individual in or at the individual's temporary or permanent residence
28 for the purpose of enabling that individual to remain safely and comfortably in the
29 individual's temporary or permanent residence. "Home care services" includes, but is not
30 limited to, nursing services, home care aide services, companion services and homemaker
31 services.

32 **9. Home care services worker.** "Home care services worker" means any individual
33 performing home care services of any kind or character whatsoever for hire.

34 **10. Homemaker services.** "Homemaker services" means assisting with or
35 performing household tasks, such as housekeeping, shopping, laundry, meal planning and
36 preparation, cleaning, home repair services and seasonal chores.

37 **11. Person.** "Person" means any individual, firm, association, partnership, company
38 or corporation or other legal entity.

39 **12. Placement agency.** "Placement agency" means any person engaged for gain or
40 profit in the business of securing or attempting to secure home care services work for an

1 individual or of securing or attempting to secure a home care services worker for a
2 consumer. "Placement agency" includes, but is not limited to, employment agencies,
3 nurse registries and any other entity that places a home care services worker for hire by a
4 consumer in that consumer's temporary or permanent residence for purposes of providing
5 home care services.

6 **13. Worker notice.** "Worker notice" means a form that contains, at a minimum, the
7 following information:

8 A. The duties, responsibilities, obligations and legal liabilities of the placement
9 agency, the consumer and the home care services worker, in the event that the home
10 care services worker is determined to be an independent contractor. The description
11 must include the following information:

12 (1) A statement as to the party responsible for the payment of the home care
13 services worker's wages, including overtime pay for hours worked in excess of 40
14 hours in a workweek, taxes, social security, Medicare and unemployment and
15 workers' compensation insurance;

16 (2) A statement identifying which party will be responsible for the homecare
17 services worker's hiring, firing, discipline, day-to-day supervision, assignment of
18 duties and provision of equipment or materials for use by the home care services
19 worker.

20 B. The department's appropriate phone number and address, in the event the home
21 care services worker has questions concerning the contents of the notice.

22 **§3213. Consumer notice**

23 **1. Notice upon placement.** A placement agency shall provide a consumer with a
24 consumer notice each time a home care services worker is placed in the consumer's home.
25 A separate consumer notice is not required in those instances when a home care services
26 worker is temporarily covering or substituting for the consumer's regular home care
27 services worker.

28 **2. Form.** A consumer notice must be on a form developed by the department.

29 **3. Signature; retention.** The consumer notice must be signed by the consumer and
30 retained by the placement agency at its office for not less than 3 years.

31 **4. Failure to provide notice to worker.** A placement agency's failure to provide a
32 consumer notice to a home care services worker subjects that agency to civil fines.

33 **5. Failure to provide notice to consumer.** A placement agency's failure to provide
34 a consumer notice does not relieve a consumer of any duties or obligations as an
35 employer. If a placement agency fails to provide a consumer notice and the consumer is
36 determined by the department to be liable to the home care services worker for payment
37 of wages, taxes, workers compensation or unemployment compensation, the consumer
38 has a right of indemnification against the placement agency, which includes the actual
39 amounts paid to or on behalf of the home care services worker, as well as the consumer's
40 attorney's fees and costs.

1 **§3214. Worker notice**

2 **1. Notice upon placement.** A placement agency shall provide a worker notice to
3 each home care services worker who is placed with a consumer that sets out the home
4 care services worker's legal relationship with the placement agency and the consumer.
5 The worker notice must be provided to the home care services worker upon the worker's
6 placement in a consumer's home.

7 **2. Form.** The worker notice must be on a form developed by the department.

8 **3. Signature; retention.** The notice must be signed by the worker and retained by
9 the placement agency at its office for not less than 3 years.

10 **4. Failure to provide.** A placement agency's failure to provide a worker notice to a
11 home care services worker subjects that agency to civil fines set forth in this chapter.

12 **§3215. Investigations; orders; civil penalties**

13 **1. Investigation.** The department may at any time, and shall upon receiving a
14 complaint from any interested person, investigate a placement agency's violation of this
15 chapter.

16 **2. Investigatory powers.** The commissioner may examine the premises of any
17 placement agency, may compel by subpoena for examination or inspection the attendance
18 and testimony of witnesses and the production of books, payrolls, records, papers and
19 other evidence in any investigation or hearing and may administer oaths or affirmations
20 to witnesses.

21 **3. Order to cease and desist.** After appropriate notice and investigation, and if
22 supported by the evidence, the department may issue and cause to be served on any
23 person an order to cease and desist from violation of this chapter and to take any further
24 action that is determined to be necessary to eliminate the effect of the violation.

25 **4. Commence action.** Whenever it appears that any person has violated a valid
26 order of the department issued under this chapter, the commissioner may commence an
27 action and obtain from the court an order directing the person to obey the order of the
28 department or be subject to punishment for contempt of court.

29 **5. Order enjoining violation.** In addition to any order or action, the department
30 may petition a court of competent jurisdiction for an order enjoining any violation of this
31 chapter.

32 **6. Penalty.** A placement agency that violates this chapter is subject to a fine of \$100
33 per day per violation.

34 **§3216. Rulemaking**

35 The department shall adopt rules to implement this chapter. Rules adopted pursuant
36 to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-
37 A.

SUMMARY

1

2 This bill creates the Home Care Consumer and Worker Protection Act. The purpose
3 of this bill is to ensure that both the consumer and the home care services worker are
4 given the ability to make informed, knowledgeable decisions regarding their status as
5 employees, independent contractors and employers.