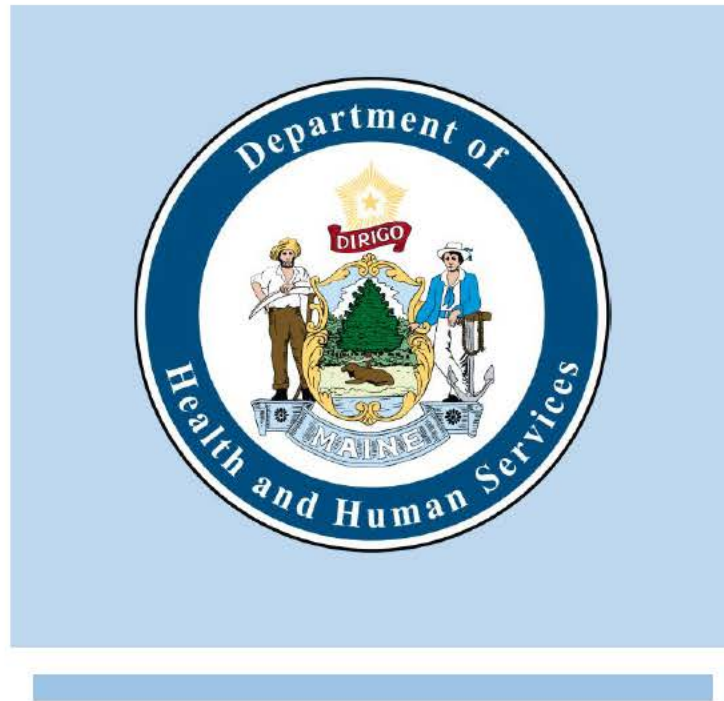


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## **Review of the Department's Statutory and Regulatory Authority Over Personal Care Agencies**

**This report is submitted pursuant to Resolves 2021, Ch. 117:**

*Resolve, Directing the Department of Health and Human Services To Conduct a Review of Rules Governing In-home Personal Care Assistance Services*

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**Winter 2022**

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## Glossary

ADL	Activities of Daily Living
APS	Adult Protective Services
CNA	Certified Nursing Assistant
DHHS	Department of Health and Human Services
DLC	Division of Licensing and Certification
EVV	Electronic Visit Verification
IADL	Instrumental Activities of Daily Living
LTCOP	Long-Term Care Ombudsman Program
LTSS	Long-term Services and Supports
MBM	MaineCare Benefits Manual
MRS	Maine Revised Statutes
OADS	Office of Aging and Disability Services
OMS	Office of MaineCare Services
PSS	Personal Support Specialist

## Executive Summary

Resolves 2021, Ch. 117 requires the Maine Department of Health and Human Services (the Department or DHHS) to review and report on its oversight and enforcement authority over personal care agencies required to be registered pursuant to 22 MRS §1717. This review complements broader system reforms aimed at expanding access and ensuring quality of home and community-based services (HCBS). Related initiatives include but are not limited to the following:

- Improving training and certification pathways for personal support specialists to increase portability and advancement of Maine’s direct care workforce.
- Expanding the pool of available direct care workers and strengthening retention strategies such as providing recruitment bonuses to frontline workers and supervisors in home and community-based services.
- Leveraging Electronic Visit Verification (EVV) data and processes to support program quality monitoring efforts including worker retention and areas related to fiscal and program integrity. An EVV system is used to verify the date, time, and site of a provider visit, as well as services provided and who provided the service to the MaineCare member in the member's home or in a community-based services setting.

Oversight responsibilities of personal care agencies rests with several offices within the Department as well as with other external agencies. Specific authority depends in part on whether the agency serves MaineCare or State-funded program participants.

This report outlines the current regulatory requirements governing personal care agencies and provides a summary of stakeholder work to date. Additional stakeholder engagement is required to ensure that any new requirements advance quality in a meaningful way without unnecessarily restricting the supply of personal care services. In particular, targeted outreach efforts are needed to ensure that the voices of program participants are heard.

Preliminary findings indicate a need for stronger statutory authority for oversight and quality improvement, but additional analysis and engagement is required regarding specific strategies. The Department is committed to strengthening oversight of personal care services and will continue working with stakeholders to offer a detailed statutory framework for consideration by the 131<sup>st</sup> Legislature.

## Introduction

Resolves 2021, Ch. 117 requires the Department of Health and Human Services (the Department or DHHS) to review and report on its oversight and enforcement authority over personal care agencies required to be registered pursuant to 22 MRS §1717. The scope of this review does not include home health agencies that are licensed pursuant to 22 MRS §§2141-2150.<sup>1</sup> While home health agencies employ home health aides who may provide some of the same types of assistance as registered personal care agencies and are part of the overall service delivery continuum, agencies that employ home health aides also provide nursing, therapies and related services which require licensure of the agency.<sup>2</sup>

Personal care agencies provide in-home assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL). Examples of ADL and IADL activities include help with bathing, dressing, meal preparation, and other types of daily care. Individuals providing these services are referred to by several different job titles, including but not limited to direct care workers, unlicensed assistive personnel, personal care attendants (PCAs), or personal support specialists (PSSs).

The Department views this opportunity to review the adequacy of current statutory and regulatory authority as consistent and timely with broader system reforms impacting the delivery of long-term services and supports (LTSS) and supporting the continued growth of home and community-based services. Investing in home and community-based services serves several complementary goals: it respects the preferences of individuals who choose to receive services in their home and communities, helps assure compliance with the community integration mandate established by the United States Supreme Court's *Olmstead* decision, and helps states to reduce costs on more expensive avoidable institutional services. To achieve these goals, it is essential that individuals needing these services have confidence in the quality of care being delivered, but the Department's current statutory authority to oversee registered personal care agencies is extremely limited.

To assist the Department in this work, and as required by Resolves 2021, Ch. 117, the Department hosted two opportunities in December 2021 for stakeholders to provide input. As this work proceeds, the Department needs to continue to seek input from a wide range of stakeholders, including individuals receiving services, providers, advocates, and other interested

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<sup>1</sup> Licensed home health agencies may also be Medicare-certified which requires the agency to meet certain federal requirements for serving Medicare beneficiaries.

<sup>2</sup> Home health services are the in-home provision of professional nursing services, physical and/or occupational therapy, speech pathology, medical social work, nutritionist services and the supervised services of licensed practical nurses, home health aides and/or certified nurse assistants providing treatment and rehabilitation for illness or disability, aimed at restoring or maintaining independent functioning. See 10-144 CMR, Chapter 119 (Licensing and Functioning of Home Health Care Services).

parties to establish an appropriate balance between ensuring quality and protecting access to these essential community services.

This report provides background on the current regulatory structure for oversight of personal care agencies and describes the analysis and stakeholder input conducted over the last few months. It also sets forth a framework for advancing this work in the coming year.



## DHHS Regulatory Oversight

Responsibility for oversight of personal care agencies rests with several offices and divisions of the Department. Specific authority depends in part on whether the agency serves MaineCare<sup>3</sup> or State-funded program participants.

State law, 22 MRS §1717, establishes registration requirements for all personal care agencies regardless of payments sources for the agency (e.g., whether services are reimbursed through MaineCare, State contract, or private pay). Some required worker qualifications such as training standards differ based on a registered personal care agency's source of payment for its services. This section describes the various roles and responsibilities of the Department for oversight activities and the relevant statutory and regulatory authorities governing these agencies.

### The Division of Licensing and Certification, Maine DHHS

The Division of Licensing and Certification (DLC) manages and oversees the registration process for all personal care agencies operating in Maine. Registration through DLC is required of all personal care agencies, regardless of the payment source for services (e.g., whether clients pay privately for services or services are reimbursed through MaineCare and/or State-funded programs). The definition of a personal care agency is a business entity that is not otherwise licensed by DLC that hires and employs individuals who work in direct contact with clients to provide assistance with ADLs and related tasks in places where the client resides.<sup>4</sup> Registration requires submission of an application and an annual registration fee of twenty-five dollars. As of December 30, 2021, there were 194 registered personal care agencies in Maine.

Pursuant to state law, the agency must conduct a comprehensive background check on staff with direct access to property, personally identifiable information, financial information or resources, or physical access to an individual served by the agency. These staff are subject to the

<sup>3</sup> MaineCare is Maine's state-specific name for its Medicaid program.

<sup>4</sup> See 22 MRS §1717(1)(c) for the complete legislative definition of a personal care agency.

### Key DLC Authorities

#### Statutory Citations:

22 MRS §1717 (Registration of PCA Agencies)

22 MRS §1812-G (CNA and Direct Care Worker Registry)

22 MRS Chapter 1691 (Maine Background Check Center Act)

#### Regulatory Citations:

10-144 CMR, Chapter 129: Rules and Regulations Governing In-Home Personal Care and Support Workers

10-144 CMR, Chapter 128: Certified Nursing Assistant and Direct Care Worker Registry Rule

10-144 CMR, Chapter 60: Maine Background Check Center Rule



employment restrictions set out in 22 MRS §1812-G and other applicable federal and state laws.<sup>5</sup> DLC administers the Certified Nursing Assistant (CNA) and Direct Care Worker Registry. This registry lists CNAs who, through training, competency testing, and clinical work experience, are authorized to work as CNAs in Maine. It also lists CNAs and direct care workers who have been found to have abused, neglected, or misappropriated the property of a person in their care.

22 MRS §1717 does not require direct care workers employed by registered personal care agencies to complete training; this means that direct care workers providing personal care for private pay individuals are not required by statute or regulation to meet minimum training or competency standards. However, training and certification as a Personal Support Specialist (PSS) is required for workers providing services reimbursed by MaineCare and State-funded programs. DLC administers the PSS certifications and holds the PSS training curriculum. Individuals wishing to provide PSS training must first receive a Certificate of Approval from DLC, obtained by submitting an attestation form showing that they meet the criteria to conduct the DLC-approved curriculum. The PSS curriculum is currently under review as part of the Department's Portability and Advancement initiative.

## **The Office of MaineCare Services, Maine DHHS**

The Office of MaineCare Services (OMS) is responsible for administering MaineCare, the Medicaid program in Maine. This includes overall responsibility for setting provider qualifications and reimbursement policies for MaineCare providers, including personal care agencies that serve MaineCare members. Other responsibilities include enrollment of qualified providers, managing the Medicaid claims system for reimbursement of services, and overseeing program integrity activities which monitor and safeguard the MaineCare program against fraud, abuse, and waste through an audit process. As of November 2021, 103 registered personal care agencies were enrolled as MaineCare providers, about half of all registered agencies.

OMS also oversees implementation of new federal requirements mandating the use of an Electronic Visit Verification (EVV) system for certain providers who offer in-home services. An EVV system is used to verify the date, time, and site of a provider visit, as well as services provided and who provided the service to the MaineCare member in the member's home or in a community-based services setting. Personal care agencies serving MaineCare members were required to be in compliance with EVV requirements by January 1, 2021. The data generated by EVV offers great potential for development of home care quality measures that are meaningful to individuals receiving services, such as timeliness and length of visits and turnover among workers. EVV also will be valuable in program integrity efforts.

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<sup>5</sup> See, e.g., 22 MRS Ch 1691, Maine Background Check Center Act.

OMS works in close partnership with DLC and the Office of Aging and Disability Services (OADS) in the delivery of oversight and compliance activities related to the quality of personal care services. The following MaineCare programs include agency-delivered personal care services as covered benefits:<sup>6</sup>

- **MaineCare Benefits Manual (MBM) Section 96:** Private Duty Nursing and Personal Care Services
- **MBM Section 18:** Home and Community-Based Services for Adults with Brain Injury
- **MBM Section 19:** Home and Community Benefits for the Elderly and Adults with Disabilities
- **MBM Section 20:** Home and Community Based Services for Adults with Other Related Conditions

## The Office of Aging and Disability Services, Maine DHHS

In partnership with OMS, OADS also oversees the administration of MaineCare program rules for Maine’s long-term services and supports system, including oversight of federally required quality assurances for waiver services.<sup>7</sup> Activities include data and compliance reviews, site visits, and health and welfare monitoring. OADS also works with MaineCare to review applications and provides training and support of new providers interested in serving MaineCare members.

OADS oversees the State-funded Home-based Care Program that provides a range of in-home supports for older adults and adults with disabilities.<sup>8</sup> The Department, through OADS, contracts with a single statewide entity to administer this program. SeniorsPlus Care Coordination is the current vendor of this service.<sup>9</sup> As part of its contractual responsibilities, SeniorsPlus Care Coordination contracts with a range of providers to provide covered services and monitors performance of those providers to ensure compliance with regulatory requirements. As of

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<sup>6</sup> Personal care attendants may be employed by other types of organizations and provide services in a variety of settings (for example, employed by a residential care facility) but this report is limited to oversight of personal care services delivered by personal care agencies. Personal care services can also be provided as part of participant-directed services but those services are not included as part of this report as they generally do not involve agency-delivered services.

<sup>7</sup> While these assurances apply specifically to Section 19 waiver services and not to Section 96 (a Medicaid State plan non-waiver services), it should be noted that personal care agencies enrolled with MaineCare often provide services both under Section 19 and Section 96.

<sup>8</sup> 10-149 Ch. 5, Office of Aging and Disability Services Policy Manual, Section 63.

<sup>9</sup> Formerly known as EIM or Elder Independence of Maine.

### Key OADS Authorities

#### Statutory Authorities:

22 MRS, Chapter 1621 (In-home and Community Support Services)

22 MRS, Chapter 958-A (Adult Protective Services)

#### Regulatory Authorities:

10-149 CMR, Chapter 1, Adult Protective Services System

10-149 CMR Chapter 5, OADS Policy Manual, Section 63 In-Home and Community Support Services for Elderly and Other Adults

November 2021, 26 registered personal care agencies are contracted to provide services under this program. Many of these agencies are also enrolled as MaineCare providers.

OADS administers the Adult Protective Services (APS) program, which receives and investigates reports of suspected abuse, neglect, or exploitation of incapacitated or dependent adults. Pursuant to 22 MRS §3473(1)(D), the APS program is in the process of expanding its registry of individuals with substantiated findings of abuse, neglect, or exploitation to include reports involving all incapacitated and dependent adults.

## External Agencies with Oversight Responsibilities

In addition to the Department, several other organizations have certain oversight and enforcement responsibilities that apply to personal care agencies and the services they provide.

### The Maine Long-Term Care Ombudsman Program

The Maine Long-Term Care Ombudsman Program (LTCOP) has oversight responsibility to resolve problems related to the health, safety, and welfare of facility residents and recipients of services provided by home-based care programs, licensed home health agencies, certified homemaker agencies, and licensed adult day providers. This authority granted the ombudsman program is federally mandated for nursing facility services, and Maine law<sup>10</sup> extends oversight authority to assisted living, residential care, and in-home care services.

### State-wide Service Coordination Agencies

The Department, with oversight by OADS, contracts with a state-wide Service Coordination Agency to administer the State-funded Home-based Care Program. This contract is currently held by SeniorsPlus Care Coordination.<sup>11</sup> As part of its responsibilities, SeniorsPlus Care Coordination manages the provider network for all services provided under Section 63 of the OADS Policy Manual. This means that personal care agencies providing services under Section 63 contract directly with SeniorsPlus Care Coordination and SeniorsPlus Care Coordination is responsible for ensuring provider compliance with Section 63 regulations.

In addition, both SeniorsPlus Care Coordination and Alpha One provide service coordination activities for individuals receiving agency-directed personal care services under MaineCare programs. As described above, personal care agencies serving MaineCare members hold a provider contract with MaineCare, and the state-wide Service Coordination Agencies are responsible under MaineCare regulations for helping members find available staffing and monitoring the provision of care. This includes assessing the member/provider relationship, including whether personal care staff duties are being performed satisfactorily; documenting receipt, investigation, and resolution of all complaints from any party related to services; responding timely to assist the member with resolving problems and other concerns; and making referrals to Adult Protective Services, DLC, or MaineCare as appropriate.

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<sup>10</sup> 22 MRSA §5107-A

<sup>11</sup> Formerly known as EIM or Elder Independence of Maine.

## **The Maine State Board of Nursing**

The mission of the Maine State Board of Nursing is to protect the public health and welfare in the area of nursing practice. The State Board of Nursing establishes nurse delegation regulations which define which tasks nurses may delegate to non-licensed and non-certified staff with oversight by the nurses. These rules impact the scope of practice for home health aides and direct care staff of personal care agencies.

## **The Office of the Maine Attorney General**

The Office of the Attorney General Healthcare Crimes Unit (the State's designated Medicaid Fraud Control Unit) is primarily federally funded and charged with investigating and prosecuting MaineCare fraud as well as abuse, neglect, or financial exploitation occurring in MaineCare facilities or committed by MaineCare providers or their employees.

## **Local Law Enforcement**

Depending on the nature of the allegation, a complaint or referral may be made to law enforcement for investigation.



## Preliminary Findings

In response to Resolves 2021, ch. 117, the Department has initiated a review of its current regulatory and oversight authorities. The Department also held two stakeholder events to gather preliminary concerns and suggestions for improving the quality of personal care services. Both stakeholder events were held virtually due to the public health emergency.

The first was a meeting of key stakeholders representing individuals who receive services, providers, and advocates on December 2, 2021. The second was a public listening session on December 14, 2021, which was open to anyone who chose to participate. The event was publicized by notice through the OADS listserv as well as through partner organizations. See Appendix II for more information on both meetings.

Some of the main topics raised and discussed included the following regulatory and oversight issues:

- The types of concerns that individuals had about the quality of personal care services;
- Ways to improve the quality of the service delivery;
- Suggestions for improving provider accountability; and
- Information and data that would help inform people on quality metrics when selecting an agency.

## Emerging Themes from this Work

This section summarizes stakeholder feedback and preliminary analysis conducted by the Department in reviewing the statutory and regulatory framework governing oversight of personal care agencies.

### o **Importance of training and ensuring quality of personal care staff**

The need to provide supported opportunities for more training was raised in several different contexts. This included training opportunities for individuals interested in starting a personal care agency, for new providers enrolling with MaineCare, and for frontline staff delivering services. Concerns regarding the quality of personal care services tended to fall into several different areas. Some involved the skill sets and competency of workers or agency staff. Others involved professionalism, such as no-shows or maintaining appropriate boundaries between the worker and the person being served. Another area raised involved preventing and addressing acts of wrongdoing, such as theft and misappropriation of property.

Training was raised as a means of addressing several different quality concerns at the agency and worker level, and stakeholders discussed the need to support training opportunities for agencies and workers. Suggestions included looking at strategies to allow for reimbursement of training time to enhance the competence of staff and to provide opportunities for additional specialty training(s) to increase the quality of support for those with acute or complex needs. As workers are generally working alone and may have limited ability to communicate with other staff, some stakeholders felt that more specialty training would benefit both the worker and the person receiving services.

Although publicly funded programs require an eight-hour orientation prior to any staff providing services, the rules generally do not set any requirements around content and topics. Some stakeholders stressed the importance of ensuring that new staff receive a high-quality orientation, particularly those who have not completed the required curriculum to be a personal support specialist.<sup>12</sup>

*Other training and competency related topics included:*

- Clarifying the scope of practice for staff providing personal care services. This would require coordination with the Maine State Board of Nursing.
- The importance of providing culturally appropriate care and ensuring that training and service delivery meets the needs of people receiving services.
- The need to offer training in different languages.
- The need to develop competency-based training that allows agencies and workers more flexibility to serve and work across populations and settings.
- The need to ensure there are adequate standards and qualifications for trainers.
- The need to improve the recruiting and onboarding of new staff (for example, safety and infection control).
- Establishing qualifications for supervisors and ensuring regular communication between supervisors and staff.
- The need for enhanced training on establishing appropriate boundaries between staff and clients.
- Including training on behavioral health.

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<sup>12</sup> MaineCare and State-funded rules require agency staff providing personal care services to enroll in a PSS course within sixty days of hire and complete the training within ninety days. Some stakeholders noted that requiring completion of PSS training prior to providing MaineCare or State-funded services would negatively impact staffing capacity for personal care services.

- Consider setting minimum training and competency requirements for agencies and direct care workers serving private pay individuals.
- **Strengthening the administrative process for establishing a personal care agency**

The current registration requires an individual to pay a fee of twenty-five dollars and complete an application. It was recommended that these minimal standards be strengthened to help ensure that individuals responsible for an agency understand what is required to provide personal care services and have general business experience and capacity necessary to operate a business. Several stakeholders suggested that owners and operators of personal care agencies would benefit from training or guidance on how to operate a business and the responsibilities for providing personal care services, including all legal requirements. For those enrolling as MaineCare providers, it was recommended that the Department require them to be trained on all program rules and regulations relevant to personal care providers.

*Related issues included:*

- Agencies that typically run “paycheck to paycheck,” meaning that they do not have sufficient financial stability or reserves to timely pay workers should the provider encounter issues with submitting and correcting its Medicaid claims or have other delays in their payment.
  - Lack of bonding or liability insurance in case of adverse events impacting operations.
  - The need for clear standards regarding the safeguarding of client records.
- **Clarifying and strengthening the Department’s investigative and enforcement authority over quality issues and complaints**

The current ability of the Department to investigate complaints is driven primarily by the type of complaint and the funding source for that service. Different DHHS offices may have different levels of authority based on these factors which can create barriers to identification of systemic issues. Complaints received by DLC, with the exception of the requirements of statute and rule (e.g., unregistered agencies or failure to complete a comprehensive background check), are generally referred to APS, MaineCare, the Office of the Attorney General, or law enforcement. Generally, there are limitations to the Department’s authority to create a corrective action plan for agencies who are the subject of significant or multiple complaints. It was also noted that although an agency may

terminate a worker based on a complaint, the absence of an external investigation may result in that same worker being hired at another agency. Several stakeholders noted that during the time it takes to complete an investigation, the person may continue to work, sometimes in a different agency potentially placing members at a healthy and safety risk.

*Related issues included:*

- No clear place to report quality of care complaints that do not rise to the level of reporting to APS or law enforcement.
- Lack of authority on the part of the Department to investigate and follow through on complaints.
- Clarifying which types of complaints go where; for example, a report can be reported by a program participant or their family, a direct care worker, or the agency itself, which can make reporting channels confusing.
- Ensuring that all providers understand their obligations as mandated reporters to APS for allegations of suspected abuse, neglect or exploitation.

One suggestion was to create standards requiring agencies to have policies and procedures in place for complaint resolution as part of the administrative requirements for operating an agency. It was also suggested that the Department consider creating a centralized reporting depository of complaints across offices that would allow for a comprehensive view of provider complaints and/or facilitate identification of systemic quality issues across agencies that would indicate a need for additional training or quality improvement.

○ **Improving compliance with required background checks and training requirements**

Maine law and statute requires that personal care agencies conduct a criminal background check on any staff with access to the property, personally identifiable information, financial information or resources, or physical access to an individual served by a provider. MaineCare and State-funded LTSS regulations also require criminal background and registry checks as part of provider qualifications. In certain cases, staff may be prohibited from employment. Monitoring of this requirement is primarily through program integrity or audit activities which are based on a sample of the overall number of agencies reimbursed through publicly funded programs. Some stakeholders noted that there is no apparent oversight of this requirement for agencies not enrolled in MaineCare (i.e., private pay).

- **Improving information for the public to help choose a personal care agency**

While OMS and OADS monitor provider performance for compliance with program regulations, findings are not available to the public and may not be directly relevant to factors that are important to a person trying to choose an agency. MaineCare providers are also only a subset of all registered providers.

Some stakeholders suggested that the Department consider the development of meaningful quality measures or quality rating system that could be reported to the public that could assist people in making informed decisions in selecting an agency. Suggestions included looking at the number and types of complaints as a percentage of the clients served and/or units billed; the number of substantiated complaints for abuse, neglect, or exploitation involving staff; and other characteristics of the agency such as length of time in operation and number of staff. Quality of experience measures, such as reliability of service delivery, should be included in any rating system.



## Next Steps

This report summarizes the current regulatory requirements governing personal care agencies and identifies opportunities to improve quality of service delivery and beneficiary experience moving forward. To ensure that the benefits of any new requirements result in meaningful quality improvements without adding administrative burdens that unnecessarily restrict the supply of personal care services, the Department recommends that further analysis is needed with continuing input from stakeholders.

Preliminary findings indicate general agreement that stronger oversight authority is warranted, but additional analysis and engagement is required regarding specific strategies. For example, several options are available for strengthening the current administrative standards for establishing and operating an agency, ranging from including additional requirements to the current registration process to moving to a licensing standard.<sup>13</sup> Licensing allows for greater authority, including the ability to establish a probationary period of performance and to take regulatory action on the license, including fines and sanctions.<sup>14</sup> Requiring licensure, however, is a significant statutory change that would likely add costs and administrative burdens to both the providers and the Department and merits further evaluation and on-going stakeholder input about the potential impact of such a change. It is important to understand how this, or any other potential changes, would impact those receiving and providing services.

It is also important to coordinate this work with several other initiatives that are on-going impacting these providers and the direct care workforce. These include but are not limited to the following examples:

- Leveraging EVV data and processes to support program quality monitoring efforts including areas related to fiscal and program integrity.
- Improving training and certification pathways for personal support specialists with a common goal of ensuring that adequate standards and rules are in place to support providers and direct care staff and to protect the health and well-being of service recipients to increase portability and advancement of Maine's direct care workforce.
- Expanding the pool of available direct care workers and strengthening retention strategies such as providing recruitment bonuses to frontline workers and supervisors in home and community-based services.

For these reasons, the Department believes it is premature to make specific statutory recommendations at this time but intends to continue to engage stakeholders in 2022, with more

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<sup>13</sup> In the absence of national standards, administrative requirements for personal care agencies vary widely among states, with a lack of uniformity in their requirements and standards.

<sup>14</sup> See, e.g., Title 5 MRS, Subchapter 5.

targeted outreach efforts to ensure that the voices of program participants are heard. The Department anticipates offering a statutory and budgetary proposal to strengthen home care oversight to the 131<sup>st</sup> Legislature.

## Appendix I: 22 MRSA §1717.

### Registration of personal care agencies and placement agencies

#### §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. [PL 1997, c. 716, §1 (NEW).]

A-1. "Direct access" means access to the property, personally identifiable information, financial information or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other individual served by a provider subject to this chapter. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

A-2. "Direct access personnel" means individuals employed in positions that have direct access. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

A-3. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [PL 2015, c. 196, §1 (NEW); PL 2015, c. 299, §1 (NEW).]

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. [PL 1997, c. 716, §1 (NEW).]

B-1. "Home care services" means assistance with activities of daily living and related tasks. [PL 2007, c. 324, §2 (NEW).]

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 Regulatory Services and that hires and employs direct access personnel or individuals who work in direct contact with clients, patients or residents 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 direct access personnel or individuals who work in direct contact with clients, patients or residents to provide care for that individual is not a personal care agency, except when permitted by rule of the department. [PL 2015, c. 196, §2 (AMD); PL 2015, c. 299, §2 (AMD).]

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 individual or of securing or attempting to secure a home care services worker for a consumer.

"Placement agency" includes, but is not limited to, employment agencies, nurse registries and any other entity that places a home care services worker for hire by a consumer in that consumer's temporary or permanent residence for purposes of providing home care services. [PL 2007, c. 324, §2 (NEW).]

D. [PL 2015, c. 196, §3 (RP); PL 2015, c. 299, §3 (RP).]

[PL 2015, c. 196, §§1-3 (AMD); PL 2015, c. 299, §§1-3 (AMD).]

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

[PL 2015, c. 494, Pt. A, §15 (RPR).]

**3. Prohibited employment based on disqualifying offenses.** A personal care agency or a placement agency shall conduct a comprehensive background check for direct access personnel in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.

A. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]

B. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]

C. [PL 2015, c. 196, §5 (RP); PL 2015, c. 299, §5 (RP).]

[PL 2015, c. 196, §5 (AMD); PL 2015, c. 299, §5 (RPR).]

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

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

[PL 2015, c. 196, §6 (NEW); PL 2015, c. 299, §6 (NEW).]

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

A. A person who operates a personal care agency or placement agency without registering with the department as required by subsection 2 commits a civil violation for

which a fine of not less than \$500 per day of operation but not more than \$10,000 may be adjudged. Each day of violation constitutes a separate offense. [PL 2007, c. 324, §2 (AMD).]

B. A person who operates a personal care agency or placement agency in violation of the employment prohibitions in subsection 3 or 3-A commits a civil violation for which a fine of not less than \$500 per day of operation in violation but not more than \$10,000 per day may be adjudged, beginning on the first day that a violation occurs. Each day of violation constitutes a separate offense. [PL 2015, c. 196, §7 (AMD); PL 2015, c. 299, §7 (AMD).]

[PL 2015, c. 196, §7 (AMD); PL 2015, c. 299, §7 (AMD).]

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

[PL 2007, c. 324, §2 (NEW).]

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

[PL 2007, c. 324, §2 (NEW).]

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

[PL 2007, c. 324, §2 (NEW).]

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

[PL 2007, c. 324, §2 (NEW).]

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

A. An application for registration of a personal care agency or placement agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules. [PL 2007, c. 324, §2 (NEW).]

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

[PL 2007, c. 324, §2 (NEW).]

C. To inspect a personal care agency or placement agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. [PL 2007, c. 324, §2 (NEW).]

[PL 2007, c. 324, §2 (NEW).]



**10. Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered personal care agency or placement agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this section. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without being registered.  
[PL 2007, c. 324, §2 (NEW).]

**11. Noninterference.** An owner or operator of an unregistered personal care agency or placement agency may not interfere with, impede or obstruct an investigation by the department, including but not limited to interviewing persons receiving services or persons with knowledge of the agency.  
[PL 2007, c. 324, §2 (NEW).]

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

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.  
[PL 2007, c. 324, §2 (NEW).]

**13. Suspension or revocation of registration.** A personal care agency or placement agency found to be in violation of this section may have its registration to operate as a personal care agency or placement agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a personal care agency or placement agency.  
[PL 2007, c. 324, §2 (NEW).]

**14. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
[PL 2007, c. 324, §2 (NEW).]

## SECTION HISTORY

PL 1997, c. 716, §1 (NEW). PL 2003, c. 634, §§1,2 (AMD). PL 2003, c. 673, §NN1 (AMD). PL 2007, c. 324, §2 (AMD). PL 2011, c. 257, §1 (AMD). PL 2015, c. 196, §§1-7 (AMD). PL 2015, c. 299, §§1-7 (AMD). PL 2015, c. 494, Pt. A, §15 (AMD).

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## Appendix II: Stakeholder Meetings to Date

### A. Stakeholder Meeting, December 3, 2021

#### Attendees: Name/Organization

Facilitated by staff at the Muskie School of Public Service, USM

Chris Beaulieu	Aroostook Area Agency on Aging
Leo Delicata	Legal Services for the Elderly
Derek Fales	Maine DHHS Office of Aging and Disability Services
Brenda Gallant	Maine Long-term Care Ombudsman Program
Gregg Golin	Care Lync
Betsy Grass	Alpha One
Jenn Griffin	Eldercare Manager Agency on Aging
Val Hooper	Maine DHHS Office of MaineCare Program Integrity Unit
Jillian Jolicoeur	Assistance Plus
Jeff Johnson	Bridges Home Services
Jonathan Leach	Maine DHHS Division of Licensing and Certification
Thomas Leet	Maine DHHS Office of MaineCare Services
William Logan	Maine DHHS Office of MaineCare Services
Pam Marshall.	Maine Long-Term Care Ombudsman Program
Karen Mason	Maine DHHS Office of Aging and Disability Services
William Montejo	Maine DHHS Division of Licensing and Certification
Japhet Murenzi	New Acadia Solutions
Thomas Newman	Alpha One
A. P.	Program Participant
Nicole Rooney	Maine DHHS Office of Aging and Disability Services
Betsy Sawyer-Manter	SeniorsPlus
Rachel Small	Bridges Home Services
Mike Stair	Care & Comfort
Trish Thorsen	Maine Long Term-Care Ombudsman Program
Alison Williams	Bridges Home Services

## **B. Public Listening Session**

### **OADS Virtual Listening Session regarding LD 958 December 14th, 2021, from 1:00-2:30**

The Department of Health and Human Services, Office of Aging and Disability Services, hosted a virtual listening session regarding LD 958: Resolve, Directing the Department of Health and Human Services to Conduct a Review of Rules Governing In-home Personal Care Assistance Services. This session was open to anyone interested in participating.

The Department provided a brief overview of the Department's current authority and opportunities for strengthening oversight and quality of care delivered by personal care agencies. The primary purpose was to hear from the public about issues and concerns related to the quality of personal care services. Approximately sixty people joined the session.