

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1464

H.P. 1019

House of Representatives, April 24, 2009

**An Act To Amend Licensing, Certification and Registration
Requirements for Health Care Providers and Other Facilities**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative JONES of Mount Vernon.
Cosponsored by Representative: LEWIN of Eliot.

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

2 Sec. 1. 22 MRSA §1723 is enacted to read:

3 **§1723. Criminal background checks**

4 Beginning October 1, 2009, a facility or health care provider subject to the licensing
5 or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an
6 individual who will work in direct contact with a consumer, criminal history record
7 information on that individual, including, at a minimum, criminal history record
8 information from the Department of Public Safety, State Bureau of Identification. The
9 facility or health care provider shall pay for the criminal background check required by
10 this section.

11 The department may adopt rules necessary to implement this section. Rules adopted
12 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,
13 subchapter 2-A.

14 Sec. 2. 22 MRSA §2131, sub-§1, as enacted by PL 1989, c. 579, §4, is amended
15 to read:

16 1. **Registration; renewal.** ~~Effective January 1, 1990, every~~ A temporary nurse
17 agency shall register with the department and renew the registration as required by rule
18 thereafter. For purposes of this chapter, unless the context otherwise indicates,
19 "temporary nurse agency" means a business entity or subdivision thereof that provides
20 nurses to another organization on a temporary basis within this State.

21 Sec. 3. 22 MRSA §2131, sub-§4, as amended by PL 2001, c. 494, §2, is repealed
22 and the following enacted in its place:

23 **4. Penalty.** The following penalties apply to violations of this chapter.

24 A. A person who operates a temporary nurse agency without registering or who fails
25 to verify the inclusion of a certified nursing assistant on the Maine Registry of
26 Certified Nursing Assistants established under section 1812-G before hiring that
27 certified nursing assistant pursuant to subsection 1-A commits a civil violation for
28 which a fine of not less than \$500 per day but not more than \$10,000 per day may be
29 adjudged. Each day constitutes a separate violation.

30 B. A person who operates a temporary nurse agency in violation of the employment
31 prohibitions in section 2138 commits a civil violation for which a fine of not less than
32 \$500 per day but not more than \$10,000 per day may be adjudged. Each day
33 constitutes a separate violation.

34 Sec. 4. 22 MRSA §2131, sub-§5 is enacted to read:

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

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

4 **§2139. Complaints**

5 **1. Complaint investigation.** The department is authorized to investigate complaints
6 against a temporary nurse agency to ensure compliance with this chapter.

7 **2. Injunctive relief.** Notwithstanding any other remedies provided by law, the
8 Attorney General may seek an injunction to require compliance with the provisions of
9 this chapter.

10 **3. Enforcement.** The Attorney General may file a complaint with the District Court
11 seeking civil penalties or injunctive relief or both for violations of this chapter.

12 **4. Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152
13 for violations of this chapter.

14 **5. Burden of proof.** The burden is on the department to prove, by a preponderance
15 of the evidence, that the alleged violation of this chapter occurred.

16 **6. Right of entry.** This subsection governs the department's right of entry with
17 respect to temporary nurse agencies.

18 A. An application for registration of a temporary nurse agency constitutes permission
19 for entry and inspection to verify compliance with applicable laws and rules.

20 B. The department has the right to enter and inspect the premises of a temporary
21 nurse agency registered by the department at a reasonable time and, upon demand,
22 has the right to inspect and copy any books, accounts, papers, records and other
23 documents in order to determine the state of compliance with applicable laws and
24 rules.

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

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

1 8. Noninterference. An owner or operator of an unregistered temporary nurse
2 agency may not interfere with, impede or obstruct an investigation by the department,
3 including, but not limited to, interviewing persons receiving services or persons with
4 knowledge of the agency.

5 9. Violation of injunction. A person, firm, partnership, association, corporation or
6 other entity that violates the terms of an injunction issued under this chapter shall pay to
7 the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day
8 of violation constitutes a separate offense. In any action brought by the Attorney General
9 against a person, firm, partnership, association, corporation or other entity for violating
10 the terms of an injunction under this chapter, the District Court may make the necessary
11 orders or judgments regarding violation of the terms of the injunction.

12 In an action under this chapter, when a permanent injunction has been issued, the District
13 Court may order the person, firm, partnership, association, corporation or other entity
14 against which the permanent injunction is issued to pay to the General Fund the costs of
15 the investigation of that person, firm, partnership, association, corporation or other entity
16 by the Attorney General and the costs of suit, including attorney's fees.

17 10. Suspension or revocation of registration. A temporary nurse agency found to
18 be in violation of this chapter may have its registration to operate as a temporary nurse
19 agency suspended or revoked. The department may file a complaint with the District
20 Court requesting suspension or revocation of a registration to operate a temporary nurse
21 agency.

22 11. Rules. The department may adopt rules to implement this section. Rules adopted
23 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
24 subchapter 2-A.

25 **Sec. 6. 22 MRSA §7704** is enacted to read:

26 **§7704. Criminal background checks**

27 Beginning October 1, 2009, a facility or health care provider subject to the licensing
28 or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a
29 hospice provider subject to chapter 1681 shall obtain, prior to hiring an individual who
30 will work in direct contact with a consumer, criminal history record information on that
31 individual, including, at a minimum, criminal history record information from the
32 Department of Public Safety, State Bureau of Identification. The entity seeking to
33 employ the individual shall pay for the criminal background check required by this
34 section.

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

38 **Sec. 7. 22 MRSA §7946, sub-§4,** as enacted by PL 1987, c. 774, §4, is amended
39 to read:

