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Legislative Document

No. 1316

H.P. 894

House of Representatives, April 14, 2015

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

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FOWLE of Vassalboro.
Cosponsored by Senator GERZOFSKY of Cumberland and
Representatives: BRYANT of Windham, DOORE of Augusta, LAJOIE of Lewiston,
McELWEE of Caribou, STUCKEY of Portland, VACHON of Scarborough, WARREN of
Hallowell.

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

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

4 C. "Personal care agency" means a business entity or subsidiary of a business entity
5 that is not otherwise licensed by the Division of Licensing and Regulatory Services
6 and that hires and employs an unlicensed assistive ~~personnel~~ person to provide
7 assistance with activities of daily living and related tasks to individuals in the places
8 in which they reside, either permanently or temporarily. An individual who hires and
9 employs an unlicensed assistive ~~personnel~~ person to provide care for that individual
10 is not a personal care agency, except when permitted by rule of the department.

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

13 D. "Unlicensed assistive ~~personnel~~ person" or "direct care worker" means ~~individuals~~
14 an individual employed to provide hands-on assistance with activities of daily living
15 or other services to individuals in private homes, assisted living ~~centers~~ programs,
16 residential care facilities, hospitals and other health care and direct care settings.
17 "Unlicensed assistive person" and "direct care worker" include but are not limited to
18 a direct support professional, residential care specialist, personal support specialist,
19 mental health support specialist, mental health rehabilitation technician, behavior
20 specialist, other qualified mental health professional, certified residential medication
21 aide and registered medical assistant and other direct care workers as described in
22 rules adopted by the department. "Unlicensed assistive ~~personnel~~ person" does and
23 "direct care worker" do not include a certified nursing ~~assistants~~ assistant employed
24 in their the capacity as of a certified nursing ~~assistants~~ assistant.

25 **Sec. 3. 22 MRSA §1717, sub-§3**, as amended by PL 2011, c. 257, §1, is repealed.

26 **Sec. 4. 22 MRSA §1717, sub-§§3-A and 3-B** are enacted to read:

27 **3-A. Prohibited employment.** A personal care agency or a placement agency may
28 not hire or place an individual who:

29 A. While working as a certified nursing assistant, was the subject of a complaint
30 investigation by the state survey agency that resulted in a substantiated complaint that
31 was placed as a notation on the Maine Registry of Certified Nursing Assistants and
32 Direct Care Workers under section 1812-G;

33 B. While working as an unlicensed assistive person, was the subject of a complaint
34 investigation by the department that resulted in a substantiated finding that was
35 placed as a notation on the Maine Registry of Certified Nursing Assistants and Direct
36 Care Workers under section 1812-G;

37 C. While working as a certified nursing assistant, received a disqualifying criminal
38 conviction that was placed as a notation on the Maine Registry of Certified Nursing
39 Assistants and Direct Care Workers under section 1812-G; or

1 D. Has a disqualifying criminal conviction as determined pursuant to section
2 1812-G, subsection 2-D.

3 **3-B. Employer criminal background checks prior to hiring.** Prior to hiring an
4 individual who will work in direct contact with a consumer, a personal care agency or a
5 placement agency shall obtain criminal history record information on that individual,
6 including, at a minimum, criminal history record information from the Department of
7 Public Safety, State Bureau of Identification. The personal care agency or the placement
8 agency shall pay for the criminal background check required by this subsection.

9 A. A personal care agency or a placement agency may not employ an individual with
10 a disqualifying criminal conviction on the Maine Registry of Certified Nursing
11 Assistants and Direct Care Workers under section 1812-G to work in direct contact
12 with a consumer.

13 B. A certified nursing assistant or unlicensed assistive person who would otherwise
14 be banned for conduct that is prohibited pursuant to section 1812-G or 1812-J is not
15 banned for that conduct if the certified nursing assistant or unlicensed assistive
16 person was employed as a certified nursing assistant or unlicensed assistive person on
17 the effective date of this paragraph and the conduct occurred prior to the effective
18 date as long as the certified nursing assistant or unlicensed assistive person continues
19 to work for the same employer at the same facility or program. When there is a
20 change of employer or employment at a specific facility or program, the certified
21 nursing assistant or unlicensed assistive person is subject to this subsection.

22 **Sec. 5. 22 MRSA §1717, sub-§4, ¶B,** as amended by PL 2007, c. 324, §2, is
23 further amended to read:

24 B. A person who operates a personal care agency or placement agency in violation of
25 the employment prohibitions in subsection ~~3~~ 3-A commits a civil violation for which
26 a fine of not less than \$500 per day of operation in violation but not more than
27 \$10,000 per day may be adjudged, beginning on the first day that a violation occurs.
28 Each day of violation constitutes a separate offense.

29 **Sec. 6. 22 MRSA §1812-G,** as amended by PL 2011, c. 257, §2, is further
30 amended to read:

31 **§1812-G. Maine Registry of Certified Nursing Assistants and Direct Care Workers**

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

35 **1-A. Definitions.** As used in this section, unless the context otherwise indicates, the
36 following terms have the following meanings.

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

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

3 A-2. "Criminal conviction" means a disqualifying criminal conviction and a
4 nondisqualifying criminal conviction.

5 A-3. "Disqualifying criminal conviction" means a criminal conviction that prohibits
6 employment as a certified nursing assistant or an unlicensed assistive person.

7 A-4. "Health and direct care setting" means a setting in which a certified nursing
8 assistant or unlicensed assistive person is providing direct care in the capacity of a
9 certified nursing assistant or unlicensed assistive person.

10 A-5. "Misappropriation of property" means the deliberate misplacement, exploitation
11 or wrongful temporary or permanent use of a client's, patient's or resident's
12 belongings or money without that client's, patient's or resident's consent.

13 A-6. "Neglect" means the failure to provide goods and services necessary to avoid
14 physical harm, mental anguish or mental illness.

15 A-7. "Nondisqualifying criminal conviction" means a criminal conviction that is
16 included as a notation on the registry but does not prohibit employment as a certified
17 nursing assistant or an unlicensed assistive person.

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

22 B-1. "State survey agency" means the agency specified under 42 United States Code,
23 Sections 1395aa and 1396 responsible for determining whether institutions and
24 agencies meet requirements for participation in the State's Medicare and Medicaid
25 programs.

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

38 **2. Registry listing.** The registry must contain a listing of certified nursing assistants
39 and a listing of any unlicensed assistive persons who have notations pursuant to section
40 1812-J. The listing must include, for any certified nursing assistant listed, a notation of:

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

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

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

12 **2-A. Registry notations.** For a certified nursing assistant listed on the registry, the
13 registry must include a notation of:

14 A. Any criminal conviction of the certified nursing assistant discovered by the
15 department; and

16 B. Any substantiated complaint against the certified nursing assistant with specific
17 documented findings by the state survey agency of abuse, neglect or misappropriation
18 of property of a resident, client or patient. Only the state survey agency may
19 investigate complaints against a certified nursing assistant of abuse, neglect or
20 misappropriation of property of a resident, client or patient. The registry notation
21 must include but is not limited to the following information:

22 (1) Documentation of the state survey agency investigation, including the nature
23 of the allegation and the evidence that led the state survey agency to substantiate
24 the allegation of abuse, neglect or misappropriation of property;

25 (2) The date of the hearing, if the certified nursing assistant chose to appeal the
26 state survey agency finding that the complaint was substantiated; and

27 (3) The certified nursing assistant's statement to the state survey agency
28 disputing the allegation, if the certified nursing assistant chose to submit a
29 statement.

30 **2-B. Criminal background checks.** The department shall obtain criminal history
31 record information on an active certified nursing assistant every 2 years.

32 **2-C. Time limit on consideration of prior criminal conviction.** The department
33 shall examine criminal convictions within the last 30 years when making a decision
34 concerning the impact a conviction has on a certified nursing assistant's employability.

35 **2-D. Conviction for specific named crime.** The department shall categorize
36 criminal convictions as disqualifying convictions or nondisqualifying convictions.
37 Specific named crimes must be based on crimes under Title 17-A, Part 2 or similar
38 conduct for convictions in other jurisdictions. In determining nondisqualifying criminal
39 convictions, the department shall consider whether moral character and conduct
40 demonstrate that the individual will respect the person and property of the people in the
41 individual's care.

1 A. A disqualifying criminal conviction prohibits employment as a certified nursing
2 assistant in health care and direct care settings as a certified nursing assistant for
3 either a 10-year period or a 30-year period.

4 B. A nondisqualifying criminal conviction does not prohibit employment as a
5 certified nursing assistant.

6 **2-E. Length of employment ban; criminal conviction.** The department shall
7 specify by rule which disqualifying criminal convictions prohibit employment for 30
8 years and which disqualifying criminal convictions prohibit employment for 10 years.

9 **2-F. Petition for removal of an employment ban; criminal conviction.** An
10 individual may petition the department for removal of an employment ban that is based
11 on a disqualifying criminal conviction prior to its expiration only if the criminal
12 conviction recorded in the criminal history record information on which the ban is based
13 is erroneous.

14 **2-G. Substantiated complaint; lifetime employment ban.** An individual may not
15 be employed in a health care or direct care setting as a certified nursing assistant if that
16 individual has a notation on the registry of a complaint involving abuse, neglect or
17 misappropriation of property of a resident, client or patient that was investigated and
18 substantiated by the state survey agency. Except as provided in subsection 2-H, an
19 employment ban based on a substantiated complaint is a lifetime ban from employment
20 as a certified nursing assistant. A certified nursing assistant with a notation of any
21 substantiated complaint on the registry may not be employed as an unlicensed assistive
22 person.

23 **2-H. Petition for removal of substantiated finding of neglect.** No sooner than 12
24 months after the date a substantiated finding of neglect is placed as a notation on the
25 registry, an individual may petition the department for removal of the substantiated
26 finding of neglect. The successful petitioner must meet the removal criteria established
27 by the department by rule. Criteria must include but are not limited to an assessment of
28 the risk of reoffending and the conduct of the petitioner.

29 **3. Eligibility requirements for listing.** The State Board of Nursing shall adopt
30 rules pursuant to the Maine Administrative Procedure Act defining eligibility
31 requirements for listing on the registry, including rules regarding temporary listing of
32 nursing assistants who have received training in another jurisdiction. The rules must
33 permit nursing assistants to work under the supervision of a registered professional nurse
34 in a facility providing assisted living services as defined in chapter 1664 and must
35 recognize work in those facilities for the purpose of qualifying for and continuing listing
36 on the registry. Rules adopted regarding the work of nursing assistants in facilities
37 providing assisted living services are routine technical rules as defined by Title 5, chapter
38 375, subchapter 2-A.

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

41 **4-A. Provider verification fee.** The department may establish a provider
42 verification fee not to exceed \$25 annually per provider for verification of a certified

1 nursing assistant's credentials and training. Providers may not pass the cost on to the
2 individual certified nursing assistant. Provider verification fees collected by the
3 department must be placed in a special revenue account to be used by the department to
4 operate the registry, including but not limited to the cost of criminal history record
5 checks. The department may adopt rules necessary to implement this subsection. Rules
6 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
7 chapter 375, subchapter 2-A.

8 **5. Verifying certified nursing assistant listing.** A health care institution, facility or
9 organization that employs a certified nursing assistant shall, before hiring a certified
10 nursing assistant, verify with the registry that the certified nursing assistant is listed on
11 the registry.

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

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

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

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

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

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

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

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

35 **8. Exception; conviction prior to June 2, 2003.** The If a criminal conviction
36 occurred prior to June 2, 2003, restrictions on employment ~~under subsections 6 and 7~~
37 ~~pursuant to this section~~ do not apply to an individual listed and active on the registry as a
38 certified nursing assistant prior to ~~the effective date of this subsection~~ June 2, 2003, as
39 long as the individual meets other state and federal requirements for certified nursing
40 assistants and continues to maintain an active status by timely reregistration as required
41 by the rules.

1 **8-A. Exception; currently employed certified nursing assistants.** A certified
2 nursing assistant who would otherwise be banned for conduct that is prohibited pursuant
3 to this section is not banned for that conduct if the certified nursing assistant was
4 employed as a certified nursing assistant on the effective date of this subsection and the
5 conduct occurred prior to the effective date as long as the certified nursing assistant
6 continues to work for the same employer at the same facility or program. When there is a
7 change of employer or employment at the specific facility or program, the certified
8 nursing assistant is subject to this section.

9 **9. Notification.** A Prior to the acceptance of any applicant, a nursing assistant
10 training program must notify applicants to that the program of the employment
11 restrictions under subsections 6 and 7 prior to the acceptance of any applicant that may be
12 imposed pursuant to this section.

13 **10. Amending the list of named crimes; advisory board.** The department shall
14 establish, chair and staff an advisory board consisting of no more than 10 individuals who
15 represent various users of the registry. The advisory board must include representatives
16 of the department, other state agencies, organizations representing direct care workers,
17 victim advocacy organizations, the district attorney's office and employers. At least once
18 every 2 years, the advisory board shall convene to:

19 A. Recommend changes to the list of named crimes in the registry; and

20 B. Provide the rational basis for each change under paragraph A to the department.

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

24 **Sec. 7. 22 MRSA §1812-J**, as amended by PL 2011, c. 257, §§3 to 8, is further
25 amended to read:

26 **§1812-J. Unlicensed assistive persons**

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

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

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

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

38 A-3. "Health care and direct care settings" means settings in which a certified
39 nursing assistant or unlicensed assistive person is providing direct care in that

1 assistant's or person's capacity as a certified nursing assistant or an unlicensed
2 assistive person.

3 A-4. "High severity" means the level, as established by the department by rule, of
4 abuse, neglect or misappropriation of property of a client, patient or resident that
5 forms the basis for a substantiated finding after investigation of a complaint against
6 an unlicensed assistive person of abuse, neglect or misappropriation of property of a
7 client, patient or resident.

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

15 A-6. "Low to moderate severity" means the level, as established by the department
16 by rule, of abuse, neglect or misappropriation of property of a client, patient or
17 resident that forms the basis for an ~~indicated~~ adverse finding after investigation of a
18 complaint against an unlicensed assistive person of abuse, neglect or
19 misappropriation of property of a client, patient or resident.

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

23 A-8. "Adverse finding" means an administrative determination made by the
24 department, after investigation of a complaint, that the level of abuse, neglect or
25 misappropriation of property was of low to moderate severity.

26 A-9. "Finding" means an adverse finding, a substantiated finding and an
27 unsubstantiated finding.

28 A-10. "Misappropriation of property" means the deliberate misplacement,
29 exploitation or wrongful temporary or permanent use of a client's, patient's or
30 resident's belongings or money without that client's, patient's or resident's consent.

31 A-11. "Neglect" means the failure to provide goods and services necessary to avoid
32 physical harm, mental anguish or mental illness.

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

37 C. "State survey agency" means the agency specified in 42 United States Code,
38 Sections 1395aa and 1396 responsible for determining whether institutions and
39 agencies meet requirements for participation in the State's Medicare and Medicaid
40 programs and authorized to investigate and substantiate complaints against certified
41 nursing assistants.

1 C-1. "Substantiated finding" means an administrative determination made by the
2 department; after investigation of a complaint ~~against an unlicensed assistive person~~
3 ~~of abuse, neglect or misappropriation of property of a client, patient or resident~~, that
4 the level of abuse, neglect or misappropriation of property of a client, patient or
5 resident was of high severity ~~based on criteria established by the department by rule~~.

6 D. "Unlicensed assistive person" or "direct care worker" means an individual
7 employed to provide hands-on assistance with activities of daily living or other
8 services to individuals in private homes, assisted living programs, residential care
9 facilities, hospitals and other health care and direct care settings. "Unlicensed
10 assistive person" and "direct care worker" include but are not limited to a direct
11 support professional, residential care specialist, personal support specialist, mental
12 health support specialist, mental health rehabilitation technician, behavior specialist,
13 other qualified mental health professional, certified residential medication aide and
14 registered medical assistant and other direct care workers as described in rules
15 adopted by the department. "Unlicensed assistive person" and "direct care worker"
16 do not include a certified nursing assistant employed in the capacity of a certified
17 nursing assistant.

18 E. "Unsubstantiated finding" means an administrative determination made by the
19 department; after investigation of a complaint ~~against an unlicensed assistive person~~
20 ~~of abuse, neglect or misappropriation of property of a client, patient or resident~~, that
21 ~~no abuse, neglect or misappropriation of property of a client, patient or resident~~
22 evidence was found to support ~~an indicated finding or either~~ a substantiated finding
23 or an adverse finding of abuse, neglect or misappropriation of property of a client,
24 patient or resident.

25 **2. Complaint investigation.** The department may investigate complaints of abuse,
26 neglect or misappropriation of property of a client, patient or resident in a private home or
27 health care or direct care setting against unlicensed assistive persons ~~employed or placed~~
28 ~~by a licensed, certified or registered agency or facility~~.

29 **2-A. Department decision after investigation of complaint.** Based on criteria
30 established by rule, the department, after investigation of a complaint of abuse, neglect or
31 misappropriation of property of a client, patient or resident, shall:

- 32 A. Make a substantiated finding;
33 B. Make an ~~indicated~~ adverse finding; or
34 C. Make an unsubstantiated finding.

35 **3. Substantiated finding of complaint; registry listing.** A substantiated finding
36 must be listed as a notation on the registry. When a complaint against an unlicensed
37 assistive person is substantiated by the department and the unlicensed assistive person is
38 listed on the registry pursuant to subsection 4, the department's decision becomes final
39 agency action ~~as defined in under~~ Title 5, ~~section 8002, subsection 4~~ chapter 375. The
40 department shall notify the employer of the unlicensed assistive person that a
41 substantiated finding of a complaint has been listed as a notation on the registry.

1 **3-A. Adverse finding of complaint; no registry listing.** An ~~indicated~~ adverse
2 finding by the department of a complaint against an unlicensed assistive person does not
3 prohibit employment as an unlicensed assistive person and is not listed as a notation on
4 the registry. The department's complaint investigation decision becomes final agency
5 action ~~as defined in under~~ Title 5, ~~section 8002, subsection 4~~ chapter 375.

6 **3-B. Determination of high severity.** The department shall establish by rule criteria
7 for determining high severity. Criteria must include but are not limited to conduct that
8 poses a threat of harm to future consumers.

9 **3-C. Determination of low to moderate severity.** The department shall establish
10 by rule criteria for determining low to moderate severity. Criteria must include but are
11 not limited to conduct that poses no threat of harm to future consumers.

12 **3-D. Unsubstantiated finding; no registry notation.** An unsubstantiated finding
13 by the department of a complaint against an unlicensed assistive person does not prohibit
14 employment and is not listed as a notation on the registry. The department's complaint
15 investigation decision becomes final agency action under Title 5, chapter 375.

16 **4. Registry listing.** The registry listing for an unlicensed assistive person with a
17 notation must include but is not limited to the following information:

18 A. Documentation of the ~~department's investigation, including the~~ nature of the
19 allegation and the evidence that led the department to substantiate the allegation of
20 abuse, neglect or misappropriation of property;

21 B. The date of the hearing, if the unlicensed assistive person chose to appeal the
22 department finding that the complaint was substantiated; and

23 C. The unlicensed assistive person's statement to the department disputing the
24 allegation, if the unlicensed assistive person chose to submit one.

25 **5. Right to hearing.** The department shall notify the unlicensed assistive person of
26 the right to request a hearing to contest the finding that the complaint under subsection 3
27 was substantiated.

28 **6. Petition for removal of a substantiated finding of abuse, neglect or**
29 **misappropriation of property.** No sooner than 12 months after the date an abuse,
30 neglect or misappropriation of property substantiated finding is placed on the registry, an
31 unlicensed assistive person may petition the department to remove a notation from the
32 registry if the substantiated complaint of abuse, neglect or misappropriation of property is
33 a one-time occurrence and there is no pattern of abuse, neglect or misappropriation of
34 property. The successful petitioner must meet the removal criteria established by the
35 department by rule. Criteria must include but are not limited to an assessment of the risk
36 of reoffending and the conduct of the petitioner.

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

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

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

7 ~~An~~ Subject to subsection 6, an employment ban based on a substantiated ~~finding of a~~
8 complaint is a lifetime employment ban.

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

12 **9. Employer background checks prior to hiring.** An employer subject to
13 licensing, certification and registration laws under this Title shall obtain criminal history
14 record information prior to hiring an individual who will work in direct contact with
15 consumers and may not employ an individual with a disqualifying criminal conviction on
16 the registry.

17 **10. Exception; currently employed unlicensed assistive persons.** An unlicensed
18 assistive person who would otherwise be banned for conduct that is prohibited under this
19 section is not banned for that conduct if the unlicensed assistive person was employed as
20 an unlicensed assistive person on the effective date of this subsection and the conduct
21 occurred prior to the effective date as long as the unlicensed assistive person continues to
22 work for the same employer at the same facility or program. When there is a change of
23 employer or employment at a specific facility or program, the unlicensed assistive person
24 is subject to this section.

25 **11. Notification.** Prior to the acceptance of an application to a training program for
26 an unlicensed assistive person, the training program shall notify the applicant to the
27 program of the employment restrictions under this section.

28 **Sec. 8. 22 MRSA §2131, sub-§4, ¶B,** as enacted by PL 2009, c. 621, §3, is
29 amended to read:

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

34 **Sec. 9. 22 MRSA §2138,** as amended by PL 2011, c. 257, §16, is repealed.

35 **Sec. 10. 22 MRSA §2138-A** is enacted to read:

36 **§2138-A. Prohibited employment**

37 **1. Prohibited employment.** A temporary nurse agency may not hire, employ or
38 place an individual who:

1 A. While working as a certified nursing assistant, was the subject of a complaint
2 investigation by the state survey agency that resulted in a substantiated complaint that
3 was placed as a notation on the Maine Registry of Certified Nursing Assistants and
4 Direct Care Workers under section 1812-G;

5 B. While working as an unlicensed assistive person, was the subject of a complaint
6 investigation by the department that resulted in a substantiated finding that was
7 placed as a notation on the Maine Registry of Certified Nursing Assistants and Direct
8 Care Workers under section 1812-G;

9 C. While working as a certified nursing assistant, received a disqualifying criminal
10 conviction that was placed as a notation on the Maine Registry of Certified Nursing
11 Assistants and Direct Care Workers under section 1812-G; or

12 D. Has a disqualifying criminal conviction as determined pursuant to section
13 1812-G, subsection 2-D.

14 **2. Employer criminal background checks prior to hiring.** Prior to hiring an
15 individual who will work in direct contact with a consumer, a temporary nurse agency
16 shall obtain criminal history record information on that individual, including, at a
17 minimum, criminal history record information from the Department of Public Safety,
18 State Bureau of Identification. The temporary nurse agency shall pay for the criminal
19 background check required by this subsection.

20 A. A temporary nurse agency may not employ an individual with a disqualifying
21 criminal conviction on the Maine Registry of Certified Nursing Assistants and Direct
22 Care Workers under section 1812-G to work in direct contact with a consumer.

23 B. A certified nursing assistant or unlicensed assistive person who would otherwise
24 be banned for conduct that is prohibited pursuant to section 1812-G or 1812-J is not
25 banned for that conduct if the certified nursing assistant or unlicensed assistive
26 person was employed as a certified nursing assistant or unlicensed assistive person on
27 the effective date of this paragraph and the conduct occurred prior to the effective
28 date as long as the certified nursing assistant or unlicensed assistive person continues
29 to work for the same temporary nurse agency. When there is a change of employer,
30 the certified nursing assistant or unlicensed assistive person is subject to this section.

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

34 **Sec. 11.** **22 MRSA §2149-A, sub-§2,** as amended by PL 2011, c. 257, §17, is
35 repealed.

36 **Sec. 12.** **22 MRSA §2149-A, sub-§§3 to 5** are enacted to read:

37 **3. Prohibited employment.** A home health care provider may not hire an individual
38 who:

39 A. While working as a certified nursing assistant, was the subject of a complaint
40 investigation by the state survey agency that resulted in a substantiated complaint that

1 was placed as a notation on the Maine Registry of Certified Nursing Assistants and
2 Direct Care Workers under section 1812-G;

3 B. While working as an unlicensed assistive person, was the subject of a complaint
4 investigation by the department that resulted in a substantiated finding that was
5 placed as a notation on the Maine Registry of Certified Nursing Assistants and Direct
6 Care Workers under section 1812-G;

7 C. While working as a certified nursing assistant, received a disqualifying criminal
8 conviction that was placed as a notation on the Maine Registry of Certified Nursing
9 Assistants and Direct Care Workers under section 1812-G; or

10 D. Has a disqualifying criminal conviction as determined pursuant to section
11 1812-G, subsection 2-D.

12 **4. Employer criminal background checks prior to hiring.** Prior to hiring an
13 individual who will work in direct contact with a consumer, a home health care provider
14 shall obtain criminal history record information on that individual, including, at a
15 minimum, criminal history record information from the Department of Public Safety,
16 State Bureau of Identification. The home health care provider shall pay for the criminal
17 background check required by this subsection.

18 A. A home health care provider may not employ an individual with a disqualifying
19 criminal conviction on the Maine Registry of Certified Nursing Assistants and Direct
20 Care Workers under section 1812-G to work in direct contact with a consumer.

21 B. A certified nursing assistant or unlicensed assistive person who would otherwise
22 be banned for conduct that is prohibited pursuant to section 1812-G or 1812-J is not
23 banned for that conduct if the certified nursing assistant or unlicensed assistive
24 person was employed as a certified nursing assistant or unlicensed assistive person on
25 the effective date of this paragraph and the conduct occurred prior to the effective
26 date as long as the certified nursing assistant or unlicensed assistive person continues
27 to work for the same home health care provider. When there is a change of
28 employer, the certified nursing assistant or unlicensed assistive person is subject to
29 this subsection.

30 **5. Rules.** The department shall adopt rules to implement this section. Rules adopted
31 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
32 subchapter 2-A.

33 **Sec. 13. 22 MRSA §7851, sub-§4,** as enacted by PL 2003, c. 634, §6, is repealed.

34 **Sec. 14. 22 MRSA §7851, sub-§§5 to 7** are enacted to read:

35 **5. Prohibited employment.** A licensed assisted housing program may not hire an
36 individual who:

37 A. While working as a certified nursing assistant, was the subject of a complaint
38 investigation by the state survey agency that resulted in a substantiated complaint that
39 was placed as a notation on the Maine Registry of Certified Nursing Assistants and
40 Direct Care Workers under section 1812-G;

1 B. While working as an unlicensed assistive person, was the subject of a complaint
2 investigation by the department that resulted in a substantiated finding that was
3 placed as a notation on the Maine Registry of Certified Nursing Assistants and Direct
4 Care Workers under section 1812-G;

5 C. While working as a certified nursing assistant, received a disqualifying criminal
6 conviction that was placed as a notation on the Maine Registry of Certified Nursing
7 Assistants and Direct Care Workers under section 1812-G; or

8 D. Has a disqualifying criminal conviction as determined pursuant to section
9 1812-G, subsection 2-D.

10 **6. Employer criminal background checks prior to hiring.** Prior to hiring an
11 individual who will work in direct contact with a consumer, a licensed assisted housing
12 program shall obtain criminal history record information on that individual, including, at
13 a minimum, criminal history record information from the Department of Public Safety,
14 State Bureau of Identification. The licensed assisted housing program shall pay for the
15 criminal background check required by this subsection.

16 A. A licensed assisted housing program may not employ an individual with a
17 disqualifying criminal conviction on the Maine Registry of Certified Nursing
18 Assistants and Direct Care Workers under section 1812-G to work in direct contact
19 with a consumer.

20 B. A certified nursing assistant or unlicensed assistive person who would otherwise
21 be banned for conduct that is prohibited pursuant to section 1812-G or 1812-J is not
22 banned for that conduct if the certified nursing assistant or unlicensed assistive
23 person was employed as a certified nursing assistant or unlicensed assistive person on
24 the effective date of this paragraph and the conduct occurred prior to the effective
25 date as long as the certified nursing assistant or unlicensed assistive person continues
26 to work for the same licensed assisted housing program at the same facility. When
27 there is a change of employer, the certified nursing assistant or unlicensed assistive
28 person is subject to this subsection.

29 **7. Rules.** The department shall adopt rules to implement this section. Rules adopted
30 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
31 subchapter 2-A.

32 **Sec. 15. 22 MRSA §8606,** as amended by PL 2011, c. 257, §18, is repealed.

33 **Sec. 16. 22 MRSA §8607** is enacted to read:

34 **§8607. Prohibited employment**

35 **1. Prohibited employment.** An adult day care program may not hire an individual
36 who:

37 A. While working as a certified nursing assistant, was the subject of a complaint
38 investigation by the state survey agency that resulted in a substantiated complaint that
39 was placed as a notation on the Maine Registry of Certified Nursing Assistants and
40 Direct Care Workers under section 1812-G;

1 B. While working as an unlicensed assistive person, was the subject of a complaint
2 investigation by the department that resulted in a substantiated finding that was
3 placed as a notation on the Maine Registry of Certified Nursing Assistants and Direct
4 Care Workers under section 1812-G;

5 C. While working as a certified nursing assistant, received a disqualifying criminal
6 conviction that was placed as a notation on the Maine Registry of Certified Nursing
7 Assistants and Direct Care Workers under section 1812-G; or

8 D. Has a disqualifying criminal conviction as determined pursuant to section
9 1812-G, subsection 2-D.

10 **2. Employer criminal background checks prior to hiring.** Prior to hiring an
11 individual who will work in direct contact with a consumer, an adult day care program
12 shall obtain criminal history record information on that individual, including, at a
13 minimum, criminal history record information from the Department of Public Safety,
14 State Bureau of Identification. The adult day care program shall pay for the criminal
15 background check required by this subsection.

16 A. An adult day care program may not employ an individual with a disqualifying
17 criminal conviction on the Maine Registry of Certified Nursing Assistants and Direct
18 Care Workers under section 1812-G to work in direct contact with a consumer.

19 B. A certified nursing assistant or unlicensed assistive person who would otherwise
20 be banned for conduct that is prohibited pursuant to section 1812-G or 1812-J is not
21 banned for that conduct if the certified nursing assistant or unlicensed assistive
22 person was employed as a certified nursing assistant or unlicensed assistive person on
23 the effective date of this paragraph and the conduct occurred prior to the effective
24 date as long as the certified nursing assistant or unlicensed assistive person continues
25 to work for the same adult day care program. When there is a change of employer,
26 the certified nursing assistant or unlicensed assistive person is subject to this
27 subsection.

28 **3. Rules.** The department shall adopt rules to implement this section. Rules adopted
29 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
30 subchapter 2-A.

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

33 **1. Criminal history record information.** A veterans' adult day health care program
34 shall obtain criminal history record information about ~~applicants~~ an applicant for
35 ~~positions~~ a position as an unlicensed assistive ~~personnel~~ person as defined in section
36 1717, subsection 1, paragraph D and may not hire an individual who:

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

- 1 B. Has been convicted in a court of law of a crime involving abuse, neglect or
2 misappropriation of property in a health care setting; or
- 3 C. Has a prior criminal conviction within the last 10 years of:
- 4 (1) A crime for which incarceration of 3 years or more may be imposed under
5 the laws of the state in which the conviction occurred; or
- 6 (2) A crime for which incarceration of less than 3 years may be imposed under
7 the laws of the state in which the conviction occurred involving sexual
8 misconduct or involving abuse, neglect or exploitation in a setting other than a
9 health care setting.

10 **SUMMARY**

11 This bill implements the recommendations of the working group created under
12 Resolve 2009, chapter 68, which reviewed employment bans based on criminal
13 convictions, the rational basis for the employment ban and the length of the employment
14 ban prohibiting an individual from working as a certified nursing assistant or unlicensed
15 assistive person.

16 It prohibits the employment of a certified nursing assistant who, while working as a
17 certified nursing assistant, was the subject of a complaint investigation by the division of
18 licensing and regulatory services within the Department of Health and Human Services,
19 which is the designated state survey agency pursuant to federal law, that resulted in a
20 substantiated complaint that was placed as a notation on the Maine Registry of Certified
21 Nursing Assistants and Direct Care Workers or received a disqualifying criminal
22 conviction that was placed as a notation on the registry or has any disqualifying criminal
23 conviction. It prohibits the employment of an unlicensed assistive person who, while
24 working as an unlicensed assistive person, was the subject of a complaint investigation by
25 the Department of Health and Human Services that resulted in a substantiated finding that
26 was placed as a notation on the registry. It requires the department to categorize criminal
27 convictions as either disqualifying or nondisqualifying convictions and to set 10-year
28 bans and 30-year bans on employment for disqualifying convictions. It sets a lifetime
29 ban on employment for substantiated complaints involving abuse, neglect or
30 misappropriation of property. It provides for petitions for the removal of employment
31 bans. It grandfathers in certain currently employed certified nursing assistants and
32 unlicensed assistive persons, but provides that if they change their employers or
33 employment at a specific facility or program, they become subject to the law. It provides
34 for the department to establish an advisory board to recommend changes to the list of
35 named crimes in the registry. It requires the department to obtain criminal history record
36 information for certified nursing assistants every 2 years and employers to obtain criminal
37 history record information prior to hiring an individual.