

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1537

H.P. 1129

House of Representatives, May 3, 2011

**An Act To Amend Licensing and Certification Laws Administered
by the Department of Health and Human Services**

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.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative STRANG BURGESS of Cumberland.
Cosponsored by Senator CRAVEN of Androscoggin and
Representatives: EVES of North Berwick, FOSSEL of Alna, MALABY of Hancock,
O'CONNOR of Berwick, SANDERSON of Chelsea, SIROCKI of Scarborough, Senator:
McCORMICK of Kennebec.

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

2 **Sec. 1. 22 MRSA §1717, sub-§3, ¶A**, as enacted by PL 2003, c. 634, §1, is
3 amended to read:

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

8 **Sec. 2. 22 MRSA §1812-G**, as amended by PL 2009, c. 590, §2, is further
9 amended to read:

10 **§1812-G. Maine Registry of Certified Nursing Assistants and Direct Care Workers**

11 **1. Established.** The Maine Registry of Certified Nursing Assistants and Direct Care
12 Workers is established in compliance with federal and state requirements. The
13 Department of Health and Human Services shall maintain the registry.

14 **1-A. Definitions.** As used in this section, unless the context otherwise indicates, the
15 following terms have the following meanings.

16 A. "Certified nursing assistant" means an individual who has successfully completed
17 an approved nursing assistant training program, holds a certificate of training and
18 meets the eligibility requirements established by the State Board of Nursing for
19 listing on the registry.

20 B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct
21 Care Workers established in subsection 1, which is a list of certified nursing
22 assistants, with notations if applicable, and a list of unlicensed assistive persons with
23 notations.

24 C. "Unlicensed assistive person" or "direct care worker" means an individual
25 employed to provide hands-on assistance with activities of daily living to individuals
26 in homes, assisted living programs, residential care facilities, hospitals and other
27 health care and direct care settings. "Unlicensed assistive person" ~~does~~ and "direct
28 care worker" do not include a certified nursing assistant employed in the capacity of a
29 certified nursing assistant.

30 **2. Contents.** The registry must contain a listing of certified nursing assistants. The
31 listing must include, for any certified nursing assistant listed, a notation of:

32 A. Any criminal convictions, except for Class D and Class E convictions over 10
33 years old that did not involve as a victim of the act a patient, client or resident of a
34 health care entity; and

35 B. Any specific documented findings by the state survey agency of abuse, neglect
36 or misappropriation of property of a resident, client or patient. For purposes of this
37 section, "state survey agency" means the agency specified under 42 United States
38 Code, Sections 1395aa and 1396 responsible for determining whether institutions and

1 agencies meet requirements for participation in the State's Medicare and Medicaid
2 programs.

3 The registry must also contain a listing of any unlicensed assistive persons who have
4 notations pursuant to section 1812-J.

5 **3. Eligibility requirements for listing.** The State Board of Nursing shall adopt
6 rules pursuant to the Maine Administrative Procedure Act defining eligibility
7 requirements for listing on the registry, including rules regarding temporary listing of
8 nursing assistants who have received training in another jurisdiction. The rules must
9 permit nursing assistants to work under the supervision of a registered professional nurse
10 in a facility providing assisted living services as defined in chapter 1664 and must
11 recognize work in those facilities for the purpose of qualifying for and continuing listing
12 on the registry. Rules adopted regarding the work of nursing assistants in facilities
13 providing assisted living services are routine technical rules as defined by Title 5, chapter
14 375, subchapter 2-A.

15 **4. Verification of credentials and training.** The department shall verify the
16 credentials and training of all certified nursing assistant applicants to the registry.

17 **4-A. Provider verification fee.** The department may establish a provider
18 verification fee not to exceed \$25 annually per provider for verification of a certified
19 nursing assistant's credentials and training. Providers may not pass the cost on to the
20 individual certified nursing assistant. Provider verification fees collected by the
21 department must be placed in a special revenue account to be used by the department to
22 operate the registry, including but not limited to the cost of criminal history record
23 checks. The department may adopt rules necessary to implement this subsection. Rules
24 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
25 chapter 375, subchapter 2-A.

26 **5. Verifying certified nursing assistant listing.** A health care institution, facility or
27 organization that employs a certified nursing assistant shall, before hiring a certified
28 nursing assistant, verify with the registry that the certified nursing assistant is listed on
29 the registry.

30 **6. Registry notations.** Except as otherwise provided in this section:

31 A. An individual may not be employed in a hospital, nursing facility, home health
32 agency or assisted housing program as a certified nursing assistant if that individual
33 has been convicted in a court of law of a crime involving abuse, neglect or
34 misappropriation of property in a health care setting; and

35 B. An individual may not be employed in a hospital, nursing facility, home health
36 agency or assisted housing program as a certified nursing assistant if that individual:

37 (1) Has been the subject of a complaint involving abuse or neglect that was
38 substantiated by the department pursuant to its responsibility to license hospitals,
39 nursing facilities, home health agencies and assisted housing programs and that
40 was entered on the registry; or

1 (2) Has been the subject of a complaint involving the misappropriation of
2 property in a health care setting that was substantiated by the department and
3 entered on the registry.

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

8 A. A crime for which incarceration of 3 years or more may be imposed under the
9 laws of the state in which the conviction occurred; or

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

13 **8. Exception.** The restrictions on employment under subsections 6 and 7 do not
14 apply to an individual listed and active on the registry prior to the effective date of this
15 subsection, as long as the individual meets other state and federal requirements for
16 certified nursing assistants and continues to maintain an active status by timely
17 reregistration as required by the rules.

18 **9. Notification.** A nursing assistant training program must notify applicants to that
19 program of the restrictions under subsections 6 and 7 prior to the acceptance of any
20 applicant.

21 **Sec. 3. 22 MRSA §1812-J, sub-§1,** as enacted by PL 2009, c. 215, §2, is
22 amended to read:

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

25 A. "Certified nursing assistant" means an individual who has successfully completed
26 an approved nursing assistant training program, holds a certificate of training and
27 meets the eligibility requirements established by the State Board of Nursing for
28 listing on the registry.

29 A-1. "Abuse" means the willful infliction of injury, unreasonable confinement,
30 intimidation or punishment with resulting physical harm, pain or mental anguish.

31 A-2. "Disqualifying criminal conviction" means a criminal conviction identified in
32 rules adopted by the department that prohibit employment as an unlicensed assistive
33 person.

34 A-3. "Health care and direct care settings" means settings in which a certified
35 nursing assistant or unlicensed assistive person is providing direct care in that
36 assistant's or person's capacity as a certified nursing assistant or an unlicensed
37 assistive person.

38 A-4. "High severity" means the level, as established by the department by rule, of
39 abuse, neglect or misappropriation of property of a client, patient or resident that
40 forms the basis for a substantiated finding after investigation of a complaint against

1 an unlicensed assistive person of abuse, neglect or misappropriation of property of a
2 client, patient or resident.

3 A-5. "Indicated finding" means an administrative determination made by the
4 department, after investigation of a complaint against an unlicensed assistive person
5 of abuse, neglect or misappropriation of property of a client, patient or resident, that
6 the abuse, neglect or misappropriation of property of a client, patient or resident was
7 of low to moderate severity based on criteria established by the department by rule
8 and that the person is not prohibited from employment as an unlicensed assistive
9 person.

10 A-6. "Low to moderate severity" means the level, as established by the department
11 by rule, of abuse, neglect or misappropriation of property of a client, patient or
12 resident that forms the basis for an indicated finding after investigation of a complaint
13 against an unlicensed assistive person of abuse, neglect or misappropriation of
14 property of a client, patient or resident.

15 A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified
16 in rules adopted by the department that is included as a notation on the registry but
17 does not prohibit employment as an unlicensed assistive person.

18 B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct
19 Care Workers, which is a list of certified nursing assistants, with notations if
20 applicable, and a list of unlicensed assistive persons with notations and is established
21 under section 1812-G.

22 C. "State survey agency" ~~has the same meaning as in section 1812-G, subsection 2,~~
23 ~~paragraph B~~ means the agency specified in 42 United States Code, Sections 1395aa
24 and 1396 responsible for determining whether institutions and agencies meet
25 requirements for participation in the State's Medicare and Medicaid programs and
26 authorized to investigate and substantiate complaints against certified nursing
27 assistants.

28 C-1. "Substantiated finding" means an administrative determination made by the
29 department, after investigation of a complaint against an unlicensed assistive person
30 of abuse, neglect or misappropriation of property of a client, patient or resident, that
31 the abuse, neglect or misappropriation of property of a client, patient or resident was
32 of high severity based on criteria established by the department by rule.

33 D. "Unlicensed assistive person" or "direct care worker" means an individual
34 employed to provide hands-on assistance with activities of daily living to individuals
35 in homes, assisted living programs, residential care facilities, hospitals and other
36 health care and direct care settings. "Unlicensed assistive person" and "direct care
37 worker" includes but is not limited to a direct support professional, residential care
38 specialist, personal support specialist, mental health support specialist, mental health
39 rehabilitation technician, behavior specialist, other qualified mental health
40 professional, certified residential medication aide and registered medical assistant and
41 other direct care workers as described in rules adopted by the department.
42 "Unlicensed assistive person" ~~does~~ and "direct care worker" do not include a certified
43 nursing assistant employed in the capacity of a certified nursing assistant.

1 E. "Unsubstantiated finding" means an administrative determination made by the
2 department, after investigation of a complaint against an unlicensed assistive person
3 of abuse, neglect or misappropriation of property of a client, patient or resident, that
4 no abuse, neglect or misappropriation of property of a client, patient or resident was
5 found to support an indicated finding or a substantiated finding of abuse, neglect or
6 misappropriation of property of a client, patient or resident.

7 **Sec. 4. 22 MRSA §1812-J, sub-§2-A** is enacted to read:

8 **2-A. Department decision after investigation of complaint.** Based on criteria
9 established by rule, the department, after investigation of a complaint of abuse, neglect or
10 misappropriation of property of a client, patient or resident, shall:

11 A. Make a substantiated finding;

12 B. Make an indicated finding; or

13 C. Make an unsubstantiated finding.

14 **Sec. 5. 22 MRSA §1812-J, sub-§3**, as enacted by PL 2009, c. 215, §2, is
15 amended to read:

16 **3. Substantiated finding of complaint; registry listing.** When a complaint against
17 an unlicensed assistive person is substantiated by the department and the unlicensed
18 assistive person ~~must be~~ is listed on the registry pursuant to subsection 4, the department's
19 decision becomes final agency action as defined in Title 5, section 8002, subsection 4.
20 The department shall notify the employer of the unlicensed assistive person that a
21 substantiated finding of a complaint has been listed as a notation on the registry.

22 **Sec. 6. 22 MRSA §1812-J, sub-§3-A** is enacted to read:

23 **3-A. Indicated finding of complaint; no registry listing.** An indicated finding by
24 the department of a complaint against an unlicensed assistive person does not prohibit
25 employment and is not listed as a notation on the registry. The department's complaint
26 investigation decision becomes final agency action as defined in Title 5, section 8002,
27 subsection 4.

28 **Sec. 7. 22 MRSA §1812-J, sub-§6**, as enacted by PL 2009, c. 215, §2, is
29 amended to read:

30 **6. Petition for removal of a substantiated finding of abuse, neglect or**
31 **misappropriation of property.** No sooner than 12 months after the date ~~a~~ an abuse,
32 neglect or misappropriation of property substantiated finding is placed on the registry, an
33 unlicensed assistive person may petition the department to remove a notation from the
34 registry if the substantiated complaint of abuse, neglect or misappropriation of property is
35 a one-time occurrence and there is no pattern of ~~abuse or~~ neglect or misappropriation of
36 property.

37 **Sec. 8. 22 MRSA §1812-J, sub-§7**, as enacted by PL 2009, c. 215, §2, is
38 amended to read:

1 **7. Prohibited employment based on substantiated complaint.** The following
2 unlicensed assistive persons may not be employed or placed by a licensed, certified or
3 registered agency or facility:

4 A. An unlicensed assistive person listed on the registry with a notation for a
5 substantiated finding; or

6 B. An unlicensed assistive person who, while working as a certified nursing
7 assistant, had a notation on the registry for a ~~complaint that was~~ substantiated finding
8 of a complaint by the state survey agency for abuse ~~or~~, neglect; or misappropriation
9 of property of a client, patient or resident.

10 ~~C. An unlicensed assistive person who, while working as a certified nursing~~
11 ~~assistant, had a notation on the registry for a complaint that was substantiated by the~~
12 ~~state survey agency for misappropriation of property in a health care setting.~~

13 An employment ban based on a substantiated finding of a complaint is a lifetime
14 employment ban.

15 **Sec. 9. 22 MRSA §1815**, as amended by PL 2003, c. 507, Pt. C, §1 and affected
16 by §4, is further amended to read:

17 **§1815. Fees**

18 Each application for a license to operate a hospital, convalescent home or nursing
19 home must be accompanied by a nonrefundable fee. Hospitals shall pay \$40 for each bed
20 contained within the facility. Nursing and convalescent homes shall pay \$26 for each bed
21 contained within the facility. Each application for a license to operate an ambulatory
22 surgical facility must be accompanied by the fee established by the department. The
23 department shall establish the fee for an ambulatory surgical facility, not to exceed \$500,
24 on the basis of a sliding scale representing size, number of employees and scope of
25 operations. All licenses ~~issued~~ must be renewed annually, or for a term of years, as
26 required by law upon payment of a like fee a renewal fee. Hospitals shall pay a \$40
27 renewal fee for each bed contained within the facility. Nursing and convalescent homes
28 shall pay a \$26 renewal fee for each bed contained within the facility. In the case of a
29 license renewal that is valid for more than one year, the renewal fee must be multiplied
30 by the number of years in the term of the license. The State's share of all fees received by
31 the department under this chapter must be deposited in the General Fund. A license
32 granted may not be assignable or transferable. State hospitals are not required to pay
33 licensing fees.

34 **Sec. 10. 22 MRSA §2041, sub-§5**, as enacted by PL 1997, c. 658, §1, is amended
35 to read:

36 **5. ESRD facility.** "ESRD facility" ~~includes a renal transplantation center,~~ means a
37 renal dialysis center or, a renal dialysis facility, a self-dialysis unit or a special-purpose
38 renal dialysis facility.

39 **Sec. 11. 22 MRSA §2041, sub-§6**, as enacted by PL 1997, c. 658, §1, is repealed.

1 **Sec. 12. 22 MRSA §2041, sub-§9**, as enacted by PL 1997, c. 658, §1, is amended
2 to read:

3 **9. Self-dialysis unit.** "Self-dialysis unit" means a unit that is part of an approved
4 ~~renal transplantation center~~, renal dialysis center or renal dialysis facility and furnishes
5 self-dialysis services.

6 **Sec. 13. 22 MRSA §2042, sub-§7**, as enacted by PL 1997, c. 658, §1, is amended
7 to read:

8 **7. Minimum survey requirement.** An ESRD facility is not eligible for licensure or
9 renewal of licensure unless the ESRD facility has had a Medicare survey or a state
10 licensure survey within the previous ~~year~~ 24 months.

11 **Sec. 14. 22 MRSA §2131, sub-§1-A**, as enacted by PL 2001, c. 494, §1, is
12 amended to read:

13 **1-A. Verifying certified nursing assistant eligibility.** A health care institution,
14 facility or organization, including a temporary nurse agency employing a certified nursing
15 assistant, shall, before hiring a certified nursing assistant, verify that the certified nursing
16 assistant is listed on the Maine Registry of Certified Nursing Assistants and Direct Care
17 Workers established under section 1812-G with no annotations to prohibit the hiring of
18 that individual according to state and federal regulations.

19 **Sec. 15. 22 MRSA §2131, sub-§4, ¶A**, as enacted by PL 2009, c. 621, §3, is
20 amended to read:

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

27 **Sec. 16. 22 MRSA §2138, sub-§1**, as enacted by PL 2009, c. 621, §5, is amended
28 to read:

29 **1. Subject of notation.** Has worked as a certified nursing assistant and has been the
30 subject of a notation by the state survey agency for a substantiated complaint of abuse,
31 neglect or misappropriation of property in a health care setting that was entered on the
32 Maine Registry of Certified Nursing Assistants and Direct Care Workers established
33 under section 1812-G;

34 **Sec. 17. 22 MRSA §2149-A, sub-§2, ¶A**, as enacted by PL 2003, c. 634, §4, is
35 amended to read:

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

1 **Sec. 18. 22 MRSA §8606, sub-§1, ¶A**, as enacted by PL 2003, c. 634, §10, is
2 amended to read:

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

7 **Sec. 19. 32 MRSA §2102, sub-§8, ¶A**, as amended by PL 1993, c. 600, Pt. A,
8 §112, is further amended to read:

9 A. Has successfully completed a training program or course with a curriculum
10 prescribed by the board, holds a certificate of training from that program or course
11 and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care
12 Workers; or

13 **Sec. 20. 32 MRSA §2102, sub-§8, ¶B**, as enacted by PL 1991, c. 421, §2, is
14 amended to read:

15 B. Was certified before September 29, 1987 and is listed on the Maine Registry of
16 Certified Nursing Assistants and Direct Care Workers.

17 **Sec. 21. 32 MRSA §2102, sub-§9**, as corrected by RR 2001, c. 2, Pt. A, §42, is
18 amended to read:

19 **9. Maine Registry of Certified Nursing Assistants and Direct Care Workers.**
20 "Maine Registry of Certified Nursing Assistants and Direct Care Workers" has the same
21 meaning as in Title 22, section 1812-G.

22 **Sec. 22. 32 MRSA §2104, sub-§4**, as amended by PL 2009, c. 628, §3, is further
23 amended to read:

24 **4. Approval and monitoring of nursing assistant training curriculum and**
25 **faculty.** An educational institution or health care facility desiring to conduct an
26 educational program for nursing assistants to prepare individuals for a certificate of
27 training and subsequent listing on the Maine Registry of Certified Nursing Assistants and
28 Direct Care Workers must apply to the Department of Health and Human Services and
29 submit evidence:

30 A. That it is prepared to carry out the curriculum for nursing assistants as
31 prescribed by the board;

32 B. That it is prepared to meet those standards established by the board;

33 C. That it is prepared to meet those standards for educational programming and
34 faculty as established by the Department of Health and Human Services; and

35 D. With respect to an application by a health care facility, that an educational
36 institution cannot provide a nursing assistant training program within 30 days of the
37 application date.

1 The Department of Health and Human Services shall issue a notice of approval to an
2 educational institution or health care facility that meets the requirements of this
3 subsection.

4

5 **SUMMARY**

6 This bill requires the Department of Health and Human Services to classify a finding,
7 after an investigation of a complaint of abuse, neglect or misappropriation of property of
8 a client, patient or resident against an unlicensed assistive person, as an unsubstantiated
9 finding or as either an indicated or substantiated finding based on the level of abuse,
10 neglect or misappropriation found by the department.

11 An unsubstantiated or indicated finding is not listed as a notation on the Maine
12 Registry of Certified Nursing Assistants and Direct Care Workers, whereas complaints
13 that are substantiated are listed as notations on the registry.

14 The department is required to establish criteria by rule to determine the level of
15 abuse, neglect or misappropriation that warrants a finding that the complaint is indicated
16 or substantiated.

17 The bill clarifies that current hospital, convalescent home and nursing home licensing
18 renewal fees are calculated by taking the amount of the renewal fee per bed multiplied by
19 the number of beds in the facility, and multiplying that product by the number of years
20 included in the term of the renewed license.

21 This bill updates the laws concerning the licensing of end-stage renal disease
22 facilities. It changes the frequency of end-stage renal disease facility surveys from every
23 year to every 24 months.