**STATE OF MAINE**

**PERSONAL CARE AGENCY LICENSING RULE**

**10-144 CODE OF MAINE RULES**

**Chapter 129**



Department of Health and Human Services

Division of Licensing and Certification

11 State House Station

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**SECTION 1: PURPOSE AND DEFINITIONS**

1. **PURPOSE:**

The State of Maine Department of Health and Human Services, Division of Licensing and Certification licenses Personal Care Agencies (PCAs) which are agencies that provide personal care services to individuals in their place of residence.

1. **DEFINITIONS:**
2. **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.

1. **Activities of Daily Living** **(ADL)** means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to, bed mobility; transfers between surfaces; locomotion; dressing; eating; toileting; bathing; and personal hygiene assistance.
2. **Administrator** means the person responsible for the management of a licensed PCA, including compliance with this rule.
3. **Applicant** means the person who is applying for a license and assumes the roles and duties under these rules.
4. **Certified Nursing Assistant (CNA)** means an individual who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing, holds a certificate of training from that program or course and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers.
5. **Client** means a person who receives services in their place of residence.
6. **Contingency plan** means a plan to respond to emergency scenarios that may impact an agency’s ability to deliver services to clients.
7. **Department** means the Maine Department of Health and Human Services.
8. **Deficiency** meansa violation of this rule.
9. **Direct care** means direct contact assistance with personal care or activities of daily living.
10. **Direct care worker** means an individual who by virtue of employment generally provides direct care to individuals 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.
11. **Directed Plan of Correction** meansa Plan of Correction, issued by the Department, which directs the agency on how and when to correct cited deficiencies, identifies the responsible party, and gives a deadline by which those actions must be completed.
12. **Discharge** means discontinuation of services.
13. **Emergency situations** means events over which the agency has no control which present the risk of harm to clients or employees.
14. **Employee** means an individual hired by a personal care agency.
15. **Exploitation** means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.
16. **Grievance** means a complaint by a client about either an action or inaction by an agency or an employee.
17. **Health care facility** means a nursing facility that is licensed under 22 MRS Ch. 405; a residential care facility that is licensed under 22 MRS Chs 1663 and 1664; an assisted housing facility that is licensed under 22 MRS Chs 1663 and 1664; a hospital that is licensed under 22 MRS Ch 405; a residential mental health or substance use facility licensed under 34-B MRS §1203-A or 22 MRS §7801; or a facility of a hospice program that is licensed under 22 MRS Ch 1681.
18. **Impeding or interfering with an inspection** means a failure to provide information to the Department during an inspection, including an investigation, that is necessary to evaluate compliance with licensing rules, or a failure or refusal to allow the Department access to records or to the premises of a PCA.
19. **Instrumental Activities of Daily Living (IADLs)** means activities related to independent living, including preparing meals, managing money, shopping for groceries or personal items, performing light housework, and communication.
20. **Involuntary discharge** means a decision by an agency to cease providing services to a client who prefers to continue receiving services from that agency.
21. **Legal representative** means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the personal care agency with documentation of their legal authority.
22. **Licensee** means any business, organization, or individual(s) that has been granted legal permission by the Department to provide Personal Care Services under this rule.
23. **Maine Registry of Certified Nursing Assistants and Direct Care Workers** means an on-line registry which identifies individuals qualified and eligible for employment as a Certified Nursing Assistant and individuals who are not eligible for employment as a CNA or direct care worker due to notations for disqualifying offenses.
24. **Misappropriation of property** means deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a client's belongings or money without that person's consent.
25. **Neglect** means a threat to a client'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.
26. **Personal Care Agency** (PCA) means a business entity or subsidiary of a business entity licensed by the Department that hires and employs direct access personnel to work in direct contact with clients to provide assistance with ADLs and IADLs in the places in which they reside, either permanently or temporarily. “Personal care agency” does not include a home health care provider licensed under 22 MRS Ch. 419 or a Family Provider Agency as defined in 10-144 Ch. 101, MaineCare Benefits Manual, Ch. II Section 96.
27. **Personal Care Services** meansa range of human assistance provided to persons with disabilities and chronic conditions to enable them to accomplish activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Personal care services, also known as “home care services”, are provided to help clients stay in their own homes and communities rather than live in institutional settings.
28. **Personal Support Specialist** means a non-medical direct care worker who assists clients with ADLs and IADLs.

1. **Plan of Correction** means a specific plan completed by the provider that fully addresses the Statement of Deficiencies by detailing the provider’s plan to correct deficiencies, prevent repeat occurrences, and the timeframes (specific dates) for completion.
2. **Provider** means a licensed personal care agency.
3. **Quality Improvement Plan** is a PCA's framework for developing and improving processes. It includes the specific indicators of the outcomes of care and quality of life developed by the PCA, and the direction, timeline, activities, and assessment of quality improvement over time within the organization.
4. **Repeated deficiency** means a subsequent deficiency with comparable circumstances or rule provisions as a prior deficiency, unless the Department determines that the circumstances of the previous deficiency are so dissimilar that it would not be proper to consider the deficiency to be a repeat.
5. **Serious harm** means serious physical injury or impairment; serious mental injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including, but not limited to, severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; sexual abuse or sexual exploitation; or serious waste or dissipation of resources.
6. **Service Plan** means an individualized written plan, developed in conjunction with the client and/or legal representative, which identifies the amount, frequency, and scope of service delivery.
7. **Significant change** means a major decline or improvement in a client’s status that impacts one or more areas of the client’s functional or health status and requires multi-disciplinary review or revision of the service plan.
8. **Site** means the physical location(s) where services are coordinated and managed. A site may consist of one or more facilities. A site is where administrative staff are housed and records are maintained.
9. **Substantial compliance** means the correction of cited deficiencies in accordance with the POC, absence of repeated deficiencies, and absence of violations that would threaten the health and safety of clients.

39. **Substantiated finding** means that facts and evidence gathered during an investigation support a decision, by a preponderance, that a person has subjected a client to specific high severity abuse, neglect, or misappropriation of property thus causing the client to be in danger of serious harm.

40. **Supervisor** means a designated individual who is responsible for staff oversight and supervision of direct care workers or other professionals delivering direct care/support to clients.

41. **Statement of Deficiencies (SOD)** meansa written summary, issued by the Department following a Department conducted inspection or investigation, identifying the provisions of this rule with which a licensee has failed to comply.

42. **Working days** means Monday-Friday, excluding State holidays, also known as business days.

**SECTION 2: LICENSING**

1. **GENERAL REQUIREMENTS.**
2. No PCA may provide services or accept any payment for services unless first licensed by the Department.

2. No PCA may advertise that they are a home health agency or that they provide any type of “health” or “healthcare” services that require the services of a licensed medical professional.

3. All licenses are non-assignable and non-transferable. Changes in ownership or control must be handled in accordance with Section 2(I).

4. The applicant must be the owner of the agency.

5. The applicant/licensee must comply with all applicable Maine Statutes and rules.

6. A PCA must have a physical site in Maine, in a non-residential building that is zoned for business or, if operating out of a private home or residential setting, located in a separate and distinct space which ensures confidentiality and contains locked storage for records.

1. **ELIGIBILITY OF APPLICANT.**
2. The applicant/licensee and administrator must meet the following requirements:
	1. The applicant/licensee and administrator must demonstrate to the Department’s satisfaction the capacity to operate and manage the agency with regard for the health and safety of clients and in consistent compliance with this rule and all relevant laws.
	2. In making any determination under this Section, the Department may consider:
3. Records of professional licensing boards, registries, past compliance history, any criminal record, child protective record, or adult protective record relating to the applicant/licensee and administrator;
4. Financial ability and fiscal responsibility of the applicant/licensee (such as a history of timely payment of employee Federal withholding taxes, capability of obtaining financing for working capital and repairs, or history of legal action for financial mismanagement) and experience in health care billing;
5. Experience in the field of health care, social services or areas related to the provision of personal care services;
6. Understanding of and compliance with agency expectations; and
7. Any information reasonably related to the ability to provide services that support the health and safety of clients.
8. No license will be issued if the applicant/licensee refuses to authorize or consent to the release of information listed under § 2 (B)(1)(b) to the Department.
9. **Type and Term of license.** A license may be provisional, full, or conditional.

1. A provisional license may be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the Department, not to exceed 12 consecutive months.

2. A full license may be issued for a period of two years, if in substantial compliance with this rule. If the applicant is not in substantial compliance, the Department may issue a license for less than two years or take other action as authorized by this rule.

3. A conditional license may be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the Department determines appropriate based on the laws and rules violated.

1. **LICENSE SPECIFICATIONS.** Each license issued by the Department will identify:
	* 1. The name of the PCA;
		2. The name of the licensee;
		3. The physical address of the agency and approved sites;
		4. The period of licensure; and
		5. The type of license.
2. **FEES.**
3. Each initial application must be accompanied by a fee of $500.00.
4. Each renewal application must be accompanied by a fee according to the schedule below:

|  |  |
| --- | --- |
| Number of employees at the time of renewal: | Licensing fee: |
| 1-5 | $200.00 |
| 6-10 | $500.00 |
| 11-20 | $1,000.00 |
| 21-50 | $1,500.00 |
| 51 or more | $2,000.00 |

1. Any change in agency name, sites, or physical location requires the license to be re-issued. The processing fee of $10.00 must be sent to the Department with the change of information application.
2. No fee will be refunded.
3. **INITIAL APPLICATION PROCEDURE.**
4. All applications must include the payment source for services. This may include, but is not limited to, private pay, MaineCare, or private insurance.

2. The applicant must provide evidence of general and professional liability insurance.

3. The applicant must provide the results of a criminal background check for all owners obtained from the State Bureau of Identification, completed not more than 30 calendar days prior to the submission of the application.

4. The applicant must provide the name and contact information, including email address, of the administrator.

5. The Department will review the application and supplemental information and approve or deny initial licensure, in writing, within 90 working days of receiving all of the required documentation.

6. An applicant must submit a completed application to the Department prior to securing a provisional license.

1. A complete initial or renewal application must include all required information on the Department-approved form, all required documentation, and the appropriate fee.
2. Applications which remain incomplete after 60 calendar days of receipt of the application by the Department will become void.
3. **LICENSE RENEWAL PROCEDURE.**
4. The agency must file an application with the Department for renewal of its license at least 60 calendar days prior to the expiration of the current license.

2. The agency will be made aware, in writing, of the decision to refuse to reissue a license.

3. An agency may submit a written request for the renewal of any waiver approved under Section 10 (D) of this rule at the time it applies for license renewal.

1. **CHANGES WITHIN THE TERM OF THE LICENSE.**
2. The agency must notify the Department, in writing, of any of the following changes during the licensing period:
	1. Change in the name of the agency;
	2. Change of physical or mailing address;
	3. Change in administrator;
	4. Intent to add a new site; or
	5. Change in telephone number or email address.
3. Notification must be made within the following time frames:
	1. Change in name of agency and address(es): At least 14 calendar days before the change occurs;
	2. Change in administrator, as follows:
4. Resignation: At least 14 calendar days prior to the administrator’s last date of work;
5. Involuntary termination: No more than seven business days after the involuntary termination date; or
6. Emergency or extended leaves of absence: No more than 14 calendar days after an emergency or extended leave is granted;
	1. Intent to add a new site: At least 60 calendar days prior to the opening a new site; and

d. Change in telephone number or email address: No more than seven calendar days after the change as set out in § 3(A)(2).

1. The agency must file an application and a change of license fee whenever there is a change in name of agency, addition of a site, or change in physical location.
2. **CHANGE OF OWNERSHIP.**
	* 1. A license is immediately void if ownership or control of the personal care agency changes.
		2. The agency must notify the Department, in writing, of the intent to change ownership at least 60 days prior to the anticipated date of the transaction.
		3. The agency must disclose the name(s) of the anticipated owner(s) and their contact information at the time of notification.
		4. The anticipated owner must file a new application at least 45 days prior to the anticipated transaction and submit all required paperwork indicated under the new license procedure section of this rule.

5. No license will be issued until the current owner verifies the transaction is complete and the effective date of the change in ownership.

1. **ADDING A SITE.**
2. The agency must file an application prior to opening a new site.
3. This application must include the following:
	* + - 1. Address of intended location;
				2. Hours of operation; and
				3. A summary of how the main location will provide supervision and direction over the new site.

3. The agency is responsible for compliance with this rule at all sites listed on the agency license.

1. **INVOLUNTARY CLOSING OF A LICENSED AGENCY.**
2. The agency must have a policy to address transfer of services for all current clients to another provider if the Department refuses to renew a license under Section 10 of this rule or the Department revokes, suspends, or voids a license.
3. The policy must include a process to notify the Long Term Care Ombudsman of the involuntary closure.

3. Upon closure, the agency must immediately surrender any license in its possession to the Department.

1. **VOLUNTARY CLOSING OF A LICENSED AGENCY.**
	* 1. Whenever a licensed agency voluntarily discontinues operation, the agency must:
2. Notify the Division of Licensing and Certification, the Office of Maine Services, the Office of Aging and Disability Services and the Long Term Care Ombudsman Program, in writing, no less than 90 calendar days in advance of the date of voluntary closure.
3. Notify all current clients and/or legal representatives in writing as soon as possible, but no later than 60 calendar days in advance of the anticipated date of closure.
4. The agency must, upon request, submit a transition plan to the Department for review and approval. The Department may require the agency to take additional steps, deemed reasonable and appropriate by the Department in the interest of client health and safety, to transition clients before the date of voluntary closure.
5. Upon closure, the agency’s license is deemed surrendered and the agency must immediately return any license in their possession to the Department.
	* 1. The agency must notify the Department, in writing, of any emergency situation which prevents compliance with the requirements above.

**SECTION 3: ADMINISTRATION**

1. **BUSINESS REQUIREMENTS.**
	1. The agency must have the following:
2. A dedicated phone line;
3. A dedicated email address;
4. A designated administrator for the operation of the agency; and
5. Designated office hours that are posted on the entrance of the site containing the office space. If no one is at the office during the designated office hours, then a contact phone number must be posted on the door.
	1. The agency must inform the Department of any changes in contact information within seven calendar days of the change.
	2. The agency must maintain general and professional liability insurance adequate to protect clients in the event of personal injury.
6. **POSTING OF LICENSE.**

The agency license must be conspicuously posted in the area where business is conducted.

If an agency that is providing personal care services is dually licensed under another license issued by the Department, both licenses must be posted.

1. **ADMISSIONS.**
2. The agency must keep a record of all admissions that includes the following:

a. Name of the client;

b. The date services began, and

c. If services were discontinued, the date services were discontinued and the reason services were discontinued.

2. The agency must retain client records for no less than five years.

3. The agency must demonstrate sufficient staffing to meet client needs when admitting clients for services.

1. **DISCHARGES.**
2. The agency must show documented evidence of strategies used to prevent involuntary discharges. A client may not be discharged involuntarily, except for the following reasons:
3. When there is documented evidence that a client has violated their contract obligations, despite reasonable attempts at problem resolution;
4. A client’s behavior or living environment constitutes a direct threat to the health or safety of others;
5. A client’s intentional behavior has resulted in substantial physical damage to the property of the agency;
6. When there is documented evidence that the agency cannot meet the needs of the client as the program is fundamentally designed;
7. The client has provided fraudulent or repeatedly inaccurate information in connection with eligibility or services;

f. The agency cannot provide staffing to provide the services as documented in the service plan, or;

g. The agency’s license has been revoked, not renewed, or voluntarily surrendered.

2. If services are being discontinued because of a direct threat to the health or safety of others, there must be documented evidence of the following:

1. The date and nature of the threat; and

b. Who was involved.

3. A discharge notice describing the reason for the involuntary discharge must be sent to the client or their legal representative within five business days. The discharge notice must include contact information for the Long Term Care Ombudsman Program.

1. **CONTRACT WITH CLIENT OR LEGAL REPRESENTATIVE.**

1. For all clients, the agency must have a written business contract with the client or legal representative which will include, at a minimum, any cost(s) for which the client will be responsible.

* 1. A notice must be given to the client or legal representative if there is any change in costs for any service at least 30 calendar days prior to the change.

**SECTION 4: STAFFING**

1. **QUALIFICATIONS.**
2. An agency may not permit an individual to provide specific direct care duties as outlined in Section 4(A)(2) unless the individual meets at least one of the following requirements:
	1. Is currently listed as an active CNA on the Maine Registry of Certified Nursing Assistants and Direct Care Workers.
	2. Has successfully completed Personal Support Specialist training or a Department-approved program related to the provision of personal care.
	3. Has been enrolled in Personal Support Specialist training or a Department-approved program related to the provision of personal care within 60 calendar days of hire.
3. The employee must complete the training within nine months of hire.
4. If an individual does not complete the program within nine months of hire, they will no longer meet the qualifications to provide direct care and may not provide personal care services until they have completed the program.

2. Training as outlined in Section 4(A)(1) is required for any individual providing direct care involving the maintenance of bodily functions, including, but not limited to, bed mobility; transfers between surfaces; locomotion; dressing; eating; toileting; bathing; and personal hygiene assistance. Personal Support Specialist training is not required when the services provided are limited to meals, managing money, shopping, light housework, and communication.

1. **ELIGIBILITY FOR EMPLOYMENT.**
	* + 1. All employees and the owner(s) and administrators must be eligible for employment as evidenced by successful completion of a background check completed by the Maine Background Check Center (MBCC) under 22 MRS Ch. 1691. The MBCC check fulfills the statutory obligation to check the Maine Registry of Certified Nursing Assistants and Direct Care Workers for CNA listing and disqualifying notations.
			2. The agency must determine that each employee has no history of substantiated incidents of abuse, neglect, or misappropriation of property by either Maine Adult Protective Services or Maine Child Protective Services.
			3. The agency must maintain a file which contains the result of all background checks. This file must contain the date each check was conducted and a printout from the databases checked or documentation from the source that performed the check.
2. **STAFFING.**

1. If the agency is not able to provide services on a scheduled day, the client and/or legal representative must be notified before the scheduled visit and informed of the reason services cannot be provided as scheduled.

2. A record must be kept of any date on which the agency was unavailable to provide scheduled services to a client and the reason why services could not be provided. This record must be available to representatives of the Department.

1. **SCOPE OF DUTIES.** Employees providing direct care to clients may only complete duties which they have been trained to perform through a state-approved Certified Nursing Assistant program or a Department-approved program related to the provision of care, in accordance with Sections 4 (A)(1) and 4(A)(2) above.

**SECTION 5: QUALITY MEASURES**

1. **OPERATIONS MANUAL.**
2. The agency must have a manual that includes, at a minimum, the following:
3. An organizational diagram delineating the lines of responsibility and accountability;
4. Job descriptions for all positions within the agency;
5. A description of the orientation program, including but not limited to mandated reporting requirements;
6. Policies and procedures on topics, including but not limited to those in subsections (i)-(xvii) below. Policies and procedures on topics that are addressed by this rule or by statutes applicable to the agency must comply with the relevant law.
	1. Infection control in the office and in private homes;
	2. A policy for seeking a referral/reassessment when a client may require higher level of care;

* 1. Verification of qualifications prior to employment;
	2. Confidentiality of records and services, including transportation and storage of records;
	3. Completion of screening of owners and employees, including determination of eligibility for employment;
	4. In-service training, including confidentiality and service planning for clients;
	5. Performance management, including disciplinary measures and annual performance reviews;
	6. Supervision of staff, including staff absences/call outs and smoking, alcohol, or illegal drug use while providing client care;
	7. Ethical business relationships with clients, including a restriction on the acceptance of gratuities, loans, and/or gifts from clients and family members;
	8. Client referrals;
	9. Client service plans, including documentation of services provided and emergency procedures related to the client;
	10. Grievance procedures;
	11. Reporting and investigation of allegations of abuse, neglect, or misappropriation of client property;
	12. Discontinuing of services, including involuntary discharge;
	13. Contingency planning, including agency closure;
	14. Client and business record retention while operating and after closure; and
	15. Communicating new policies and policy changes with all employees.

2. Agency policies and procedures must be implemented and followed by the agency, including the plan for communicating policy changes with all employees.

1. **STAFF ORIENTATION.**
2. All employees providing direct care to clients must receive agency orientation prior to working independently with any client.
3. The agency orientation program must include, at a minimum, the following topics:
4. Mandated reporting requirements as stated in 22 MRS §3477 and 22 MRS §4011-A;
5. Agency policy related to abuse, neglect, and misappropriation of client property;
6. The agency expectations enumerated in Section 7 (A) of this rule;
7. Grievance policy;
8. Job duties and responsibilities;
9. Agency policies on performance management, including disciplinary measures and annual performance reviews;
10. Client service plans;
11. Documentation requirements;
12. Contingency planning practices;
13. Infection control;
14. Training requirements;
15. Emergency procedures related to the client; and
16. Confidentiality requirements in accordance with state and federal rules and laws.
17. **ANNUAL STAFF TRAINING.**
18. Each employee must receive annual training, including but not limited to:
19. Maine’s mandated reporting statutes;
20. Agency policy related to abuse, neglect, and misappropriation of client property;
21. Grievance policy;
22. The agency expectations enumerated in Section 7 (A) of this rule;
23. Infection control;
24. Emergency and disaster policies; and
25. Confidentiality requirements in accordance with state and federal rules and laws.
26. **Supervision.**
27. The agency must designate one or more individuals who will be responsible for supervision of employees providing direct care.
28. To be a supervisor, an individual must:

i. Hold a license in good standing as a Licensed Practical Nurse or Registered Nurse;

ii Have completed the Department-approved course in personal care services and have at least one year’s experience providing personal care services;

iii. Be registered as a CNA; or

iv. Have a combination of at least five years of education and/or experience in a related field.

1. The supervisor must provide on-site supervision at least once every 30 days to each employee assigned direct care duties, for the first three months of employment. The on-site supervision must occur while the employee is providing personal care services.
2. The on-site supervisory visit must be documented. This documentation must include, at a minimum, the following:
3. The services that the supervisor observed;
4. Any competency issues noted;
5. The action plan to resolve any issues; and
6. An interview with the client and/or legal representative regarding his/her satisfaction with the services the staff is providing to the client and whether the service plan is being followed.
7. The supervisor must complete an annual performance review, based on the employee’s date of hire. The evaluation must be maintained in the employee’s personnel record.

**E. qUALITY IMPROVEMENT MEASURES.** The agency must develop, implement, and maintain a data-driven Quality Improvement Plan that focuses on indicators of the outcomes of care and quality of life.

* + - 1. The plan shall include how data and information collected from systems and/or reports will be used to develop, investigate or identify trends related to service delivery, client care and quality of life/service provided.
			2. Agencies shall use information to develop strategies to mitigate or prevent adverse event(s) and improve quality of service.

3. The agency shall have documentation demonstrating the development, implementation, and evaluation of corrective actions or performance improvement activities.

**SECTION 6: ALLEGATIONS OF ABUSE, NEGLECT, AND/OR**

**MISAPPROPRIATION OF CLIENT PROPERTY**

1. **Reporting requirements.**
2. The agency must have a written policy and procedure to address the reporting of abuse, neglect, and/or misappropriation of client property. The policy may not conflict with 22 MRS §3477 or 22 MRS §4011-A.
3. All allegations of client abuse, client neglect, exploitation, and/or misappropriation of client property involving agency staff must be reported immediately, to the following:
4. Agency administrator;
5. Adult Protective Services, if the client is 18 years or older;
6. Child Protective Services, if the client is less than 18 years old; and
7. The Division of Licensing and Certification.

3. Reports to the Division of Licensing and Certification may be submitted by established online reporting sites or by telephone.

4. A written report must be submitted to the Division of Licensing and Certification after reporting an allegation by telephone or voicemail.

1. The written report may be submitted either using the online form or a designated Department form; and
2. Must be received by the Department within 48 hours of the verbal report.

5. All reports to the Division of Licensing and Certification, both verbal and written, must indicate, at a minimum, the following:

1. Agency name, address, and phone number;
2. Name of the client;
3. Address of the client;
4. Information regarding the nature of the abuse, neglect, exploitation, or misappropriation of client property;
5. Name and title, if any, of the alleged perpetrator;
6. The name of the person making the report; and
7. Contact number of the person making the report.
8. **INVESTIGATIONS.**

1. Agency investigation regarding an allegation must include, but is not limited to, the following documentation:

1. Date and time of the alleged events;

1. The nature of the allegation;
2. Date and time all required individuals were notified in accordance with § 6(A)(2);
3. Name and contact information of the initial reporter;
4. Name and contact information of the alleged perpetrator and their title, if any;
5. Date and time the alleged perpetrator was removed from duty, if an employee;
6. Documented interviews with the client, all individuals with possible knowledge of the alleged incident, and the alleged perpetrator;
7. A conclusion statement; and
8. An action plan.

2. The alleged perpetrator, if an employee, may not work with any client until an investigation has been completed.

3. The investigative report containing information listed in Section 6(B)(1)(a-h) must be submitted to the Department no later than the close of business on the seventh calendar day after the alleged incident.

4. Any reasonable suspicion of a crime involving the client, as the victim, must be reported to law enforcement within the following time frames:

1. Any event that caused reasonable suspicion and resulted in serious bodily injury to a client must be reported immediately, but not later than two hours after forming the suspicion.
2. An event that caused reasonable suspicion and did not result in serious bodily injury to a client must be reported not later than 24 hours after forming the suspicion.

5. The agency may not interfere with, impede or obstruct an investigation by the Department, including but not limited to influencing or limiting client or staff participation in Department investigative activities.

**SECTION 7: AGENCY EXPECTATIONS**

* + 1. **EXPECTATIONS.**

1. Agencies must comply with the following:

a. Inform clients of the names of agency staff and their qualifications, upon request;

b. Provide services to clients free from abuse, neglect, exploitation, or misappropriation of property;

c. Involve clients in the development of their service plan;

d. Arrange for clients to receive the services as identified on their service plan, unless a client refuses services;

e. Communicate with clients about services and supports in a language the client understands;

f. Inform clients if services cannot be delivered on a given day;

g. Provide clients with access to their records and produce paper copies of all records pertaining to a client upon the client’s or legal representative’s request. If the request for paper copies is made orally, the agency must document the date the request was received in the client record (the agency may assess a reasonable, cost-based fee for paper copies consistent with applicable law);

h. Treat client records and information pertaining to a client’s personal, medical and mental health status as confidential, in accordance with Section 9(A)(2) of this rule;

i. Inform clients, verbally and in writing, of how to file a grievance with the agency, provided in language understood by the client;

j. Inform clients, verbally and in writing, and in a language understood by the client, of how to file a complaint with the Department and that this complaint may be filed instead of or in addition to a grievance;

k. Inform clients of the outcome of any licensing inspection or investigation conducted by the Department, upon request; and

l. Inform clients of their state protection and advocacy rights, including but not limited to providing contact information for the Division of Licensing and Certification, Adult Protective Services and the Maine Long Term Care Ombudsman Program.

1. The client must be given a copy of these agency expectations at the time of signing a contract with the agency.
2. A signed copy must be maintained in the client’s record.

**B. Grievance Procedures.**

1. The agency must have a process for clients to raise issues or concerns about the manner and quality of services or other grievances with the agency.
2. The agency must retain a record of all grievances filed by any client or a client’s legal representative. This record must contain the following:
3. Client’s name;
4. Date of filing of the grievance; and
5. The nature of the grievance.
6. The agency must investigate all grievances.

1. The agency must document the investigation and the resolution of all grievances in the client’s record.
2. The agency must provide a written resolution to the client within seven calendar days and a copy must be kept in the client’s record.

**SECTION 8: SERVICES**

1. **SERVICE PLAN DEVELOPMENT AND IMPLEMENTATION.**
2. A written service plan must be developed, in coordination with the client and/or legal representative, prior to any services being provided.
3. The service plan must identify the following:
4. The date the service plan was developed;
5. Who participated in the development of the plan;

c. The services that are to be provided;

d. The frequency at which each service is to be delivered; and

e. The client’s and/or legal representative’s signature attesting to their involvement and agreement with the plan.

1. The service plan must be updated whenever there is a significant change in client function or status. At the time of any update, the client and/or legal representative will sign attesting to their involvement and agreement with the updated service plan.

4. A review of the service plan, with the client and/or legal representative, must be conducted at least annually. At the time of any update, the client and/or legal representative must sign attesting to their involvement and agreement with the updated service plan.

5. The agency must implement the service plan as written.

1. **DOCUMENTATION OF SERVICES PROVIDED.**
2. At each visit, the employee must document what services were provided to the client.
3. Documentation must include the signature of the employee and date of service(s) provided.

3. If the client expresses any grievances regarding his/her services, the employee must document these concerns in the client’s record and report the concerns in accordance with the agency policy.

**SECTION 9: RECORDS**

1. **CONFIDENTIALITY.**

1. All administrative and client records must be stored in a secure manner such that unauthorized persons cannot gain access to them. Personal electronic devices used to store or transmit client information must be equipped with software and/or applications to ensure that the information cannot be accessed by unauthorized individuals.

2. Records or information that is confidential pursuant to state or federal law must meet the confidentiality requirements of those applicable statutes.

1. **CLIENT RECORDS.**
2. An individualized record must be maintained for each client. These records may be paper records or electronic records. The record must contain, at a minimum, the following:
3. Name;
4. Address;
5. Phone number;
6. Emergency contact person;
7. Date of admission;
8. Date services began;

g. Service plans;

h. Documentation of service delivery;

i. Signed service contract;

j. Any concern or complaints the client expressed about his/her care;

k. Discharge summary, including date services ended, reason services ended, and client status at discharge; and

l. Any signed releases of information, updated annually.

m. If services were discontinued because of non-payment or the safety of staff, a copy of the letter sent to the client, family, and/or legal representative.

2. All client records must be accessible to Department representatives upon request.

1. **OWNER AND EMPLOYEE RECORDS.**
2. An individualized record must be kept at the agency for owners and all employees.
3. Owner records must contain the following:
4. Name;
5. Current address and phone number;
6. Social security number and/or date of birth; and
7. Results of MBCC, APS, and CPS checks.
8. Employee records must contain the following:
9. Name;
10. Current address and phone number;
11. Social security number and/or date of birth;
12. Date of hire;
13. Signed job description;
14. First date employee provided direct care to a client;
15. Evidence of the completion of a Certified Nursing Assistant program or a Department-approved training program related to provision of direct care;
16. If the employee had not completed a required program at the time of hire, the date on which the employee was enrolled in a program;
17. Results of MBCC, APS, and CPS checks;
18. Documentation of completion of the required orientation program and all required trainings;
19. Each annual performance review; and
20. Documentation of all required supervisory visits.
21. **BUSINESS RECORDS.** The organizationmust havethe following current business records on site for review:

1. The agency’s articles of incorporation, if so organized,

2. The agency’s insurance policy(ies); and

3. The agency must create a chart showing the organizational structure, including lines of authority.

**SECTION 10: ENFORCEMENT**

1. **RIGHT OF ENTRY AND INSPECTION.**
2. The Department may enter the premises of any licensed site, at any reasonable hour, to conduct inspection surveys and complaint investigations, in accordance with 22 MRS § 1717.
3. The Department has the right to inspect the premises of a PCA licensed 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.
4. The right of entry and inspection extends to any premises that the Department knows or believes are being operated without being licensed. Such entries or inspections must be made with permission of the owner or person in charge unless a warrant is first obtained from the District Court authorizing that entry or inspection.
5. Department employees, with the permission of the client, may also visit sites of service provision to determine compliance with these rules.
6. An agency may not impede or obstruct a Department inspection.
7. **Frequency and type of inspections**. An inspection may occur:
8. Prior to the issuance of a license;
9. Prior to renewal of a license;
10. Upon complaint that there has been an alleged violation of this rule;
11. When there has been a change or proposed change in administrator, physical plant, or sites;
12. When necessary to determine compliance with a Plan of Correction or conditions placed on a license, or to determine whether cited deficiencies have been corrected;
13. For routine monitoring of client care; or
14. To assess whether an agency has violated a provision of this rule or is operating without a license.
15. **COMPLAINT INVESTIGATIONS**. The Department will accept complaints from any person about alleged violation(s) of this rule.
16. The provider may not retaliate against any client or his/her representative for filing a complaint.
17. Any licensing violations noted as a result of a complaint investigation will be provided to the PCA in a Statement of Deficiencies.
18. Complaint investigations resulting in a substantiated finding of abuse, neglect, or misappropriation of property may be shared with the Maine Registry of Certified Nursing Assistants and Direct Care Workers.

**D. Waiver of a licensing rule.** An agency holding a full license may request, in writing, a waiver of a provision of this rule.

1. The Department may waive or modify a provision of this rule under the following terms and conditions:

a. The agency must provide clear and convincing evidence, including expert opinion at the request of the Department, which demonstrates to the satisfaction of the Department that the organization's alternative method will comply with the intent of the rule provision;

b. The provision is not mandated by State or federal law; and

c. The waiver may not violate the rights of clients receiving services.

2. A waiver granted by the Department is enforceable as rule and a violation is subject to the enforcement procedures in this rule.

3. A waiver, when granted, must be for a specific period, not to exceed the term of the license.

4. A waiver may impact an agency’s ability to receive payment for services. It is the PCA’s responsibility to research any potential conflicts before requesting a waiver.

**E. STATEMENTS OF DEFICIENCIES (SOD).**

1. After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with this rule.
2. An SOD may be accompanied by a Directed Plan of Correction (DPOC.)

**F. Informal Conference.**

1.An agency may request a courtesy informal conference to dispute any deficiency cited on an SOD.

2. An agency wishing to dispute the findings of an SOD must submit a written request for a courtesy informal conference to the Department within ten (10) business days of receipt of the SOD.

3. A Plan of Correction (POC) must be submitted to the Department within ten (10) business days of the organization’s receipt of an SOD. The agency may not delay submitting a POC within the required timeframe because an informal conference has been requested. Failure to submit a POC within the required timeframe is a violation of this rule that may result in sanctions.

4. The written request for a courtesy informal conference must specifically identify what deficiencies are being disputed, include a reason for the request, and provide evidence sufficient to support the disputation of the deficiency.

5. Informal conferences may not be used to present evidence that was required to be available at the time of an inspection or investigation.

6. If the agency meets the requirements of § 10 (F)(1)-(5) above to the satisfaction of the Department when submitting the request, the Department will schedule an informal conference. Informal conferences will be scheduled upon availability of DLC staff.

7. Only one informal conference will be permitted regarding an inspection that results in the issuance of a SOD. Failure to appear at the scheduled time of the informal conference or failure to provide at least 24 hours’ notice of the need to reschedule the informal conference will result in forfeiture of the opportunity for an informal conference for that SOD.

8. If an agency chooses to be accompanied by counsel, then the agency must notify the Department of that intent in their request for a courtesy informal conference. The Department reserves the right to cancel a courtesy informal conference when an agency’s counsel appears without prior notice.

9. A courtesy informal conference may result in:

 a. No change to the SOD; or

 b. A revision to the SOD to accurately reflect the violations supported by the evidence.

10. The Department will notify the PCA, in writing, of the results of the courtesy informal conference. If there is a revision to the SOD, a revised SOD will be issued to the agency and a POC must be submitted within ten (10) business days.

11. An informal conference will not delay any subsequent enforcement action against an agency or any other aspect of the inspection and/or licensing process. DLC retains the authority to conduct subsequent inspections that may result in additional actions.

12. The decision to grant or deny a courtesy informal conference is not final agency action and may not be appealed. The outcomes of courtesy informal conferences are not subject to the right of appeal, although the ability to appeal sanctions will be as set out in subsection H.

**G. PLANS OF CORRECTION (POCs).**

1. The licensee must complete a POC which addresses each cited deficiency, sign the plan, and submit it to the Department within ten (10) business days of receipt of the SOD.

2. An acceptable plan of correction must contain the following elements. It must:

1. Address how corrective action will be accomplished for those clients found to have been affected by the deficient practice;
2. Address how the agency will identify other clients having the potential to be affected by the same deficient practice;
3. Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
4. Indicate how the agency plans to monitor its performance to make sure that solutions are sustained;
5. Include dates when corrective action will be completed; and
6. Be limited to the content above.

3. The Department will review and may approve the POC. The corrective action(s) and completion date(s) must be acceptable to the Department.

1. If the Department rejects the POC as initially submitted, the agency will be notified in writing.
	1. The agency must submit an acceptable POC that addresses the reasons for rejection of the initial POC within five calendar days of the date of notice.
	2. If the revised POC is acceptable, the Department will notify the agency in writing.
	3. If the agency fails to provide an acceptable plan of correction within five calendar days of the date of notice, the Department may issue sanctions in accordance with this rule.
2. The agency is responsible for compliance with an approved POC.

**H. SANCTIONS FOR NON-COMPLIANCE WITH THIS RULE**

1. The Department may issue one or more of the following sanctions when one or more grounds for sanctions have been determined:

1. Issue a directed plan of correction;
2. Issue a directive to cease admissions or intake of new clients;
3. Issue a financial penalty;
4. Issue a conditional license;
5. Petition the Superior Court to appoint a receiver to operate the PCA in accordance with 22 MRS ch. 1666-A;
6. Refuse to renew a license; or
7. File a complaint with the District Court to suspend a license or revoke a license.

2. The Department may issue a Directed Plan of Corrections (DPOC) which directs the agency on how and when to correct cited deficiencies, identifies the responsible party, and gives a deadline by which those actions must be completed.

 a. A DPOC may include action steps including, but not limited to, seeking technical assistance through the Department or its designated agent.

 b. A DPOC may include a restriction on admitting new clients into care.

3. The Department may impose one or more financial penalties when one or more of the circumstances listed below are present, and the Department determines that a sanction is necessary and appropriate to ensure compliance with this rule or to protect the clients to whom the agency provides services, in accordance 22 MRS § 1717 (4)(A-1) and (13-A)(A)(5).

* 1. Operation of a personal care agency without a license may be referred to the Office of the Attorney General for enforcement as a civil infraction and may result in a fine of not less than $500 per day, up to a maximum of $10,000.
	2. The Department may impose a financial penalty upon a PCA in addition to, or in lieu of, the penalties imposed pursuant to subsection H (3)(a) above for a violation of this rule, according to the schedule below.

|  |  |
| --- | --- |
| i. Failure to submit a POC within ten calendar days after receipt of a SOD. | $500 per day of operation |
| ii. Substantiated findings of abuse, neglect, and/or misappropriation. | $500 per day of operation |
| iii. Failure to comply with a Directed Plan of Corrections. | $500 per day of operation |
| iv. Impeding or obstructing an inspection by the Department. | $500 per day of operation |
| v. Failure to conduct a background check in accordance with this rule.  | $500 per day of operation |
| vi. Failure to report allegations of abuse and/or neglect. | $500 per day of operation |
| vii. Operation of a site without prior approval by the Department. | $500 per day of operation |

**I. Conditional license.**

1. A conditional license may be issued by the Department when an agency fails to comply with applicable laws and rules, and in the judgment of the Commissioner, the best interest of the public would be served by issuing a conditional license.

1. The conditional license will be issued for a period sufficient to achieve compliance, not to exceed 12 months.
2. The Department will specify when and what corrections must be made during the term of the conditional license.
3. An agency may not add new sites during the term of a conditional license.

**J. REFUSAL TO ISSUE OR RENEW A LICENSE.**

1. The Department may refuse to issue a provisional license to the applicant if it finds that the information submitted as part of the application is inaccurate or incorrect.
2. The Department may refuse to renew a license if it finds that any the following conditions exist:
3. The applicant has demonstrated repeated non-compliance with this rule, including citations for repeat deficiencies and/or failure to implement a POC or DPOC.
4. The applicant has failed to comply with all applicable Maine Statutes and rules and regulations; or
5. The Department finds that agency practice is detrimental to the welfare of persons to whom the personal care agency is providing services.

K. **SUSPENSION OR REVOCATION OF A LICENSE.**

1. The Department may file a complaint with the District Court requesting suspension or revocation of any license issued for violation of applicable laws and rules.
2. Upon revocation of a license, the license must be immediately surrendered to the Department.
3. Whenever the Department determines that the health or physical safety of an individual who is receiving services is in immediate jeopardy, the Department may, under the emergency provisions of 4 MRS §184(6), request that the District Court suspend or revoke the license and/or proceed in accordance with or 5 MRS §10004.

**L. APPEALS.** Any person aggrieved by the Department's decision to take any of the following actions may request an administrative hearing, in conformity with the Maine Administrative Procedure Act:

1. Denial of or refusal to renew a full license;
2. Denial of a provisional license;
3. Issuance of a conditional license;
4. Amendment or modification of a license; or
5. Imposition of sanctions set forth in H(1)(a)-(c).

**STATUTORY AUTHORITY:** 22 MRS §§1717, 1723

**RULEMAKING HISTORY**

 EFFECTIVE DATE: January 1, 1999

 REPEALED AND REPLACED: August 20, 2024