**STATE OF MAINE**

**CERTIFIED NURSING ASSISTANT**

**AND DIRECT CARE WORKER REGISTRY RULE**

**10-144 CODE OF MAINE RULES**

**CHAPTER 128**

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**Department of Health and Human Services**

**CERTIFIED NURSING ASSISTANT
AND DIRECT CARE WORKER REGISTRY RULE**

**10-144 CMR Chapter 128**

**SUMMARY STATEMENT**

This rule governs the Certified Nursing Assistant (C.N.A.) and Direct Care Worker (D.C.W.) Registry in the State of Maine. The Registry maintains a listing of C.N.A.s who are eligible or ineligible for employment in Maine, and D.C.W.s who are ineligible for employment in Maine.

**AUTHORITY**

22 MRS §1812-G and 42 CFR Part 483 and Part 488

**EFFECTIVE DATE**

June 15. 2019

**Table of Contents**

**Section 1. DEFINITIONS 1**

**Section 2. REGISTRY OPERATION AND CONTENT 3**

A. Placement on the C.N.A. Registry 3

B. Training and competency programs for C.N.A.s 4

C. C.N.A. application requirements 5

D. Nursing facility verification of out-of-state Registries 7

E. C.N.A. Registry administration 7

F. C.N.A. Registry content 8

G.Denial or removal from the C.N.A. Registry 9

H. D.C.W. Registry administration 10

I. D.C.W. Registry content 10

J. Notice to annotated D.C.W.s 11

K. Registry accessibility 11

**Section 3. WORK DISQUALIFICATION AND ANNOTATIONS 12**

A. Disqualifying offenses 12

B. Other disqualifying offenses 12

C. Substantiated findings 12

D. Prohibited employment based on disqualifying offenses 12

E. Nondisqualifying criminal convictions 12

**Section 4. COMPLAINT INVESTIGATIONS, SUBSTANTIATED FINDINGS,**

 **PETITIONS AND appeals 13**

 A. Complaint investigations, substantiated findings and appeals for

 C.N.A.s and D.C.W.s 13

B. C.N.A. petitions 13

C. D.C.W. petitions 15

D. Any petition for removal of an employment ban due to criminal conviction 15

E. Appeals 16

**Statutory Authority AND HISTORY 16**

**SECTION 1. DEFINITIONS**

# The following definitions supplement those definitions in the applicable statutes. The definitions in the applicable statutes are not repeated in this rule.

1. Abuse means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions.
2. Annotation or annotated means the notation on the Registry of a Certified Nursing Assistant (C.N.A.) or Direct Care Worker (D.C.W.), due to a specific criminal conviction, a substantiated finding of abuse or neglect of a patient, client or resident, or a substantiated finding of misappropriation of a patient’s, client’s or resident’s property, in accordance with 22 MRS §1812-G (2-C).
3. Certified Nursing Assistant means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the Registry.
4. Department means the Maine Department of Health and Human Services.
5. 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. A listing of D.C.W.s can be found at 22 MRS §1812-G (2-A).
6. Disqualifying Offense means a substantiation for abuse, neglect or exploitation, or a criminal conviction identified in rules adopted by the Department that prohibits employment as a certified nursing assistant or a direct care worker in accordance with 22 MRS §1812-G (2-C).
7. **Misappropriation of Property** means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of a client's, patient's or resident's belongings or money without that person's consent.
8. **Neglect** means a threat to a person's health or welfare by failure to provide goods or services necessary to avoid physical or mental injury or impairment or the threat of injury or impairment.
9. **Nondisqualifying criminal conviction** means a criminal conviction that is included as an annotation on the registry, but does not prohibit employment as a certified nursing assistant or a direct care worker.
10. **Non-traditional Certified Nursing Assistant (C.N.A.) means:**
* A C.N.A. trained in Maine who has not worked as a C.N.A. for at least the preceding 24 months; or
* An individual trained as a C.N.A., or its equivalent, while serving in the United States Armed Services who meets the requirements set out in this rule.
1. **Registry** means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, which lists C.N.A.s who are qualified to work in Maine, and includes any C.N.A.s who are annotated and disqualified from employment as a C.N.A. The Registry also lists any D.C.W.s, who are annotated and not eligible for employment due to a prior disqualifying offense.
2. **Substantiated finding** means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident.
3. **Training and competency evaluation program** means an approved program that a C.N.A. must successfully complete before the C.N.A. qualifies to apply for listing on the Registry. Maine training and competency evaluation programs must comply with the Omnibus Budget Reconciliation Act of 1987 (OBRA 87).
4. **Unsubstantiated finding** means an administrative determination made by the department after investigation of a complaint against a certified nursing assistant or a direct care worker that no evidence of abuse, neglect or misappropriation of property of a client, patient or resident was found to support a substantiated finding.

**SECTION 2. Registry Operation and Content**

**A. Placement on the C.N.A. Registry**

**1. No C.N.A. fee.** The Department may not charge an applicant or a C.N.A. a fee related to the application and the biennial renewal for listing on the Maine Registry.

**2.**  **Date of successful completion of the C.N.A. competency test.** The Registry shall document the date the individual successfully completed the C.N.A. competency test.

**a.** **Failure to work as a C.N.A. during 24-month period from date of completion of test.** In accordance with Omnibus Budget Reconciliation Act of 1987 (OBRA 87), failure to notify the C.N.A. Registry of at least eight hours of employment as a C.N.A. during the 24-month period from the date of completion of the competency test shall result in the immediate removal of the C.N.A. from the list of active C.N.A.s. The individual may not be employed as a C.N.A. until they successfully complete the test for non-traditional C.N.A.s, the Department receives an application for placement on the Registry and the Registry determines the individual is eligible for placement on the Registry.

**b. Minimum employment requirement.** To comply with the above, the C.N.A. must submit documented proof of qualified employment for monetary compensation for a minimum of eight hours within the last 24 consecutive months under the supervision of a registered professional nurse in a health care setting, in the capacity of a C.N.A. on a full or part-time basis.

**c. Qualified employment.** Employment in a health care setting, under the supervision of a registered professional nurse, is recognized as qualified employment that can be applied to meet the minimum work requirement of eight hours within 24 consecutive months.

**3.** **Date approved for placement on the Registry.** The Registry shall document the date the individual is approved for placement on the Registry.

**a. Renewal term.** The renewal term will be 24 months.To remain on the Registry, a C.N.A. must submit a completed renewal form and the required documents on or before their current expiration date.

**b.** Failure to submit a timely completed renewal form and required documentation shall result in immediate removal from the Registry and bars future employment as a C.N.A. until the C.N.A. takes appropriate action pursuant to this rule to be reinstated on the Registry.

**4. Notification of listing.** The Registry shall notify the C.N.A. in writing when the Registry approves the C.N.A. for placement on the list of active C.N.A.s on the Registry. This notification shall include the approval date.

**5. Nursing school student on Registry.** A nursing school student currently enrolled in an educational program in nursing that prepares persons for admission to a licensure examination, or a former student who has terminated enrollment, who has been issued a “Certificate of Equivalent Training” may be placed on the list of active C.N.A.s on the Registry. Further testing is not required if the Registry finds the individual is competent to function as a C.N.A.

**B. Training and competency programs for C.N.A.s**

**1.** **Training and testing options.** Training and testing options include the Maine C.N.A. training program, educational preparation in a state other than Maine, and the competency evaluation exam for non-traditional C.N.A.s.

**a.** **Maine C.N.A. Training Program.** The Maine C.N.A. training program includes the minimum number of training hours required by the MSBON, including classroom instruction, skills laboratory and correlated supervised clinical practice, and the MSBON develops the prescribed curriculum utilized by training programs for C.N.A.s. (See 02-380 CMR Ch. 5 (2) *Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants.*)

**i.** **Student qualifications.** Students applying for admission to a C.N.A. training program must submit at a minimum, documentation in accordance with 02-380 CMR Ch. 5:

1. Proof of completion of the 9th grade of school. A high school diploma, or a high school equivalency diploma, is preferred; and
2. Proof of compliance with the minimum age requirement of 16 years; and
3. Demonstrated ability to read and write in English.

**ii. Demonstration of competency.** Each student must satisfactorily complete both parts of the competency evaluation test:

**1.** The student must pass a written or an oral examination; and

**2.** The student must demonstrate an ability to successfully complete skills listed on the MSBON curriculum checklist.

**3.** The student will be allowed no more than three attempts to pass the Maine C.N.A. test within 2 years from the completion date of training, in accordance with CFR title 42 §483.154 (f)(2). If this criterion is not met, the C.N.A. training program must be retaken.

 **b.** **Educational Preparation in a State Other than Maine.** A C.N.A. who has passed a nationally-certified C.N.A. testing process which includes the evaluation of both theory and clinical competence may be listed on the Registry, when the C.N.A. has:

 **i.** Recently graduated from a C.N.A. program outside of the State of Maine; or

 **ii.** Has been employed as a C.N.A. outside of the State of Maine for the last two years.

**ii. Temporary listing.** A C.N.A. who received training in another jurisdiction that does not meet the requirements of Section 2 (B)(1)(b) may request temporary listing on the Maine Registry, pending completion of a Department of Health and Human Services-approved C.N.A. training program. The temporary listing shall be in effect for a maximum of 4 months, and shall not be renewed.

**c. Test for non-traditional C.N.A.s.** Qualified C.N.A.s may take the test for non-traditional C.N.A.s. Qualified C.N.A. includes, but is not limited to:

**i.** A C.N.A. trained in Maine who has not worked as a C.N.A. for at least 8 hours in the preceding 24 months; or

**ii.** An individual trained as a C.N.A., or its equivalent, while serving in the United States Armed Services who completed training that is at least equal to the Maine minimum of approved C.N.A. training required by these rules.

**iii.** If a non-traditional C.N.A. fails to pass the test on their first attempt, they will be allowed no more than two additional attempts to pass the test. If the C.N.A. does not pass the test within two years from the date of the first scheduled exam, the C.N.A. must complete and pass the full C.N.A. training program before being allowed to test again.

**3. C.N.A.s employed by nursing facilities.** Nursing facilities must comply with the requirements of OBRA 87:

**a. Nursing facility prohibited from charging employee for C.N.A. training or required competency evaluation.** An individual who is employed by, or who has received an offer of employment from, a nursing facility on or before the date the individual begins a C.N.A. training program or competency evaluation, may not be charged for any portion of the program (including any fees for textbooks or other required course materials).

**b.** **Nursing facility reimburses training costs.** A C.N.A. who is employed by, or receives an offer of employment from, a nursing facility not later than 12 months after successfully completing a C.N.A. training program or competency evaluation must be reimbursed by the nursing facility for the costs incurred for the training program or competency evaluation.

**c.** **Nursing facility in-service education for C.N.A.s.** Nursing facilities must provide C.N.A.s with no less than 12 hours per year of in-service education (OBRA '87). Documentation of completed in-service education is given to the C.N.A..

**C. C.N.A. application requirements**

**1. All applicants.** All applicants must submit theDepartment-approved application or renewal form and all required documentation. Required documentation includes but is not limited to the following, as applicable:

**a.** Documentation necessary to verify the identity of the individual, including:

**i.** Full name, including maiden name, and all previously held names;

**ii.** Date of birth;

**iii.** Current mailing address; and

**iv.** Copy of current driver’s license or other suitable identification containing a photograph and signature.

**2. C.N.A.s trained in Maine.** In addition to the requirements of 2(C)(1),C.N.A.s trained in Maine must submit at least the following information to determine eligibility for placement, or continued listing, on the Registry.

**a.** Training verification documentation necessary to verify the training and evaluation testing of the individual, including, as applicable:

**i.** A copy of the Certificate of Training issued by the training program or equivalent documentation of successful completion of the MSBON prescribed curriculum training program on or after 10/9/91; or

**ii.** Documentation of successful completion of a Maine Department of Education-approved training program prior to 10/9/91; or

**iii.** Documentation of successful completion of the competency evaluation test; or

**iv.** A copy of a Certificate of Training or equivalent documentation confirming that the training met then-existing MSBON requirements at the time the course was taken; or

**v.** Documentation of 24 consecutive months of employment for the same employer between 12/19/1987 and 12/19/1989 at one or more Maine facilities, and documentation of current employment by that same employer in one of the facilities; or

**vi.** Documentation of nursing assistant training in Maine prior to 1975.

**b.** A copy of the criminal background check secured by the training program as part of the admission process.

**c.** Documentation from former and current employers verifying the dates and places (with full address) of employment as a C.N.A. during the preceding two years.

**3. C.N.A.s trained in another jurisdiction.** In addition to the requirements of 2(c)(1),C.N.A.s trained in another jurisdiction must submit documentation to determine eligibility for placement, or continued listing, on the Maine Registry. Required documentation includes but is not limited to the following, as applicable:

**a.** Information necessary to verify the training and evaluation testing of the individual, including:

**i.** A copy of the official score report from the testing company that conducted the competency evaluation, indicating a passing score in both theory and clinical competence;

**ii.** A copy of the Certificate of Training issued by the institution or agency conducting the training program; and

**iii.** Documentation from all facilities where the individual was employed as a C.N.A. during the preceding two years, including the dates and places of employment (with full address).

**4. Background check for C.N.A. training programs.** Training programs for C.N.A.s must secure or pay for a background check on each individual who applies for enrollment. Prior to enrolling an individual, a training program for C.N.A.s must notify individuals that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a C.N.A.

**D. Nursing facility verification of out-of-state Registries.** In addition to the requirements set out in 22 MRS §1812-G , nursing facilities must make a reasonable effort to obtain information pertaining to an individual from each State C.N.A. Registry which is likely to contain such information (OBRA '87).

**E. C.N.A. Registry administration.** The Registry shall:

**1.** Determine C.N.A. eligibility for placement on the Registry;

**2.** Determine C.N.A.’s eligibility to take the C.N.A. Competency Evaluation test for non-traditional nursing assistants;

**3.** Annotate the applicant’s or C.N.A.’s record on the Registry to include criminal convictions in accordance with this rule;

**4.** Remove any criminal convictions considered a Class D or Class E criminal offense under Maine law that are at least ten years old or older, provided the conviction did not involve as a victim a patient, client, or resident of a health care setting; and

**5.** Respond to inquiries from the public, including but not limited to, health care providers, individual C.N.A.s, health care consumers, the MSBON, and C.N.A. Registries in other jurisdictions.

**a.** The Registry must disclose, at a minimum, the following information about an individual to all requesters:

**i.** Whether the individual is on the list of active C.N.A.s and direct care workers on the Registry, without disqualifying annotation.

**ii.** The date the individual C.N.A. successfully completed the competency test.

**iii.** The date the individual was approved for placement on the Registry.

**iv.** Verification of employment as a C.N.A. during the preceding 24 months.

**v.** Whether the individual is annotated on the Registry for any of the following:

**1.** Criminal convictions; or

**2.** Substantiated complaints of abuse, neglect or misappropriation of property of a patient, client or resident, the nature of the allegation, the evidence that led the State survey agency to substantiate the complaint, the date of the hearing, if any, and the C.N.A.'s statement disputing the allegation, if any.

**b.** The Department shall promptly notify any C.N.A. when he or she is annotated on the Registry, and upon request by the public.

**1.** The Department shall notify a registered C.N.A. by mail within ten business days, when they are annotated.

**2.** The notification shall include information describing the individual’s right to appeal.

**F. C.N.A. Registry content.** The Registry must contain at least the following information for each applicant and C.N.A.:

**1.** Identity verification documentation;

**2.** Training verification documentation;

**3.** Documentation of successful completion of the C.N.A. competency evaluation must be included on the Registry within 30 days of the date of successful completion;

**4.** Employment verification documentation;

**5.** The Registry determination that it finds the C.N.A. is competent to function as a C.N.A.;

**6.** Annotation of any substantiated findings of abuse, neglect, or misappropriation of property of a patient, client or resident on the Registry within 10 working days of final agency action. Each annotation shall include:

 **a.** Documentation of an investigation of a certified nursing assistant or a direct care worker, including the nature of the allegation and evidence supporting a determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident;

 **b.** Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

 **c.** If the certified nursing assistant or direct care worker appealed the substantiated finding, the date of the hearing; and

 **d.** The statement of the certified nursing assistant or direct care worker disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the certified nursing assistant or direct care worker submitted such a statement;

 The information remains on the Registry permanently, unless documentation demonstrates to the Department that the finding was made in error, the individual was found not guilty in a court of law, or the Registry is notified of the individual’s death;

**7.** Disqualifying criminal convictions;

**8.** Nondisqualifying criminal convictions, except that an annotation is not required on the Registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident;

**9.** Petitions filed by a certified nursing assistant for removal of employment ban issued by the Department that were based on a criminal conviction and the Department’s review and determination;

**10.** Information received from C.N.A. Registries in other jurisdictions; and

**11.** The following eligibility and renewal status information regarding placement on the Registry:

**a.** The date that the C.N.A. was added to the list of active C.N.A.s on the Registry.

**b.** The date the Registry approves a C.N.A.’s completed renewal form for continued listing on the Registry.

**G. Denial or removal from the C.N.A. Registry**

**1. Misrepresentation, deceit, or fraud on application or renewal form.** The Department will either deny placement on the active Registry list or remove a C.N.A. from the list, based on the following factors:

**a.** **Denial.** The Department will deny placement on the active Registry list when an individual knowingly submits an application or renewal form that contains misrepresentations concerning qualification for listing on the Registry or in any way attempts to obtain placement on the Registry by deceitful or fraudulent means; or

**b.** **Removal.** The Department will remove a C.N.A. from the active Registry list if it determines that the individual gained such placement by knowingly submitting an application or renewal form that contained misrepresentations concerning qualification for listing on the Registry or in any way attempted to obtain placement on the Registry by deceitful or fraudulent means.

**2. Nondisclosure of conviction is misrepresentation**. For the purpose of this rule, misrepresentation includes, but is not limited to, the nondisclosure of criminal convictions by an applicant or C.N.A. Nondisclosure occurs when an applicant or C.N.A. fails to comply with this rule.

**3. Fraud or deceit in obtaining a Certificate of Training.** An individual who practices fraud or deceit in obtaining a Certificate of Training as a nursing assistant shall not be eligible for placement on the Maine C.N.A. Registry, in accordance with 02-380 CMR Ch. 5 Regulations Relating to Training Programs and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants.

**H. D.C.W. Registry administration.** The Department places those D.C.W.’s on the Registry, based on information regarding those D.C.W.’s criminal convictions from the Maine Background Check Center and/or substantiated findings from Department-licensing agencies or investigative entities.

**I. D.C.W. Registry content.** Any annotated D.C.W.s will be listed on the Registry. As a result, these annotated D.C.W. names will include the disqualifying offense and the length of time that the D.C.W. is ineligible for employment. The Registry will not list D.C.W.s in good standing who are not annotated. The Registry contains the following information for each annotated D.C.W. listed:

**1. Identity verification documentation.** Information necessary to verify the identity of the individual, including:

**a.** Full name, including maiden name, and all previously held names;

**b.** Date of birth; and

**c.** Current mailing address.

**2. Disqualifying criminal convictions;**

**3. Nondisqualifying criminal convictions,** except that an annotation is not required on the registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident;

**4.** **Substantiated findings,** including but not limited to the following information:

 **a.** Documentation of an investigation of a direct care worker, including the nature ofthe allegation and evidence supporting a determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident;

 **b.** Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

 **c.** If the direct care worker appealed the substantiated finding, the date of the hearing;

 **d.** The statement of the direct care worker disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the direct care worker submitted such a statement; and

 **e.** Petitions filed by a direct care worker for removal of an employment ban issued by the Department that was based on a criminal conviction and the Department’s review and determination.

 **f.** If the D.C.W. was already annotated and listed on the Registry for other disqualifying offenses, then the Department will add these most recent findings to the D.C.W.’s record. A D.C.W. is added to the Registry only after he or she has exhausted all of their rights to appeal under 10-144 MRS Chapter 1 with the licensing or investigative entity reporting the substantiated findings.

**5. Training of D.C.W.s.** The employer or hiring entity is responsible for verifying the credential(s), training, and certification of a D.C.W.

**J. Notice to annotated D.C.W.s.** The Department shall notify an annotated D.C.W. of his or her listing on the Registry by mail within ten business days of referral from the Maine Background Check Center about criminal convictions, or referral from another Department agency regarding high-severity substantiated findings of abuse, neglect or misappropriation of property. The Department will add the annotated D.C.W. to the Registry at the time of notification.

**K. Registry accessibility**. The Registry will be sufficiently accessible to meet the needs of the public, including, but not limited to, health care providers, individual C.N.A.s, health care consumers, and other state C.N.A. Registries. The Department must disclose, at a minimum, the following information about an individual who is listed on the Registry, to all requesters:

 **1.** The date that the individual was placed on the Registry; and

 **2.** Whetherthe individual was annotated on the Registry for:

 **a.** Criminal convictions; or

 **b.** Substantiated findings of abuse or neglect of a patient, client or resident; or

 **c.** Substantiated findings of misappropriation of property of a patient, client or resident.

**3.** Upon request, the Department shall promptly provide all information about a particular D.C.W. listed on the Registry to the requester.

**Section 3. work Disqualifications and Annotations**

**A. Disqualifying criminal offenses - A Table of Crimes.** The Department incorporates the Table of Disqualifying Crimes from the Maine Background Check Center Rule, 10-144 CMR Ch. 60, Section 3 into this rule. That Table lists the length of time that an individual is prohibited from employment as a C.N.A. or D.C.W. All crimes listed in the Table are disqualifying offenses. Convictions for comparable convictions in other jurisdictions will be treated identically.

**B. Other disqualifying offenses.** Lists prohibiting employment:

1. National Sex Offender Public Website;
2. Maine Sex Offender Registry;
3. Federal Office of the Inspector General exclusion list;
4. MaineCare exclusion list; or
5. The exclusion list of any other applicable registries.

**C. Substantiated Finding; lifetime employment ban; Exception to Lifetime Employment Ban**

**1.** A C.N.A. or a registered D.C.W. with an annotation of a substantiated finding on the applicable registry is banned for life from employment as either a C.N.A. or a D.C.W.,

except as provided below.

2. C.N.A.s may petition for removal of an annotation of a substantiated finding as set forth in Section 4 of this rule.

**D. Prohibited Employment Based on Disqualifying Offenses.** An individual with a disqualifying offense, including a substantiated complaint or a disqualifying criminal conviction, may not work as a certified nursing assistant or a direct care worker, and an employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

**E. Nondisqualifying criminal convictions.** A criminal conviction not listed in 10-144 CMR Chapter 60, *Maine Background Check Center Rule* does not disqualify an individual from employment. Convictions for Class D and E offenses more than 10 years old do not have to be annotated, and are not disqualifying offenses.

**SECTION 4 Complaint Investigations, SubstantiatED Findings,**

**PETITIONS, AND APPEALS**

**A. Complaint Investigations, Substantiated Findings and Appeals for C.N.A.s and D.C.W.s**

**1. Complaint investigation.** The Department may investigate complaints and allegations against certified nursing assistants or registered direct care workers of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident. These investigations may not duplicate similar investigations the Department initiates under separate regulations.

**2. Decision.** After an investigation, the Department shall issue a written decision that the allegation of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident is unsubstantiated or substantiated. Each allegation of abuse, neglect or misappropriation of property must be considered separately. The written decision must include at least the following information:

**a.** Whether the allegation is unsubstantiated or substantiated;

**b.** A description of the factors supporting a substantial finding;

**c.** If an annotation of a substantiated finding is entered on the Registry;

**d.** A description of the employment prohibition, if any;

**e.** Notice of the right to appeal the Department’s decision;

**f.** That if they do not request a hearing within 30 days, they will be annotated in the Registry and will be barred from working as a C.N.A. or D.C.W.; and

**g.** That appeals should be sent to the Division of Licensing and Certification, Maine Department of Health and Human Services.

 **3. Right to hearing, Appeal**

 **a.** If the individual requests a hearing, that hearing will be held in accordance with 10-144 C.M.R. Ch. 1, *Administrative Hearings Regulations*. The issue at hearing shall be whether the Department was correct in deciding that the individual abused, neglected or misappropriated the property of a patient, client, or resident.

 **b.** If the final decision after hearing is that the finding is substantiated, the substantiation will be annotated in the Registry, unless the individual appeals the decision to Superior Court. If the finding is appealed, the substantiation will not be annotated unless the final result of the court appeal is in the Department’s favor.

**B**. **C.N.A. petitions**

**1. Petition for reinstatement.** After removal from the active Registry list for fraudulent or deceitful application or renewal, a C.N.A. may petition the Department for reinstatement no sooner than 12 months after the removal date was documented on the Registry. The Department will deny the petition if removal from the Registry was based on more than one application or renewal that resulted in findings of misrepresentation, deceit, or fraud while on the Registry or while pending before the Registry. Reinstatement is subject to the following:

**a.** The removal was based on only one application or renewal that resulted in a finding of misrepresentation, deceit or fraud; and

**b.** The reinstatement petition includes a new, updated application for placement on the Registry.

 **2. Petition for removal of an annotation of a substantiated finding of neglect under certain circumstances.** A C.N.A. may petition the Department to remove an annotation of neglect no sooner than 12 months after the date the neglect finding was documented on the Registry, in accordance with 42 U.S.C. §§ 1395i-3 and 1396r. Substantiated findings of abuse or the misappropriation of property of a patient, client or resident may not be petitioned, in accordance with 22 MRS §1812-G(13). Removal of the annotation of neglect is subject to the following:

**a.** The annotation of neglect was a one-time occurrence and the employment and personalhistory of the C.N.A. does not reflect a pattern of abusive behavior or neglect; and

**b.** The C.N.A. submits a department-approved petition form to the Department that includes a short, clear statement by the C.N.A. that contains the reasons why the C.N.A. is eligible to have the neglect finding removed from the Registry. The Department will then forward those petitions to the licensing or investigative entity that reported the finding to the Department, so that the licensing or investigative agency may review and approve or deny the petition.

**3.** **Petition for removal of an employment ban; criminal conviction.** A C.N.A. may petition the Department for early removal of an employment ban in accordance with 22 MRS §1812-G(6)(D).

 **a.** Prior to the expiration of an employment ban under Section 3 (A), an individual may petition the department for removal of an employment ban that is based on a disqualifying criminal conviction. Unless otherwise prohibited, removal of the employment ban allows the individual to work as a certified nursing assistant or a direct care worker.

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

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

 d. The Department will assess factors including, but not limited to, the risk of reoffending and the conduct of the petitioner since the conviction in the determination to approve or deny the petition.

 **e.** A petition for removal of an employment ban submitted by a certified nursing assistant or a registered direct care worker must be denied if the conduct that led to the conviction would have resulted in a lifetime ban, if that conduct had been investigated as a complaint that resulted in a substantiated finding.

 **f.** When the Department grants a petition for removal of an employment ban, the individual, unless otherwise prohibited, may work as a certified nursing assistant or a direct care worker. The notation of the criminal conviction remains on the registry.

**C.** **D.C.W. petitions**

 **1. Petition for removal of a notation of a substantiated finding.** A D.C.W. may petition the Department to remove a notation of a substantiated finding of neglect no sooner than 12 months after the date the finding was documented on the Registry. The Department will approve or deny the petition by considering the following factors:

**a.** The finding was a one-time occurrence and the employment and personalhistory of the D.C.W. does not reflect a pattern of neglect; and

**b.** The D.C.W. submitted a Department-approved petition form that included a short, clear statement by the D.C.W. that contains the reasons why the D.C.W. is eligible for removal from the Registry. The form must include the following:

**i.** The employment and personal history of the D.C.W. does not reflect a pattern of neglect;

**ii.** The action leading to the original finding was a one-time occurrence; and

**iii.** The action leading to the finding did not result in serious harm to an individual in care or a criminal conviction.

**2.** **Petition for removal of an employment ban due to criminal conviction.** Petitions for the removal of an employment ban must be made in accordance with 22 MRS §1812-G(6)(D). The Department will respond to a petition in accordance with rule adopted under 22 MRS §9054.

**3**. **Retention of information.** Information resulting in annotation remains on the Registry permanently, unless documentation demonstrates that the annotated D.C.W. was listed in error, the individual’s conviction was overturned in a court of law, or the Department is notified of the individual’s death. In order to assert that the substantiated finding was made in error, the D.C.W. must provide evidence to the Department that could not have been presented at the original hearing or that is new evidence.

**D. Any petition for removal of an employment ban due to criminal conviction.** Prior to the expiration of an employment ban under Section 3(A), an individual may petition the department for removal of an employment ban that is based on a disqualifying criminal conviction.

 **1.** An individual may petition the department for removal of:

 **a.** A 5-year employment ban, no sooner than 2 ½ years after an individual is discharged from the legal restraints imposed by the criminal conviction;

 **b.** A 10-year employment ban, no sooner than 5 years after an individual is discharged from the legal restraints imposed by the criminal conviction; and

 **c.** A 30-year employment ban, no sooner than 15 years after an individual is discharged from the legal restraints imposed by the criminal conviction.

**2.** Removal of the employment ban will be based upon assessment of the risk of reoffending and the conduct of the petitioner since the conviction, and the petitioner meets the burden of proof that there exists sufficient rehabilitation to warrant the public trust.

**3.** A petition for removal of an employment ban, submitted by a certified nursing assistant or a registered direct care worker, will be denied if the conduct that led to the conviction would have resulted in a substantiated finding of abuse, neglect, or the misappropriation of property of a client, patient or resident and no proof is provided that the conviction was caused by factors beyond person’s control.

**4.** When the department grants a petition for removal of an employment ban, the individual, unless otherwise prohibited, may work as a certified nursing assistant or a direct care worker. The notation of the criminal conviction remains on the Registry.

**E. Appeals**

**1. C.N.A. right to appeal.** A C.N.A. may request an administrative hearing to appeal the following Departmental decisions:

**a.** Denial of an application or renewal for placement on the C.N.A. Registry;

**b.** Removal from the active C.N.A. Registry list; or

**c.** Denial of a petition for removal of an employment ban.

**2. D.C.W. right to appeal.** An annotated D.C.W. may appeal the denial of a petition.

**3. Administrative hearing**. A C.N.A. or D.C.W. may submit a written request for a hearing and must specify the reason for the appeal. This hearing request must be mailed to the Department within 10 days from receipt of the Department’s decision to take one of the actions listed in Section 4C(1) or (2) above. The administrative hearing process is governed by the *Maine Administrative Procedure Act* at 5 MRS Ch. 375 and the Department's *Administrative Hearings Regulations* (10-144 CMR Ch. 1).

**4. Judicial review.** A person who is aggrieved by a final agency action may be entitled to judicial review in the Superior Court.

**STATUTORY AUTHORITY:**

 22 MRS §§ 42, 1812-G, and 42 C.F.R. Parts 483 and 488

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