

# MAINE STATE LEGISLATURE

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Date: 6/12/7

(Filing No. H-552)

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
123RD LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1254, L.D. 1800, Bill, "An Act To Amend Licensing and Certification Requirements"

Amend the bill by striking out sections 2 to 12 and inserting the following:

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

**§1717. Registration of personal care agencies and placement agencies**

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

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.

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.

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

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.

C-1. "Placement agency" means any person or entity engaged for gain or profit in the business of securing or attempting to secure home care services work for an

**COMMITTEE AMENDMENT**

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  
4 by a consumer in that consumer's temporary or permanent residence for purposes of  
5 providing home care services.

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

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

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

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

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

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

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

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

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

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

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

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

3        **5. Injunctive relief.** Notwithstanding any other remedies provided by law, the  
4        Office of the Attorney General may seek an injunction to require compliance with the  
5        provisions of this section.

6        **6. Enforcement.** The Office of the Attorney General may file a complaint with the  
7        District Court seeking civil penalties or injunctive relief or both for violations of this  
8        section.

9        **7. Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152  
10       for violations of this section.

11       **8. Burden of proof.** The burden is on the department to prove, by a preponderance  
12       of the evidence, that the alleged violations of this section occurred.

13       **9. Right of entry.** This subsection governs the department's right of entry.

14       **A.** An application for registration of a personal care agency or placement agency  
15       constitutes permission for entry and inspection to verify compliance with applicable  
16       laws and rules.

17       **B.** The department has the right to enter and inspect the premises of a personal care  
18       agency or placement agency registered by the department at a reasonable time and,  
19       upon demand, has the right to inspect and copy any books, accounts, papers, records  
20       and other documents in order to determine the state of compliance with applicable  
21       laws and rules.

22       **C.** To inspect a personal care agency or placement agency that the department knows  
23       or believes is being operated without being registered, the department may enter only  
24       with the permission of the owner or person in charge or with an administrative  
25       inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E  
26       by the District Court authorizing entry and inspection.

27       **10. Administrative inspection warrant.** The department and a duly designated  
28       officer or employee of the department have the right to enter upon and into the premises  
29       of an unregistered personal care agency or placement agency with an administrative  
30       inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by  
31       the District Court at a reasonable time and, upon demand, have the right to inspect and  
32       copy any books, accounts, papers, records and other documents in order to determine the  
33       state of compliance with this section. The right of entry and inspection may extend to  
34       any premises and documents of a person, firm, partnership, association, corporation or  
35       other entity that the department has reason to believe is operating without being  
36       registered.

37       **11. Noninterference.** An owner or operator of an unregistered personal care agency  
38       or placement agency may not interfere with, impede or obstruct an investigation by the  
39       department, including but not limited to interviewing persons receiving services or  
40       persons with knowledge of the agency.

41       **12. Violation of injunction.** A person, firm, partnership, association, corporation or  
42       other entity that violates the terms of an injunction issued under this section shall pay to

1 the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day  
2 of violation constitutes a separate offense. In any action brought by the Office of the  
3 Attorney General against a person, firm, partnership, association, corporation or other  
4 entity for violating the terms of an injunction under this section, the District Court may  
5 make the necessary orders or judgments regarding violation of the terms of the injunction.

6 In an action under this section, when a permanent injunction has been issued, the District  
7 Court may order the person, firm, partnership, association, corporation or other entity  
8 against which the permanent injunction is issued to pay to the General Fund the costs of  
9 the investigation of that person, firm, partnership, association, corporation or other entity  
10 by the Office of the Attorney General and the costs of suit, including attorney's fees.

11 **13. Suspension or revocation of registration.** A personal care agency or placement  
12 agency found to be in violation of this section may have its registration to operate as a  
13 personal care agency or placement agency suspended or revoked. The department may  
14 file a complaint with the District Court requesting suspension or revocation of a  
15 registration to operate a personal care agency or placement agency.

16 **14. Rules.** The department may adopt rules to implement this section. Rules  
17 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
18 chapter 375, subchapter 2-A.'

19 Amend the bill in section 15 in §7702-B by striking out all of subsection 8 and  
20 inserting the following:

21 '**8. Administrative inspection warrant.** The department and a duly designated  
22 officer or employee of the department have the right to enter upon and into the premises  
23 of an unlicensed long-term care facility or child care facility or an uncertified family child  
24 care provider with an administrative inspection warrant issued pursuant to the Maine  
25 Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon  
26 demand, have the right to inspect and copy any books, accounts, papers, records and other  
27 documents in order to determine the state of compliance with subsection 1. Pursuant to  
28 the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and  
29 inspection may extend to any premises and documents of a person, firm, partnership,  
30 association, corporation or other entity that the department has reason to believe is  
31 operating without a license or a certificate.

32 **9. Noninterference.** An owner or person in charge of an unlicensed long-term care  
33 facility or child care facility or an uncertified family child care provider may not interfere  
34 with or prohibit the interviewing by the department of residents or consumers of  
35 services.'

36 Amend the bill in §7702-B by renumbering the subsections to read consecutively.

37 Amend the bill by inserting after section 25 the following:

38 '**Sec. 26. 22 MRSA §8301-A, sub-§1-A, ¶B,** as amended by PL 2005, c. 530,  
39 §7, is further amended to read:

40 B. "Child care facility" means a child care center, small child care facility or nursery  
41 school. "Child care facility" does not include a facility operated by a family child

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1 care provider, a summer camp established solely for recreational and educational  
2 purposes, programs offering instruction to children for the purpose of teaching a skill  
3 such as karate, dance or basketball, a formal public or private school in the nature of  
4 a kindergarten or elementary or secondary school approved by the Commissioner of  
5 Education in accordance with Title 20-A or a private school recognized by the  
6 Department of Education as a provider of equivalent instruction for the purpose of  
7 compulsory school attendance. Any program for children under 5 years of age that is  
8 located in a private school, ~~other than~~ and programs that contract with one or more  
9 Child Development Services System sites, ~~is~~ are required to be licensed as a child  
10 care facility.'

11 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
12 section number to read consecutively.

13 **SUMMARY**

14 The amendment defines "placement agency" and "home care services." It requires a  
15 placement agency to register with the Department of Health and Human Services. It gives  
16 the Department of Health and Human Services the same right of entry and applies the  
17 same administrative inspection and license suspension and revocation provisions with  
18 respect to placement agencies as apply to personal care agencies. It clarifies that the  
19 department's right of entry may extend to any premises and documents of a person, firm,  
20 partnership, association, corporation or other entity that the department has reason to  
21 believe is operating without a license or a certificate. It clarifies that an owner or person  
22 in charge of an unlicensed long-term care facility or child care facility or an uncertified  
23 family child care provider may not interfere with or prohibit the interviewing by the  
24 department of residents or consumers of services. It clarifies that an owner or operator of  
25 an unregistered personal care agency or placement agency may not interfere with, impede  
26 or obstruct an investigation by the department, including but not limited to interviewing  
27 persons receiving services or persons with knowledge of the agency. It changes the word  
28 "subtitle" to "section" and corrects statutory language to clarify that a child care facility  
29 license is required before the Department of Education grants approval for a program to  
30 contract with one or more Child Development Services System sites.

**FISCAL NOTE REQUIRED**  
(See attached)

**COMMITTEE AMENDMENT**



# 123rd MAINE LEGISLATURE

LD 1800

LR 1059(02)

## An Act To Amend Licensing and Certification Requirements

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

Committee: Health and Human Services

Fiscal Note Required: Yes

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### Fiscal Note

Current revenue increase - General Fund

Minor cost increase - General Fund

### Correctional and Judicial Impact Statements

Establishes civil penalties. Allows the District Court to order violators of injunctions to pay the General Fund for costs of investigation by the Office of the Attorney General and for costs of suit, including attorney's fees.

This bill may increase the number of civil suits filed in the court system.

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

### Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services can be absorbed by the department within existing budget resources. Any impact on fee or license revenue is expected to be minor.