CHAPTER 417-A

BACKGROUND CHECKS FOR TEMPORARY NURSE AGENCIES

§2136. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 621, §5 (NEW).]

1. Hire, employ or place. "Hire, employ or place" means to recruit, select, train, declare competent, schedule, direct, define the scope of the position of or supervise an individual who provides temporary care pursuant to chapter 417.
[PL 2009, c. 621, §5 (NEW).]

2. Temporary nurse agency. "Temporary nurse agency" means a business entity or subdivision thereof that provides nurses to another organization on a temporary basis within this State.
[PL 2009, c. 621, §5 (NEW).]

SECTION HISTORY

PL 2009, c. 621, §5 (NEW).

§2137. Criminal background checks

Beginning October 1, 2010, a temporary nurse agency, prior to hiring, employing or placing an individual who will work in direct contact with a consumer or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The temporary nurse agency shall pay for the criminal background check required by this section. [PL 2015, c. 196, §10 (AMD); PL 2015, c. 299, §18 (AMD).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 621, §5 (NEW).]

SECTION HISTORY

PL 2009, c. 621, §5 (NEW). PL 2015, c. 196, §10 (AMD). PL 2015, c. 299, §18 (AMD).

§2138. Prohibited employment based on disqualifying offenses

A temporary nurse agency shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including a certified nursing assistant or a direct care worker. [PL 2015, c. 494, Pt. A, §19 (RPR).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 299, §19 (NEW).]

1. Subject of notation.
[PL 2015, c. 196, §11 (RP); PL 2015, c. 299, §19 (RP).]

2. Convicted of crime involving abuse, neglect or misappropriation.
[PL 2015, c. 196, §11 (RP); PL 2015, c. 299, §19 (RP).]

3. Other prior conviction.
[PL 2015, c. 196, §11 (RP); PL 2015, c. 299, §19 (RP).]

SECTION HISTORY

PL 2009, c. 621, §5 (NEW). PL 2011, c. 257, §16 (AMD). PL 2015, c. 196, §11 (RPR). PL 2015, c. 299, §19 (RPR). PL 2015, c. 494, Pt. A, §19 (AMD).

§2139. Complaints

1. Complaint investigation. The department is authorized to investigate complaints against a temporary nurse agency to ensure compliance with this chapter.
[PL 2009, c. 621, §5 (NEW).]

2. Injunctive relief. Notwithstanding any other remedies provided by law, the Attorney General may seek an injunction to require compliance with the provisions of this chapter.
[PL 2009, c. 621, §5 (NEW).]

3. Enforcement. The Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this chapter.
[PL 2009, c. 621, §5 (NEW).]

4. Jurisdiction. The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this chapter.
[PL 2009, c. 621, §5 (NEW).]

5. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violation of this chapter occurred.
[PL 2009, c. 621, §5 (NEW).]

6. Right of entry. This subsection governs the department's right of entry with respect to temporary nurse agencies.

A. An application for registration of a temporary nurse agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules. [PL 2009, c. 621, §5 (NEW).]

B. The department has the right to enter and inspect the premises of a temporary nurse agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules. [PL 2009, c. 621, §5 (NEW).]

C. To inspect a temporary nurse agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. [PL 2009, c. 621, §5 (NEW).]

[PL 2009, c. 621, §5 (NEW).]

7. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered temporary nurse agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this chapter. The right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating a temporary nurse agency without being registered.
[PL 2009, c. 621, §5 (NEW).]

8. Noninterference. An owner or operator of an unregistered temporary nurse agency may not interfere with, impede or obstruct an investigation by the department, including, but not limited to, interviewing persons receiving services or persons with knowledge of the agency.
[PL 2009, c. 621, §5 (NEW).]

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

In an action under this chapter, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Attorney General and the costs of suit, including attorney's fees.
[PL 2009, c. 621, §5 (NEW).]

10. Suspension or revocation of registration. A temporary nurse agency found to be in violation of this chapter may have its registration to operate as a temporary nurse agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a temporary nurse agency.
[PL 2009, c. 621, §5 (NEW).]

11. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2009, c. 621, §5 (NEW).]

SECTION HISTORY

PL 2009, c. 621, §5 (NEW).

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