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127th MAINE LEGISLATURE

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Legislative Document

No. 1426

H.P. 972

House of Representatives, May 20, 2015

**An Act Regarding the Maine Registry of Certified Nursing
Assistants and Direct Care Workers**

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.


ROBERT B. HUNT
Clerk

Presented by Representative ESPLING of New Gloucester.

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

2 **Sec. 1. 22 MRSA §1717, sub-§1, ¶¶A-1 to A-3** are enacted to read:

3 A-1. "Direct access" means access to the property, personally identifiable
4 information, financial information or resources of an individual or physical access to
5 an individual who is a Medicare or Medicaid beneficiary or other individual served
6 by a provider subject to this chapter.

7 A-2. "Direct access personnel" means individuals employed in positions that have
8 direct access.

9 A-3. "Direct care worker" means a worker who by virtue of employment has direct
10 access to provide direct contact assistance with activities of daily living for
11 individuals in homes, assisted living centers, residential care facilities, hospitals and
12 other health care settings. "Direct care worker" does not include a certified nursing
13 assistant employed in that person's capacity as a certified nursing assistant.

14 **Sec. 2. 22 MRSA §1717, sub-§1, ¶C**, as amended by PL 2007, c. 324, §2, is
15 further amended to read:

16 C. "Personal care agency" means a business entity or subsidiary of a business entity
17 that is not otherwise licensed by the Division of Licensing and Regulatory Services
18 and that hires and employs ~~unlicensed assistive~~ direct access personnel ~~or individuals~~
19 who work in direct contact with clients, patients or residents to provide assistance
20 with activities of daily living and related tasks to individuals in the places in which
21 they reside, either permanently or temporarily. An individual who hires and employs
22 ~~unlicensed assistive~~ direct access personnel ~~or individuals who work in direct contact~~
23 with clients, patients or residents to provide care for that individual is not a personal
24 care agency, except when permitted by rule of the department.

25 **Sec. 3. 22 MRSA §1717, sub-§1, ¶D**, as amended by PL 2007, c. 324, §2, is
26 repealed.

27 **Sec. 4. 22 MRSA §1717, sub-§2**, as amended by PL 2007, c. 324, §2, is further
28 amended to read:

29 **2. Registration of personal care agencies and placement agencies.** Beginning
30 August 1, 1998, a personal care agency not otherwise licensed by the department shall
31 register with the department. Beginning January 1, 2008, a placement agency not
32 otherwise licensed by the department shall register with the department. The department
33 shall adopt rules establishing the annual registration fee, which must be ~~at least~~ between
34 \$25 and \$250. Rules adopted pursuant to this section are routine technical rules as
35 defined in Title 5, chapter 375, subchapter 2-A.

36 **Sec. 5. 22 MRSA §1717, sub-§3**, as amended by PL 2011, c. 257, §1, is further
37 amended to read:

38 **3. Prohibited employment based on disqualifying offenses.** A personal care
39 agency or a placement agency shall ~~obtain criminal history record information about~~

1 applicants for positions as unlicensed assistive personnel or home care services workers
2 and may not hire or place an individual who: conduct a comprehensive background check
3 for direct access personnel in accordance with state law and rules adopted by the
4 department and is subject to the employment restrictions set out in section 1812-G and
5 other applicable federal and state laws when hiring, employing or placing direct access
6 personnel, including, but not limited to, a certified nursing assistant or a direct care
7 worker.

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

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

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

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

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

21 **Sec. 6. 22 MRSA §1717, sub-§3-A** is enacted to read:

22 **3-A. Verification of listing on the registry.** Prior to hiring a certified nursing
23 assistant or a direct care worker, a personal care agency or a placement agency shall
24 check the Maine Registry of Certified Nursing Assistants and Direct Care Workers
25 established pursuant to section 1812-G and verify that a certified nursing assistant or
26 direct care worker listed on the registry has no disqualifying notations.

27 The department may adopt rules necessary to implement this subsection. Rules adopted
28 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
29 subchapter 2-A.

30 **Sec. 7. 22 MRSA §1717, sub-§4, ¶B,** as amended by PL 2007, c. 324, §2, is
31 further amended to read:

32 B. A person who operates a personal care agency or placement agency in violation of
33 the employment prohibitions in subsection 3 or 3-A commits a civil violation for
34 which a fine of not less than \$500 per day of operation in violation but not more than
35 \$10,000 per day may be adjudged, beginning on the first day that a violation occurs.
36 Each day of violation constitutes a separate offense.

37 **Sec. 8. 22 MRSA §1724, first ¶,** as reallocated by RR 2009, c. 2, §49, is further
38 amended to read:

39 Beginning October 1, 2010, a facility or health care provider subject to the licensing
40 or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an

1 individual who will work in direct contact with a consumer, criminal history record
2 information on that individual, including, at a minimum, criminal history record
3 information from the Department of Public Safety, State Bureau of Identification. A
4 facility or provider subject to licensing under chapter 419 shall conduct a comprehensive
5 background check for individuals employed in positions that have direct access to a
6 consumer's property, personally identifiable information, financial information or
7 resources in accordance with applicable federal and state laws. The comprehensive
8 background check must be conducted in accordance with state law and rules adopted by
9 the department. The facility or health care provider shall pay for the comprehensive or
10 criminal background check required by this section as applicable.

11 **Sec. 9. 22 MRSA §1812-G**, as amended by PL 2011, c. 257, §2, is further
12 amended to read:

13 **§1812-G. Maine Registry of Certified Nursing Assistants and Direct Care Workers**

14 **1. Established.** The Maine Registry of Certified Nursing Assistants and Direct Care
15 Workers is established in compliance with federal and state requirements. The
16 Department of Health and Human Services shall maintain the registry and make it
17 accessible through a public website portal.

18 ~~**1-A. Definitions.** As used in this section, unless the context otherwise indicates, the~~
19 ~~following terms have the following meanings.~~

20 ~~A. "Certified nursing assistant" means an individual who has successfully completed~~
21 ~~an approved nursing assistant training program, holds a certificate of training and~~
22 ~~meets the eligibility requirements established by the State Board of Nursing for~~
23 ~~listing on the registry.~~

24 ~~B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct~~
25 ~~Care Workers established in subsection 1, which is a list of certified nursing~~
26 ~~assistants, with notations if applicable, and a list of unlicensed assistive persons with~~
27 ~~notations.~~

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

39 **1-B. Definitions.** As used in this section, unless the context otherwise indicates, the
40 following terms have the following meanings.

- 1 A. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or
2 cruel punishment that causes or is likely to cause physical harm or pain or mental
3 anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless
4 deprivation of essential needs. "Abuse" includes acts and omissions.
- 5 B. "Certified nursing assistant" means an individual who has successfully completed
6 an approved nursing assistant training program, holds a certificate of training and
7 meets the eligibility requirements established by the State Board of Nursing for
8 listing on the registry.
- 9 C. "Direct access" means access to the property, personally identifiable information,
10 financial information or resources of an individual or physical access to an individual
11 who is a Medicare or Medicaid beneficiary or other individual served by a provider
12 subject to this chapter.
- 13 D. "Direct care worker" means an individual employed in a home, community or
14 other health care or direct access setting who provides direct contact assistance with
15 personal care, activities of daily living or other services to individuals. "Direct care
16 worker" does not include certified nursing assistants employed in their capacity as
17 certified nursing assistants.
- 18 E. "Disqualifying offense" means a substantiation for abuse, neglect or exploitation,
19 or a criminal conviction identified in rules adopted by the department that prohibits
20 employment as a certified nursing assistant or a direct care worker in accordance with
21 subsection 2-C.
- 22 F. "Employer" means a person or licensed, certified or registered provider or other
23 entity that employs direct access workers, including certified nursing assistants and
24 direct care workers, to provide direct contact services in home, community or other
25 health care or direct access settings. An individual who employs an unlicensed person
26 to provide care for that individual is not an employer for the purposes of this section,
27 except when required by rules adopted by the department.
- 28 G. "Health care or direct access setting" means a setting in which individuals receive
29 services that require direct access by a certified nursing assistant or a direct care
30 worker or other employee in providing care and related services.
- 31 H. "Misappropriation of property" means the deliberate misplacement, exploitation
32 or wrongful, temporary or permanent use of a client's, patient's or resident's
33 belongings or money without that person's consent.
- 34 I. "Neglect" means a threat to a person's health or welfare by failure to provide goods
35 or services necessary to avoid physical or mental injury or impairment or the threat of
36 injury or impairment.
- 37 J. "Nondisqualifying criminal conviction" means a criminal conviction identified in
38 rules adopted by the department pursuant to subsection 18 that is included as a
39 notation on the registry but does not prohibit employment as a certified nursing
40 assistant or a direct care worker.
- 41 K. "Registered direct care worker" means an individual listed on the registry for
42 training, education or compliance purposes in accordance with rules adopted pursuant
43 to this chapter. "Registered direct care worker" does not include a certified nursing

1 assistant employed in the capacity of a certified nursing assistant or a direct care
2 worker listed on the registry with notations for disqualifying offenses.

3 L. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct
4 Care Workers established in subsection 1, which identifies individuals qualified and
5 eligible for employment as a certified nursing assistant or a registered direct care
6 worker and individuals who are not eligible for employment as a certified nursing
7 assistant or direct care worker due to notations for disqualifying offenses.

8 M. "Substantiated finding" means an administrative determination made by the
9 department after investigation of a complaint against a certified nursing assistant or a
10 direct care worker of abuse, neglect or misappropriation of property of a client,
11 patient or resident.

12 N. "Unsubstantiated finding" means an administrative determination made by the
13 department after investigation of a complaint against a certified nursing assistant or a
14 direct care worker that no evidence of abuse, neglect or misappropriation of property
15 of a client, patient or resident was found to support a substantiated finding.

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

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

21 ~~B. Any specific documented findings by the state survey agency of abuse, neglect or~~
22 ~~misappropriation of property of a resident, client or patient. For purposes of this~~
23 ~~section, "state survey agency" means the agency specified under 42 United States~~
24 ~~Code, Sections 1395aa and 1396 responsible for determining whether institutions and~~
25 ~~agencies meet requirements for participation in the State's Medicare and Medicaid~~
26 ~~programs.~~

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

29 **2-A. Registry listing.** All active certified nursing assistants employed in the State
30 must be listed on the registry. The registry must contain a listing of certified nursing
31 assistants and direct care workers that are ineligible for employment based on notations
32 for disqualifying offenses. Direct care workers registered for training, education or
33 compliance purposes may apply for registration and listing on the registry. Direct care
34 workers who may be listed on the registry include but are not limited to the following:

35 A. Behavior specialists;

36 B. Behavioral health professionals;

37 C. Certified residential care aides;

38 D. Certified residential medication aides;

39 E. Direct support professionals;

40 F. Mental health rehabilitation technicians;

- 1 G. Mental health support specialists;
- 2 H. Other qualified mental health professionals;
- 3 I. Personal care or support specialists;
- 4 J. Registered medical assistants;
- 5 K. Residential care specialists;
- 6 L. Community health workers; and
- 7 M. Other direct care workers described in rules adopted by the department pursuant
- 8 to subsection 18.

9 **2-B. Individual information.** The registry must include information for each listed
10 certified nursing assistant and direct care worker as required by rules adopted by the
11 department pursuant to subsection 18.

12 **2-C. Registry notations.** The registry must include for a certified nursing assistant
13 and direct care worker listed on the registry a notation of:

- 14 A. Disqualifying criminal convictions;
- 15 B. Nondisqualifying criminal convictions, except that a notation is not required on
- 16 the registry for Class D and Class E criminal convictions over 10 years old that did
- 17 not involve as a victim of the act a patient, client or resident;
- 18 C. Substantiated findings, including but not limited to the following information:
 - 19 (1) Documentation of an investigation of a certified nursing assistant or a direct
 - 20 care worker, including the nature of the allegation and evidence supporting a
 - 21 determination that substantiates the allegation of abuse, neglect or
 - 22 misappropriation of property of a client, patient or resident;
 - 23 (2) Documentation of substantiated findings of abuse, neglect or
 - 24 misappropriation of property of a client, patient or resident;
 - 25 (3) If the certified nursing assistant or direct care worker appealed the
 - 26 substantiated finding, the date of the hearing; and
 - 27 (4) The statement of the certified nursing assistant or direct care worker
 - 28 disputing the allegation of abuse, neglect or misappropriation of property of a
 - 29 client, patient or resident if the certified nursing assistant or direct care worker
 - 30 submitted such a statement; and
- 31 D. Petitions filed by a certified nursing assistant or direct care worker for removal of
- 32 an employment ban issued by the department that was based on a criminal conviction
- 33 and the department's review and determination.

34 **3. Eligibility requirements for listing; certified nursing assistant.** The State
35 Board of Nursing shall adopt rules pursuant to the Maine Administrative Procedure Act
36 defining eligibility requirements for listing on the registry as a certified nursing assistant,
37 including rules regarding temporary listing of nursing assistants who have received
38 training in another jurisdiction. The rules must permit certified nursing assistants to work
39 under the supervision of a registered professional nurse in a facility providing assisted

1 ~~living housing~~ services as defined in chapter 1664 and must recognize work in those
2 facilities for the purpose of qualifying for and continuing listing on the registry. Rules
3 adopted regarding the work of certified nursing assistants in facilities providing assisted
4 ~~living housing~~ services are routine technical rules as defined by Title 5, chapter 375,
5 subchapter 2-A.

6 **3-A. Listing on the registry; direct care worker.** A direct care worker listed for
7 purposes other than a disqualifying notation may be listed on the registry as a registered
8 direct care worker for 2-year renewable periods. The department shall adopt routine
9 technical rules regarding listing direct care workers on the registry, including but not
10 limited to the following:

11 A. Direct care workers with disqualifying offenses must be listed on the registry; and

12 B. Direct care workers without disqualifying offenses who are registered for training,
13 education or compliance purposes must comply with requirements for continued
14 listing on the registry.

15 The rules may include provisions for direct care workers registered for training, education
16 or compliance purposes including provisions for the temporary listing of direct care
17 workers who received training in another jurisdiction.

18 A certified nursing assistant in good standing on the registry may qualify for registration
19 as a direct care worker.

20 **4. Department verification of credentials and training.** The department ~~shall~~ may
21 verify the credentials and training of ~~all certified nursing assistant applicants to the~~
22 assistants and registered direct care workers listed on the registry.

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

32 **5. Employment eligibility verification; certified nursing assistant.** ~~A~~ An
33 employer, including a health care institution, facility or other organization that employs
34 an individual as a certified nursing assistant, shall, before hiring a certified nursing
35 assistant, verify with the registry that the certified nursing assistant is listed as active and
36 has no disqualifying notations on the registry.

37 **5-A. Employment eligibility verification; direct care worker.** An employer,
38 including a health care institution, facility or other organization that employs an
39 individual as a direct care worker, shall verify that the direct care worker, if listed on the
40 registry, has no disqualifying notations and has complied with the training or education
41 requirements for registration, if applicable.

1 **6. Prohibited employment based on disqualifying offenses.** ~~Except as otherwise~~
2 ~~provided in this section:~~ An individual with a disqualifying offense including a
3 substantiated complaint or a disqualifying criminal conviction may not work as a certified
4 nursing assistant or a direct care worker and an employer is subject to penalties for
5 employing a disqualified or otherwise ineligible person in accordance with applicable
6 federal or state laws.

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

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

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

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

20 **6-A. Background check.** Certified nursing assistants and direct care workers are
21 subject to a background check as defined by rules adopted by the department and
22 according to the following:

23 ~~A. A training program for certified nursing assistants or direct care workers must~~
24 ~~secure and pay for a background check on each individual who applies for~~
25 ~~enrollment. The individual's current name and all previous names are subject to the~~
26 ~~background check. A copy of the background check is given to the individual who,~~
27 ~~upon successful completion of the training, submits it with an application to be listed~~
28 ~~on the registry as a certified nursing assistant or a registered direct care worker.~~

29 ~~(1) Prior to enrolling an individual, a training program for certified nursing~~
30 ~~assistants or direct care workers must notify individuals that a background check~~
31 ~~will be conducted and that certain disqualifying offenses, including criminal~~
32 ~~convictions, may prohibit an individual from working as a certified nursing~~
33 ~~assistant or a direct care worker.~~

34 ~~B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606, 9005 and Title 34-B,~~
35 ~~section 1225, licensed, certified or registered providers must secure and pay for a~~
36 ~~background check prior to hiring an individual who will work in direct contact with~~
37 ~~clients, patients or residents, including a certified nursing assistant or a direct care~~
38 ~~worker.~~

39 ~~C. The department may secure a background check on certified nursing assistants~~
40 ~~and registered direct care workers on the registry every 2 years.~~

41 ~~D. A person or other legal entity that is not otherwise licensed by the department and~~
42 ~~that employs or places a certified nursing assistant or direct care worker to provide~~

1 services allowing direct access must secure and pay for a background check in
2 accordance with state law or rules adopted by the department.

3 **6-B. Convictions within previous 10 years; impact on employment eligibility.**

4 The department shall determine the effect of a criminal conviction within the previous 10
5 years on the employability of an individual as a certified nursing assistant or direct care
6 worker based on rules adopted by the department pursuant to subsection 18.

7 **6-C. Table of crimes.** Department rules must include a table of crimes. Specific
8 crimes listed on the table must be considered substantive offenses under Title 17-A, Part
9 2 or crimes identified in federal or state law that prohibit employment of an individual
10 subject to this chapter. Convictions of specific crimes must be categorized in the table of
11 crimes as disqualifying criminal convictions or nondisqualifying criminal convictions.
12 Convictions in other jurisdictions for similar crimes must be identified as disqualifying or
13 nondisqualifying convictions.

14 A. A disqualifying criminal conviction within the previous 10 years prohibits
15 employment as a certified nursing assistant or a direct care worker.

16 (1) An individual with a disqualifying criminal conviction is subject to an
17 employment ban of 10 or 30 years. The department shall adopt rules that specify
18 disqualifying criminal convictions that prohibit employment for 10 years and
19 disqualifying criminal convictions that prohibit employment for 30 years.

20 B. Nondisqualifying criminal convictions do not prohibit employment as a certified
21 nursing assistant or a direct care worker.

22 **6-D. Petition for removal of an employment ban; criminal conviction.** Prior to
23 the expiration of an employment ban under subsection 6-C, paragraph A, subparagraph
24 (1), an individual may petition the department for removal of an employment ban that is
25 based on a disqualifying criminal conviction. Unless otherwise prohibited, removal of the
26 employment ban allows the individual to work as a certified nursing assistant or a direct
27 care worker.

28 A. No sooner than 5 years after an individual is discharged from the legal restraints
29 imposed by the criminal conviction, an individual may petition the department for
30 removal of a 10-year employment ban.

31 B. No sooner than 15 years after an individual is discharged from the legal restraints
32 imposed by the criminal conviction, an individual may petition the department for
33 removal of a 30-year employment ban.

34 C. A successful petitioner must meet the criteria established by department rules for
35 removal of an employment ban. Criteria must include but not be limited to an
36 assessment of the risk of reoffending and the conduct of the petitioner since the
37 conviction.

38 A petition for removal of an employment ban submitted by a certified nursing
39 assistant or a registered direct care worker must be denied if the conduct that led to
40 the conviction would have resulted in a lifetime ban if that conduct had been
41 investigated as a complaint that resulted in a substantiated finding under subsection
42 13.

1 D. When the department grants a petition for removal of an employment ban, the
2 individual, unless otherwise prohibited, may work as a certified nursing assistant or a
3 direct care worker. The notation of the criminal conviction remains 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; certified nursing assistant convictions prior to June 2, 2003.** The
14 restrictions on employment ~~under subsections 6 and 7~~ based on criminal convictions prior
15 to June 2, 2003 do not apply to an individual listed and active on the registry as a certified
16 nursing assistant prior to the ~~effective date of this subsection June 2, 2003~~, as long as the
17 individual meets other state and federal requirements for certified nursing assistants and
18 continues to maintain an active status by timely ~~re-registration~~ renewal as required by the
19 rules.

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

23 **10. Complaint investigation.** The department may investigate complaints and
24 allegations against certified nursing assistants or registered direct care workers of abuse,
25 neglect, exploitation or misappropriation of property of a client, patient or resident.

26 **11. Issue a decision.** After an investigation under subsection 10, the department
27 shall issue a written decision that the allegation of abuse, neglect, exploitation or
28 misappropriation of property of a client, patient or resident is unsubstantiated or
29 substantiated. Each allegation of abuse, neglect or misappropriation of property must be
30 considered separately. A substantiated finding must be based on factors established by
31 department rules. The written decision must include at least the following information:

32 A. Whether the allegation is unsubstantiated or substantiated;

33 B. A description of the factors supporting a substantiated finding;

34 C. If a notation of a substantiated finding is entered on the registry;

35 D. A description of the employment prohibition, if any; and

36 E. Notice of the right to appeal the department's decision pursuant to subsection 12.

37 **12. Right to hearing; appeal.** In accordance with department rules, a certified
38 nursing assistant or registered direct care worker may request an administrative hearing to
39 appeal a substantiated finding under subsection 11.

1 **13. Substantiated finding; lifetime employment ban.** A certified nursing assistant
2 or a registered direct care worker with a notation of a substantiated finding on the registry
3 is banned for life from employment as either a certified nursing assistant or a direct care
4 worker.

5 **14. Registration requirements; direct care workers.** An individual registered by
6 the department as a direct care worker for training, education or compliance purposes
7 must comply with requirements established by department rules, including but not limited
8 to the following:

9 A. Submission of a completed department-approved application form with required
10 documents;

11 B. Successful completion of training requirements; and

12 C. Submission to a background check, if required.

13 **15. Department review of application; decision.** After review of an application for
14 an initial or renewed registration for a direct care worker for training, education or
15 compliance purposes, the department shall render a written decision to either deny or
16 approve the application. The decision must be based on factors established by department
17 rules and the factors must be included in the written decision.

18 A. A department-issued registration for a direct care worker for training, education
19 or compliance purposes is for a term of 2 years. The issued date and the expiration
20 date must be on the registration.

21 **16. Renewal of registration.** Prior to expiration of a direct care worker's
22 registration for training, education or compliance purposes, the direct care worker shall
23 secure a department-issued renewed registration.

24 **17. Failure to renew registration prior to expiration.** Upon expiration of the 2-
25 year registration under subsection 15, a direct care worker registered for training,
26 education or compliance purposes pursuant to subsection 14 who fails to secure a
27 department-issued renewed registration will receive a notation on the registry that may
28 disqualify the direct care worker for employment in the capacity for which the training,
29 education or compliance purposes were required. A direct care worker who elects not to
30 renew a registration remains eligible for employment as a direct care worker in a capacity
31 that does not require registration-level training or education pursuant to subsection 14,
32 paragraph B.

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

36 **Sec. 10. 22 MRSA §1812-J,** as amended by PL 2011, c. 257, §§3 to 8, is
37 repealed.

38 **Sec. 11. 22 MRSA §2137, first ¶,** as enacted by PL 2009, c. 621, §5, is amended
39 to read:

1 Beginning October 1, 2010, a temporary nurse agency ~~shall obtain~~, prior to hiring,
2 employing or placing an individual who will work in direct contact with a consumer;
3 ~~criminal history record information on that individual, including, or who has direct access~~
4 ~~to a consumer's property, personally identifiable information, financial information or~~
5 ~~resources, shall obtain a comprehensive background check in accordance with applicable~~
6 ~~federal and state laws. The comprehensive background check must include, at a~~
7 minimum, criminal history record information from the Department of Public Safety,
8 State Bureau of Identification. The temporary nurse agency shall pay for the criminal
9 background check required by this section.

10 **Sec. 12. 22 MRSA §2138**, as amended by PL 2011, c. 257, §16, is repealed and
11 the following enacted in its place:

12 **§2138. Prohibited employment based on disqualifying offenses**

13 A temporary nurse agency shall conduct a comprehensive background check for
14 direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in
15 accordance with state law and rules adopted by the department and is subject to the
16 employment restrictions set out in section 1812-G and other applicable federal and state
17 laws when hiring, employing or placing direct access personnel including a certified
18 nursing assistant or a direct care worker.

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

22 **Sec. 13. 22 MRSA §2149-A, sub-§2**, as amended by PL 2011, c. 257, §17, is
23 further amended to read:

24 **2. Prohibited employment based on disqualifying offenses.** A home health care
25 provider shall ~~obtain criminal history record information about applicants for positions as~~
26 ~~unlicensed assistive personnel as defined in section 1717, subsection 1, paragraph D and~~
27 ~~may not hire an individual who:~~ conduct a comprehensive background check for direct
28 access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance
29 with state law and rules adopted by the department and is subject to the employment
30 restrictions set out in section 1812-G and other applicable federal and state laws when
31 hiring, employing or placing direct access personnel including a certified nursing
32 assistant or a direct care worker.

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

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

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

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

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

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

8 **Sec. 14. 22 MRSA §7706, first ¶**, as reallocated by RR 2009, c. 2, §61, is
9 amended to read:

10 Beginning October 1, 2010, a facility or health care provider subject to the licensing
11 or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a
12 hospice provider subject to chapter 1681 ~~shall obtain~~, prior to hiring an individual who
13 will work in direct contact with a consumer, ~~criminal history record information on that~~
14 ~~individual, including, or who has direct access to a consumer's property, personally~~
15 identifiable information, financial information or resources, shall obtain a comprehensive
16 background check in accordance with applicable federal and state laws. The
17 comprehensive background check must include, at a minimum, criminal history record
18 information from the Department of Public Safety, State Bureau of Identification. The
19 entity seeking to employ the individual shall pay for the criminal background check
20 required by this section.

21 **Sec. 15. 22 MRSA §7851, sub-§4**, as enacted by PL 2003, c. 634, §6, is amended
22 to read:

23 **4. Prohibited employment based on disqualifying offenses.** A licensed assisted
24 housing program ~~may not hire as unlicensed assistive personnel as defined in section~~
25 ~~1717, subsection 1, paragraph D an individual who is prohibited from employment as a~~
26 ~~certified nursing assistant pursuant to section 1812-G, subsection 6 or 7~~ must conduct a
27 comprehensive background check for direct access personnel, as defined in section 1717,
28 subsection 1, paragraph A-2, in accordance with state law and rules adopted by the
29 department and is subject to the employment restrictions set out in section 1812-G and
30 other applicable federal and state laws when hiring, employing or placing direct access
31 personnel including a certified nursing assistant or a direct care worker.

32 The department may adopt rules necessary to implement this subsection. Rules adopted
33 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
34 subchapter 2-A.

35 **Sec. 16. 22 MRSA §8606**, as amended by PL 2011, c. 257, §18, is further
36 amended to read:

37 **§8606. Prohibited employment based on disqualifying offenses**

38 **1. Prohibited employment based on disqualifying offenses.** An adult day care
39 program ~~shall obtain criminal history record information about applicants for positions as~~
40 ~~unlicensed assistive personnel as defined in section 1717, subsection 1, paragraph D and~~
41 ~~may not hire an individual who:~~ conduct a comprehensive background check for direct

1 access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance
2 with state law and rules adopted by the department and is subject to the employment
3 restrictions set out in section 1812-G and other applicable federal and state laws when
4 hiring, employing or placing direct access personnel, including, but not limited to, a
5 certified nursing assistant or a direct care worker.

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

10 ~~B.— Has been convicted in a court of law of a crime involving abuse, neglect or~~
11 ~~misappropriation of property in a health care setting; or~~

12 ~~C.— Has a prior criminal conviction within the last 10 years of:~~

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

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

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

22 **Sec. 17. 22 MRSA §9005**, as enacted by PL 2011, c. 444, §1, is amended to read:

23 **§9005. Prohibited employment based on disqualifying offenses**

24 **1. Prohibited employment based on disqualifying offenses.** A veterans' adult day
25 health care program shall ~~obtain criminal history record information about applicants for~~
26 ~~positions as unlicensed assistive personnel as defined in section 1717, subsection 1,~~
27 ~~paragraph D and may not hire an individual who:~~ conduct a comprehensive background
28 check for direct access personnel, as defined in section 1717, subsection 1, paragraph
29 A-2, in accordance with state law and rules adopted by the department and is subject to
30 the employment restrictions set out in section 1812-G and other applicable federal and
31 state laws when hiring, employing or placing direct access personnel, including, but not
32 limited to, a certified nursing assistant or a direct care worker.

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

37 ~~B.— Has been convicted in a court of law of a crime involving abuse, neglect or~~
38 ~~misappropriation of property in a health care setting; or~~

39 ~~C.— Has a prior criminal conviction within the last 10 years of:~~

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

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

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

10 **Sec. 18. 34-B MRSA §1225, first ¶**, as reallocated by RR 2009, c. 2, §94, is
11 amended to read:

12 Beginning October 1, 2010, a facility or health care provider subject to the licensing
13 provisions of section 1203-A shall obtain, prior to hiring an individual who will work in
14 direct contact with a consumer, ~~criminal history record information on that individual,~~
15 ~~including, or who has direct access to a consumer's property, personally identifiable~~
16 ~~information, financial information or resources, shall obtain a comprehensive background~~
17 ~~check in accordance with applicable federal and state laws. The comprehensive~~
18 ~~background check must include, at a minimum, criminal history record information from~~
19 ~~the Department of Public Safety, State Bureau of Identification. A facility or provider~~
20 ~~licensed under section 1203-A is subject to the employment restrictions set out in Title~~
21 ~~22, section 1812-G and other applicable federal and state laws when employing direct~~
22 ~~access personnel, as defined in section 1717, subsection 1, paragraph A-2. The facility or~~
23 ~~health care provider shall pay for the criminal background check required by this section.~~

24 **Sec. 19. Department implementation.** The Department of Health and Human
25 Services shall begin registering direct care workers for training, education or compliance
26 purposes and listing them on the registry established pursuant to the Maine Revised
27 Statutes, Title 22, section 1812-G after the department adopts rules pursuant to Title 22,
28 section 1812-G.

29 SUMMARY

30 This bill amends the Maine Registry of Certified Nursing Assistants and Direct Care
31 Workers in the following ways.

32 1. It clarifies the circumstances under which a person employed as a direct care
33 worker is listed on the registry.

34 2. It amends the requirements for listing certified nursing assistants and direct care
35 workers.

36 3. It requires employers to verify that an individual listed on the registry is eligible
37 for employment as a certified nursing assistant or direct care worker.

38 4. It consolidates information and aligns language used across programs based on
39 federal and state laws related to background checks, disqualifying offenses, prohibited

1 employment, criminal convictions and substantiated findings related to complaints of
2 abuse, neglect or misappropriation of property.

3 5. It describes the process of identifying the disqualifying offenses that adversely
4 affect an individual's eligibility for employment as a certified nursing assistant or direct
5 care worker.

6 6. It establishes the department's authority to adopt eligibility for listing on the
7 registry and other requirements by rule.

8 7. It establishes statutory background check requirements and employment
9 restrictions based on disqualifying offenses, including criminal convictions.

10 8. It replaces current ambiguous statutory language that bases employment bans on
11 the length of the sentence that may be imposed with a requirement that the department
12 adopt by rule a table of named crimes that form the rational basis for employment bans
13 based on convictions.

14 9. It requires the department to adopt rules that list nondisqualifying criminal
15 convictions that do not ban employment leaving hiring decisions to employer discretion.

16 10. It provides that disqualifying criminal convictions result in 10-year or 30-year
17 employment bans and that the length of an employment ban may be shortened by filing a
18 petition with the department to lift an employment ban prior to its expiration.

19 11. It consolidates complaint investigation requirements.