**STATE OF MAINE**

**TEMPORARY NURSE AGENCY REGISTRATION RULE**

**10-144 CODE OF MAINE RULES**

**Chapter 111**



Department of Health and Human Services

Division of Licensing and Certification

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**Temporary Nurse Agency Licensing Rule**

**TABLE OF CONTENTS**

**I. Purpose and Scope**

A. Purpose 1

B. Scope 1

**II. Definitions**

A. Definitions 2

**III. Registration and Fees**

A. Initial registration 4

B. Changes within the registration period 4

C. Annual renewal of registration 4

D. Change of ownership 5

E. Voluntary closure of a TNA 5

F. Fees 5

**IV. Quality Assurance**

A. Employee quality assurance 6

B. Availability of records 6

**V. Annual Reporting Requirements**

A. Annual reporting 7

B. Availability of records 7

**VI. Criminal Background Checks**

A. Criminal background checks 8

B. Prohibited employment based on disqualifying offenses 8

**VII. Enforcement**

A. Compliance 9

B. Complaint investigation 9

C. Violations 9

D. Penalties and sanctions 10

E. Appeal rights 10

**Statutory Authority and Rulemaking History** 11

**SECTION I. PURPOSE AND SCOPE**

**A. Purpose**

This rule governs the registration of Temporary Nurse Agencies (TNA) in Maine, in accordance with 22 MRS Chapters 417 and 417-A. This rule operationalizes and clarifies the content of Maine statutes regarding the registration of TNAs, the operational requirements for these agencies, and enforcement actions allowed by law.

**B. Scope**

This rule applies to all TNAs operating within the State of Maine, whether located within the state or located elsewhere, and placing nursing staff, certified nursing assistants, and other qualified staff in health care facilities and/or health care settings within the state.

**SECTION II. DEFINITIONS**

**A. Definitions.** As used in this rule, the following terms have the following meanings.

1. **Certified Nursing Assistant (CNA)** 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.

2. **Department** means the Maine Department of Health and Human Services, Division of Licensing and Certification or its successor agency.

3.**Direct access** means access to the property, personally identifiable information, financial information, or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other protected individual served by a nurse, certified nursing assistant, or other qualified staff placed by a TNA.

4. **Health care facility** means a public or private, proprietary or not-for-profit entity or institution providing health services, including, but not limited to a nursing facility; a residential care facility; a continuing care retirement community; an assisted housing facility; a hospital; a community mental health facility; a scene response air ambulance; a facility of a hospice program; or a community health center.

5. **Health care setting** means a provider that offers health care services to patients in the state of Maine, including but not limited to home health care agencies, physician’s offices, vaccination clinics, or other sites where staff employed by a TNA are placed.

6. **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.

7.**Maine Background Check Center (MBCC)** means the entity that operates the Internet-based system established and maintained by the Department in accordance with 22 MRS §9054, used by employers to request background checks on potential or current direct access workers to determine the eligibility of individuals to work in direct access positions with vulnerable Mainers including children, elderly persons, dependent adults and persons with disabilities.

8.**Maine Registry of Certified Nursing Assistants and Direct Care Workers Registry** means the registry which lists CNAs who are qualified to work in Maine and includes any CNAs who are annotated and disqualified from employment as a CNA. The Registry also lists any Direct Care Workers who are annotated and not eligible for employment due to a prior disqualifying offense.

9. **Nurse** means an individual engaged in the practice of nursing as set forth in 32 M.R.S. § 2102, including professional nursing, advanced practice registered nursing, and practical nursing.

10. **Other qualified staff** means any other type of health care staff that require certification or licensure to provide services in Maine, including but not limited to Physical Therapists, Occupational Therapists, Speech Language Pathologists/ Speech Therapists, Certified Residential Medication Assistants, and Personal Support Specialists. Other qualified staff does not include physicians.

11. **Person in charge** means an individual designated by the TNA as the person who is responsible for the day-to-day operations of the TNA and would be the contact person for the Department.

12. **Repeat Deficiency** means violating the same rule more than once in a two-year period.

13. **Reporting period** means the period from July 1st to June 30th of each year. The quarters of the reporting period are: 1st quarter: July 1st to September 30th; 2nd quarter: October 1st to December 31st; 3rd quarter: January 1st to March 31st; and 4th quarter: April 1st to June 30th.

14. **Temporary nurse agency (TNA)** means a business entity or subdivision of a business entity that primarily provides nurses, certified nursing assistants and other qualified staff to another organization on a temporary basis within this State. A temporary nurse agency does not include an agency licensed in this State as a home health care services provider.

**SECTION III. Registration and Fees**

**A.** **Initial registration.** A proposed TNA must register with the Department prior to beginning operations in the State of Maine.

1. This registration includes submitting a completed application and the required fee as established by 22 MRS § 2131.

2. Registrations will be valid for one year.

3. The TNA must designate an individual to be the day-to-day person in charge who will be the point person for communication with the Department and provide electronic contact information for that individual on the application.

**B. Changes within the registration period.**

1. The TNA must notify the department of any of the following within 14 days of occurrence by submitting a change notice on the form designated by the Department:
2. Name change;
3. Address change;
4. Change in agency’s email address;
5. Change in the person in charge;
6. Change in the person in charge’s email address; and
7. Change in operation (i.e.: temporary closure) and effective date.

**C. Annual renewal of registration.**

1. To renew a TNA registration, at least 30 days prior to the expiration of the current TNA registration, the Department must receive:
   1. a completed renewal application, on a form approved by the Department, and
   2. the required fee.

For renewals due within 30 days of the effective date of this rule, a renewal will be accepted as timely if the Department receives the completed application and required renewal fee prior to the expiration of the current registration.

2. Renewal registrations will be valid for one year.

3. The Department will review the TNA’s performance over the registration period for compliance with these rules in evaluating whether to approve or deny a registration renewal.

**D. Change of ownership.**

1. No registration is transferable from one owner to another owner.
2. The current owner must notify the Department at least 60 days prior to any ownership change. This notification will include the new owner’s name and the anticipated date of the sale.

1. The new owner must submit the following:
2. An application and the required fee for initial registration at least 30 days prior to taking ownership of the TNA;
3. A written statement from the seller that verifies the sale of the TNA or a copy of the executed purchase sale agreement; and
4. The effective date of the sale transaction. If this date changes after this submission, the Department must be notified immediately.
5. If approved, a new registration will become effective the date of the sale transaction.

**E. Voluntary closure of a TNA.**

1. Whenever a registered TNA plans to voluntarily discontinue services, the agency must:
2. Notify the Department in writing 45 days in advance of the anticipated date of voluntary closure;
3. Notify all health care facilities and health care settings with whom they have contracts of the closure in writing at least 30 days in advance of the date of the anticipated closure; and

1. Upon closure, notify the Department of the actual closure date.

**F. Fees.**

1. For all applications received on or after 10/25/2023, the initial and annual fee for registration is $1,000.00, in accordance with 22 MRS §2131 (3).
2. The fee must be submitted with the application, by check or money order.
3. A processing fee of $10.00 must be submitted for a name change, address change, and/or a change in the person in charge, in accordance with 22 MRS §1723.
4. Checks or money orders for registration must be made payable to “Treasurer, State of Maine.”
5. All fees are non-refundable.

**SECTION IV. Quality Assurance**

**A. Employee quality assurance.**

1. A TNA shall ensure that each employee the agency assigns or refers to a health care facility or setting for a position meets the state and federal qualification requirements for that position and has the appropriate work experience for that position.
2. A TNA must maintain a record for each employee that includes documentation of the following:
3. The employee’s credentials, including evidence of licensure, if applicable;
4. Required immunizations in accordance with 10-144 CMR Chapter 264, Immunization Requirements for Healthcare Workers;
5. Orientation;
6. In-service education;
7. Completion of required training or education; and
8. Contact information (i.e.: current phone number and email address).

**B. Availability of records.**

1. Upon request, a TNA must make available any record described in this subsection to the Department.

2. When requested by the health care facility or setting to demonstrate compliance with State rule(s) or federal regulation(s), or to appropriately conduct an internal complaint investigation, a TNA must provide any record described in this subsection for an employee of that TNA to the health care facility or setting where an employee is placed.

**SECTION V. Annual Reporting Requirements**

**A.** **Annual reporting**. By July 31st of each year, a TNA must provide an annual report to the Department covering the preceding reporting period, in a format determined by the Department. The report must include the following:

1. The number of total employees placed, the health care settings and facilities into which they were placed, the average duration of the placements, and the state of licensure for those employees;

2. The total and average amounts charged during each quarter of the reporting period to a health care facility or setting for each category of health care employee providing services to the health care facility or setting;

3. The total and average amounts of wages paid during each quarter of the reporting period to health care employees for each category of health care employee;

4. The total and average amounts of stipends paid during each quarter of the reporting period to health care employees for each category of health care employee;

5.Documentation that each employee contracted to a health care facility or setting during the reporting period had a current, unrestricted license or certification in good standing and met the training and continuing education standards required by state and federal law for the position with the health care facility or setting throughout the entirety of the reporting period; and

6. Documentation that the TNA had successfully completed all background checks required by federal and state law relating to the health care position and health care facility or setting in which the employee was placed during the reporting period, for each employee contracted to a health care facility or setting.

**Section VI. Criminal Background Checks**

**A. Criminal background checks.**

1. A TNA, prior to hiring, employing, or placing an individual in Maine 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 22 MRS Ch. 1691, Maine Background Check Act.

2. The comprehensive background check must be completed through the Maine Background Check Center (MBCC.)

3. The TNA must pay for the criminal background check required by this section.

4. The TNA must retain the report from the MBCC indicating the employee’s eligibility for hire and make this report available to the health care facility or setting upon request.

5. A report from the MBCC indicating that a certified nursing assistant (CNA) is eligible for hire satisfies the requirement that the TNA verify that a CNA is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers established under 22 MRS § 1812‑G with no annotations to prohibit the hiring of that individual, in accordance with 22 MRS §2131 (1-A).

**B. Prohibited employment based on disqualifying offenses.** A temporary nurse agency may not hire, employ, or place an individual at a health care facility or setting in Maine who has been determined to have a disqualifying offense under 10-144 CMR Ch. 60, Maine Background Check Center Rule.

**Section VII. Enforcement**

1. **Compliance.**
2. The Department will issue a statement of deficiencies (SOD) for any violation of this rule. This SOD will be issued, via email, to the email address on file with the Department.
3. A TNA must submit and the Department must receive an acceptable Plan of Correction (POC) within ten business days of receipt of a SOD.
4. An acceptable POC must contain the following elements for each and every specific deficiency:
5. How the TNA will address any processes and systems issues that led to the deficiency;
6. The procedure for implementing the POC and the date of implementation;
7. The monitoring procedure to ensure that the POC is effective and the specific deficiency cited remains corrected and in compliance with this rule, including the timeframe and processes for monitoring to ensure continued compliance after the date of completion; and
8. The title of the person responsible for implementing the acceptable POC.
9. A POC may not contain any patient’s or client’s name or protected health information.
10. Failure to correct any deficiency(ies), or to file an acceptable timely POC, may lead to further action by the Department.

4. The Department will review the submitted POC and determine if the plan is acceptable or not and will notify the TNA in writing if the POC is acceptable or not.

* 1. If the POC is not acceptable, the Department will request a revised POC.
  2. Failure to submit an acceptable POC may result in revocation or suspension of a registration.

1. **Complaint Investigation.** Any individual may report allegations of non-compliance with this rule to the Department.

1.The Department may conduct complaint investigations to determine compliance with this rule.

2. Complaint investigations may include interviews with employees of the TNA placed in Maine, desk audits, records requests, and other activities appropriate to the nature of the complaint as deemed necessary by the Department.

**C. Violations**

1. The Department may deny an application or seek revocation or suspension of a registration for the following reasons:

1. The TNA submitted an application with information that is incorrect or is fraudulent, deceitful, or a misrepresentation of fact;
2. The TNA has demonstrated repeated non-compliance with this rule;
3. The TNA has failed to comply with all applicable Maine statutes and rules;

1. The TNA’s practice is detrimental to the welfare of persons to whom the TNA is providing services;
2. The TNA failed to submit an acceptable plan of correction after receiving a Statement of Deficiencies;
3. The TNA violated 5 MRS Ch. 10, Maine Unfair Trades Practice Act; or
4. The TNA engaged in predatory recruitment as defined in 22 MRS § 2131(1-C).

**D.** **Penalties and Sanctions.**

1. The following violations of this rule may be referred to the Office of the Attorney General to pursue civil penalties in accordance with 22 MRS § 2131 (4)(A) and (B):

1. Operating without registering. A person who operates a TNA without registering commits a civil violation for which a fine of not less than $500 per day but not more than $10,000 per day may be adjudged. Each day constitutes a separate violation;
2. Failure to verify the inclusion of a CNA on the Maine Registry of Certified Nursing Assistants and Direct Care Workers. A person who operates a TNA who fails to verify Certified Nursing Assistant status on the Maine Registry of Certified Nursing Assistants and Direct Care Workers before hire, which may be done through the MBCC, commits a civil violation for which a fine of not less than $500 per day but not more than $10,000 per day may be adjudged. Each day constitutes a separate violation; and
3. Operating a TNA in violation of the employment prohibitions in 22 MRSA § 2138. A person who operates a temporary nurse agency in violation of the employment prohibitions in 22 MRSA §2138 commits a civil violation for which a fine of not less than $500 per day but not more than $10,000 per day may be adjudged. Each day constitutes a separate violation.

2. The Department may impose a fine of not less than $500.00 and not more than $10,000 for violations of 22 MRS §2131 (4)(C)(1) or (2) on a person or business entity operating a TNA as follows:

* + - * 1. A person or a business entity who fails to meet the documentation requirements outlined in Section IV (A) of this rule;
        2. A person or a business entity who fails to make documentation required in Section IV(A) available to the Department on request; or
        3. A person or a business entity who fails to provide an annual report that includes all required documentation listed in Section V of this rule.

**E. Appeal rights.**

1.A TNA aggrieved by the Department’s decision to take either of the following actions may request an administrative hearing to refute the basis of the Department’s decision, as provided by the Maine Administrative Procedure Act, 5 MRS Chapter 375:

a. Imposition of a fine; or

b. Refusal to register a TNA.

2.A request for a hearing must be made in writing to the Division of Licensing and Certification and must specify the reason for the appeal.

3.Administrative hearings will be held in conformity with 10-144 CMR Ch. 1, Administrative Hearings Regulations.

**STATUTORY AUTHORITY**

22 MRS Ch. 417 and Ch. 417-A

**RULEMAKING HISTORY**

EFFECTIVE DATE:

April 6, 2024 – filing 2024-081