

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

H.P. 762 - L.D. 1157

An Act to Amend the Laws Relating to the State's Background Check Center

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

Sec. 1. 22 MRSA §9053, sub-§2, as repealed and replaced by PL 2023, c. 646, Pt. A, §27, is amended to read:

2. Assisted housing facility. "Assisted housing facility" means a facility licensed pursuant to chapter ~~1663~~ 1664 or an independent housing with services program exempt from licensing pursuant to chapter 1663.

Sec. 2. 22 MRSA §9053, sub-§5, as enacted by PL 2015, c. 299, §25, is amended to read:

5. Background check report. "Background check report" means a comprehensive report generated by the Background Check Center based on a search and analysis of data stored in federal and state criminal record repositories, registry databases or agencies, including, ~~but not limited to,~~ the Federal Bureau of Investigation; the Department of Public Safety, State Bureau of Identification; abuse and neglect, sex offender and employment-related registries; professional licensing authorities; and Medicare and Medicaid exclusion databases. ~~The~~ A completed background check report is recorded in the Background Check Center and informs a provider when an offense a conviction appears in an individual's record that may disqualify the individual from eligibility for employment as a direct access worker.

Sec. 3. 22 MRSA §9053, sub-§10, as enacted by PL 2015, c. 299, §25, is amended to read:

10. Contingent offer of employment. "Contingent offer of employment" means an offer of employment as a direct access worker that is based upon receipt of ~~a final~~ an initial nondisqualifying background check report and that may be withdrawn by the employer if a disqualifying final background check report is issued.

Sec. 4. 22 MRSA §9053, sub-§12, as enacted by PL 2015, c. 299, §25, is amended to read:

12. Direct access. "Direct access" means access to the property, personally identifiable information, financial information, medical records or treatment information and other resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other protected individual served by a provider subject to this chapter this section.

Sec. 5. 22 MRSA §9053, sub-§13, as enacted by PL 2015, c. 299, §25, is amended to read:

13. Direct access employment. "Direct access employment" or "employment" means any activity involving direct access services, including employment for wages, contracting for temporary staff or use of unsupervised volunteers or students who perform functions similar to those performed by direct access workers, and is the type of employment that provides access that could lead to physical, mental, financial or privacy-related harms on the individual receiving those direct access services.

Sec. 6. 22 MRSA §9053, sub-§14, as amended by PL 2023, c. 646, Pt. A, §28, is further amended to read:

14. Direct access worker. "Direct access worker" means an individual ~~who by virtue of employment generally provides to individuals direct contact assistance or has direct access regardless of setting. "Direct access worker" does not include an individual performing repairs, deliveries, installations or similar services who does not have direct access without supervision. "Direct access worker" includes but is not limited to the following individuals engaged in direct access employment and includes:~~

~~A. An individual seeking employment as a direct access worker;~~

~~A-1. Physicians and physician assistants, nurse practitioners and nurses, clinical support staff, pharmacists and pharmacy staff;~~

~~A-2. Physical therapists, occupational therapists and rehabilitation service providers;~~

~~A-3. Certified nursing assistants and direct care workers pursuant to section 1812-J;~~

~~A-4. Residential support staff, behavioral health providers, drug treatment center staff, recreation aides, community support specialists and case managers;~~

~~A-5. Administrative staff, including clerical staff, information services staff, finance and billing staff and their supervisors, management, leadership, executives, partners and owners;~~

~~A-6. Environmental, operations and facility services staff, including dietary, food services, maintenance, transportation and security staff; and~~

~~B. An employee who is employed upon the effective date of this chapter and who is required to have a background check in accordance with section 9058-A;~~

~~C. A former employee who consents, prior to leaving employment, to periodic review of that employee's criminal background for a fixed time;~~

~~D. An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A; a worker who is placed with a provider by a temporary nurse agency; or a worker who is placed with a provider by a personal care agency registered or licensed pursuant to section 1717;~~

~~E. A volunteer, student or other person with direct access who routinely performs unsupervised functions similar to those performed by a direct access worker for a provider; and~~

~~F. A direct care worker pursuant to section 1812-J, subsection 1, paragraph G.~~

"Direct access worker" does not include an individual supervised while interacting or engaging with service recipients, such as an individual performing repairs, making deliveries or carrying out installations or similar services who does not have direct access without supervision or an individual performing oversight, such as a surveyor, auditor or ombudsman.

Sec. 7. 22 MRSA §9053, sub-§16, as enacted by PL 2015, c. 299, §25, is repealed.

Sec. 8. 22 MRSA §9053, sub-§19, as repealed and replaced by PL 2023, c. 241, §52, is amended to read:

19. Grandfathered employee. "Grandfathered employee" means an individual subject to the requirements of this chapter who has been employed prior to ~~October 1, 2023~~, the date biometric-based background check capability becomes available, who is subject to section 9058-A and who has not previously submitted biometric identifier data for a background check under this chapter.

Sec. 9. 22 MRSA §9053, sub-§19-A is enacted to read:

19-A. Home and community-based service agency. "Home and community-based service agency" means an entity licensed pursuant to Title 34-B, section 1203-B.

Sec. 10. 22 MRSA §9053, sub-§24-A, as enacted by PL 2023, c. 241, §54, is amended to read:

24-A. Noncriminal justice submitting entity. "Noncriminal justice submitting entity" means the agency responsible for initiating requests under the rap back monitoring program ~~pursuant to federal implementation guidance documents.~~

Sec. 11. 22 MRSA §9053, sub-§29, as amended by PL 2023, c. 241, §56, is further amended to read:

29. Provider. "Provider" means a licensed, license-exempt, certified or registered entity that employs direct access workers to provide ~~long-term care and~~ facility-based, in-home and community-based services under this chapter.

Sec. 12. 22 MRSA §9054, sub-§3, ¶B, as enacted by PL 2015, c. 299, §25, is amended to read:

B. Obtain the individual's informed consent and executed consent to release information to all entities as needed to conduct the background check investigation, analysis and monitoring process;

Sec. 13. 22 MRSA §9054, sub-§7, ¶P, as amended by PL 2023, c. 241, §62, is repealed.

Sec. 14. 22 MRSA §9054, sub-§7, ¶Q, as enacted by PL 2023, c. 241, §63, is amended to read:

Q. Substance use disorder treatment agencies; ~~and~~

Sec. 15. 22 MRSA §9054, sub-§7, ¶R, as enacted by PL 2023, c. 241, §64, is amended to read:

R. Hospitals; ~~and~~

Sec. 16. 22 MRSA §9054, sub-§7, ¶S is enacted to read:

S. Home and community-based service agencies.

Sec. 17. 22 MRSA §9054, sub-§8, as amended by PL 2023, c. 241, §§65 to 67, is further amended to read:

8. Background Check Center responsibilities. The Background Check Center's responsibilities include, ~~but are not limited to,~~ the following:

A. Operating an online portal used by employers to secure background checks for individuals employed as direct access workers;

B-1. Collecting fingerprints to determine eligibility of individuals to work in direct access positions in accordance with standards adopted by department rule, and in accordance with applicable policies and rules of the Department of Public Safety, Bureau of State Police and the Federal Bureau of Investigation. The Bureau of State Police shall take, or cause to be taken, an individual's fingerprints, along with any other information necessary for a statewide and nationwide criminal history record check. The Bureau of State Police shall make a determination of the existence of any state-level criminal history and, if none is found, the fingerprints must be forwarded to the Federal Bureau of Investigation for a national criminal history record check pertaining to the individual. The Background Check Center shall obtain the results of the state and federal criminal history record check queries from the State Bureau of Identification. Criminal records obtained pursuant to this section and the information contained therein may not be released or otherwise disclosed to any private entity. All fingerprints must be maintained by the State Bureau of Identification and the Federal Bureau of Investigation in accordance with their policies and procedures, ~~and the Background Check Center shall obtain the results of the fingerprinting queries from the State Bureau of Identification;~~

C. Generating background check reports for employers ~~regarding the presence of disqualifying offenses, including criminal charges without disposition, in a direct access worker's background;~~

D. Monitoring and enforcing compliance with the requirements of this chapter;

E. Providing for a process by which an individual subject to actions taken by the Background Check Center may challenge the accuracy of information in a background check report and correct the information in accordance with rules adopted pursuant to this chapter;

F. Specifying offenses, including offenses that may appear in publicly available criminal record information, that disqualify an individual from employment as a direct access worker for a term of 5, 10 or 30 years or, for disqualifying offenses that occur in health care settings, the lifetime of the individual, including, but not limited to, convictions and other events or notations;

G. Coordinating with federal and state criminal justice agencies as required to facilitate a criminal record rap back monitoring program; and

H. Providing for an independent process for to obtain a waiver for a determination of ineligibility based on a criminal conviction history that gives an individual with a disqualifying offense who has been banned from employment pursuant to this chapter the opportunity to demonstrate that the ban should be waived because the individual does not pose a risk to patients, facilities, property or others. A waiver is applicable only to the requesting employer and is not transferable between employers.

Sec. 18. 22 MRSA §9054, sub-§10, as amended by PL 2023, c. 241, §68, is repealed and the following enacted in its place:

10. Background check report content. The background check report must inform an employer whether the individual submitted for a background check is eligible for employment as a direct access worker. The background check report must include information specific to the individual along with:

- A. All state-level offenses, including criminal charges without disposition;
- B. The presence of federal-level disqualifying offenses without disclosure of the details;
- C. A result of finding of registry disqualifications; and
- D. The status of the individual, based on the outcome of the background check report, as:
 - (1) Eligible for hire; or
 - (2) Ineligible for hire.

Sec. 19. 22 MRSA §9054, sub-§12, as enacted by PL 2015, c. 299, §25, is amended to read:

12. Appeal by individual. The department shall establish procedures in accordance with the provisions of the Maine Administrative Procedure Act to ensure that each individual submitted for a background check in compliance with this chapter has the opportunity to challenge and correct errors in records created and generated by the Background Check Center. The subject of a state criminal record check may inspect and review criminal history record information pursuant to Title 16, section 709. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.

Sec. 20. 22 MRSA §9054, sub-§14, as enacted by PL 2015, c. 299, §25, is amended to read:

14. Approval of waiver. The department shall specify in rule the criteria for issuing a waiver for a disqualifying offense. The waiver determination is based on a consideration of the facts and circumstances of the specific individual's ~~conviction~~ criminal history that include the passage of time, extenuating circumstances, a demonstration of rehabilitation and the relevancy of the particular disqualifying offense with respect to the current or prospective employment with a sponsoring employer. All waivers are contingent on a final determination by the department that the employer has reasonably determined that the health and safety of a protected individual is not in jeopardy and a denial of a waiver request is not otherwise warranted in accordance with federal or state law. A waiver is applicable only to the requesting employer and is not transferable between employers.

Sec. 21. 22 MRSA §9056, sub-§2, as amended by PL 2023, c. 241, §71, is further amended to read:

2. Rap back monitoring program. The bureau is authorized to initiate and provide services pursuant to ~~federal or~~ state rap back monitoring to report new criminal record events to the Background Check Center for noncriminal justice purposes. ~~The bureau is authorized as the State's noncriminal justice submitting entity for federal rap back monitoring.~~ Requests under the rap back monitoring program include the following procedures:

- A. The noncriminal justice submitting entity submits to an electronic repository the biometric identifier data of a direct access worker;
- B. The electronic repository retains the biometric identifier data for a period of time specified in the State's subscription with the electronic repository; and
- C. The electronic repository notifies the noncriminal justice submitting entity of any new criminal record events tied to the biometric identifier data that may disqualify an individual from continued employment as a direct access worker.

Sec. 22. 22 MRSA §9058-A, sub-§1, as enacted by PL 2023, c. 241, §78, is amended to read:

1. Background check. Beginning ~~October 1, 2024~~, ~~an employer~~ when biometric-based background check capability becomes available for a specified type of provider, a provider of that type employing direct access workers subject to this section shall use the Background Check Center to secure a background check and a background check report using biometric identifier data for each direct access worker.