

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1230 - L.D. 1925

An Act to Clarify and Improve the Laws Relating to the Background Check Center and the Maine Certified Nursing Assistant and Direct Care Worker Registry

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

Sec. 1. 22 MRSA §1812-G, sub-§1-B, ¶E, as enacted by PL 2015, c. 196, §9, is amended to read:

E. "Disqualifying offense" means a substantiation for abuse, neglect or ~~exploitation~~ misappropriation of property, or a criminal conviction identified in rules adopted by the department that prohibits employment as a certified nursing assistant or a direct care worker in accordance with subsection 2-C.

Sec. 2. 22 MRSA §1812-G, sub-§1-B, ¶F, as enacted by PL 2015, c. 196, §9, is amended to read:

F. "Employer" means a person or licensed, certified or registered provider or other entity that employs ~~direct access workers, including~~ certified nursing assistants and direct care workers; to provide direct contact services in home, community or other health care or direct access settings. An individual who employs an unlicensed person to provide care for that individual is not an employer for the purposes of this section, except when required by rules adopted by the department.

Sec. 3. 22 MRSA §1812-G, sub-§1-B, ¶J, as enacted by PL 2015, c. 196, §9, is amended to read:

J. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department pursuant to subsection 18 that is included as a notation on the registry but does not prohibit employment as a certified nursing assistant ~~or a direct care worker~~.

Sec. 4. 22 MRSA §1812-G, sub-§1-B, ¶K, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 5. 22 MRSA §1812-G, sub-§1-B, ¶L, as enacted by PL 2015, c. 196, §9, is amended to read:

L. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers established in subsection 1, which identifies individuals qualified and eligible for employment as a certified nursing assistant ~~or a registered direct care worker~~ and individuals who are not eligible for employment as a certified nursing assistant or direct care worker due to notations for disqualifying offenses.

Sec. 6. 22 MRSA §1812-G, sub-§2-A, as enacted by PL 2015, c. 196, §9, is amended to read:

2-A. Registry listing. All active certified nursing assistants employed in the State must be listed on the registry. The registry must contain a listing of certified nursing assistants and direct care workers that are ineligible for employment based on notations for disqualifying offenses. ~~Direct care workers registered for training, education or compliance purposes may apply for registration and listing on the registry.~~ Direct care workers who may be listed on the registry include but are not limited to the following:

- A. Behavior specialists;
- B. Behavioral health professionals;
- C. Certified residential care aides;
- D. Certified residential medication aides;
- E. Direct support professionals;
- F. Mental health rehabilitation technicians;
- G. Mental health support specialists;
- H. Other qualified mental health professionals;
- I. Personal care attendants or personal support specialists;
- J. Registered medical assistants;
- K. Residential care specialists;
- L. Community health workers; and
- M. Other direct care workers described in rules adopted by the department pursuant to subsection 18.

Sec. 7. 22 MRSA §1812-G, sub-§2-C, as enacted by PL 2015, c. 196, §9, is amended to read:

2-C. Registry notations. The registry must include for a certified nursing assistant ~~and direct care worker~~ listed on the registry a notation of:

- A. Disqualifying criminal convictions;
- B. Nondisqualifying criminal convictions, except that a notation is not required on the registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident; and
- C. Substantiated findings, including but not limited to the following information:
 - (1) Documentation of an investigation of a certified nursing assistant ~~or a direct care worker~~, including the nature of the allegation and evidence supporting a

determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident;

(2) Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

(3) If the certified nursing assistant ~~or direct care worker~~ appealed the substantiated finding, the date of the hearing; and

(4) The statement of the certified nursing assistant ~~or direct care worker~~ disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the certified nursing assistant or direct care worker submitted such a statement; ~~and.~~

~~D. Petitions filed by a certified nursing assistant or direct care worker for removal of an employment ban issued by the department that was based on a criminal conviction and the department's review and determination.~~

Sec. 8. 22 MRSA §1812-G, sub-§3-A, as enacted by PL 2015, c. 196, §9, is repealed and the following enacted in its place:

3-A. Listing on the registry; direct care worker. The department shall adopt routine technical rules regarding listing direct care workers on the registry, including but not limited to the following:

A. Direct care workers with disqualifying offenses must be listed on the registry; and

B. The notation for direct care workers listed on the registry for substantiated findings must include the following information:

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

(2) Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident;

(3) If the direct care worker appealed the substantiated finding, the date of the hearing; and

(4) The statement of the direct care worker disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the direct care worker submitted such a statement.

Sec. 9. 22 MRSA §1812-G, sub-§3-B is enacted to read:

3-B. Petition for removal of a substantiated finding of neglect or misappropriation of property. No sooner than 12 months after the date a substantiated finding of neglect or misappropriation of property is placed on the registry, a direct care worker may petition the department to remove the notation from the registry if the substantiated complaint is a one-time occurrence and there is no pattern of neglect or misappropriation of property.

Sec. 10. 22 MRSA §1812-G, sub-§4, as amended by PL 2015, c. 196, §9, is further amended to read:

4. Department verification of credentials and training. The department may verify the credentials and training of certified nursing assistants ~~and registered direct care workers~~ listed on the registry.

Sec. 11. 22 MRSA §1812-G, sub-§4-A, as amended by PL 2015, c. 196, §9, is further amended to read:

4-A. Provider verification fee. The department may establish a provider verification fee not to exceed \$25 annually per provider for verification of a certified nursing assistant's ~~or registered direct care worker's~~ credentials and training. Providers may not pass the cost on to the individual certified nursing assistant ~~or registered direct care worker~~. Provider verification fees collected by the department must be placed in a special revenue account to be used by the department to operate the registry, including but not limited to the cost of criminal history record checks. The department may adopt rules necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 12. 22 MRSA §1812-G, sub-§5-A, as enacted by PL 2015, c. 196, §9, is amended to read:

5-A. Employment eligibility verification; direct care access worker. An employer, including a health care institution, facility or other organization that employs an individual as a direct care access worker, shall verify that the direct care access worker, ~~if listed on the registry,~~ has no disqualifying notations ~~and has complied with the training or education requirements for registration, if applicable~~ offenses.

Sec. 13. 22 MRSA §1812-G, sub-§6, as repealed and replaced by PL 2015, c. 494, Pt. A, §16, is amended to read:

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

Sec. 14. 22 MRSA §1812-G, sub-§6-A, as amended by PL 2015, c. 494, Pt. A, §§17 and 18, is further amended to read:

6-A. Background check. Certified nursing assistants ~~and direct care workers~~ are subject to a background check ~~as defined by rules adopted by the department pursuant to chapter 1691~~ and according to the following:

A. A training program for certified nursing assistants ~~or direct care workers~~ must secure or pay for a background check on each individual who applies for enrollment. The individual's current name and all previous names are subject to the background check. A copy of the background check is given to the individual who, upon successful completion of the training, submits it with an application to be listed on the registry as a certified nursing assistant ~~or a registered direct care worker~~.

(1) Prior to enrolling an individual, a training program for certified nursing assistants ~~or direct care workers~~ must notify individuals that a background check will be conducted and that certain disqualifying offenses, including criminal

convictions, may prohibit an individual from working as a certified nursing assistant ~~or a direct care worker~~.

B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 ~~and~~, 9005 and 9054 and Title 34-B, section 1225, licensed, certified or registered providers shall secure and pay for a background check prior to hiring an individual who will work in direct contact with clients, patients or residents, including a certified nursing assistant ~~or a direct care worker~~.

C. The department may secure a background check on certified nursing assistants ~~and registered direct care workers~~ on the registry ~~every 2 years~~.

D. A person or other legal entity that is not otherwise licensed by the department and that employs or places a certified nursing assistant ~~or direct care worker~~ to provide services allowing direct access shall secure and pay for a background check in accordance with state law and rules adopted by the department.

Sec. 15. 22 MRSA §1812-G, sub-§6-B, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 16. 22 MRSA §1812-G, sub-§6-C, ¶A, as enacted by PL 2015, c. 196, §9, is amended to read:

A. A disqualifying criminal conviction ~~within the previous 10 years~~ prohibits employment as a certified nursing assistant or a direct care access worker.

(1) An individual with a disqualifying criminal conviction is subject to an employment ban of 5, 10 or 30 years. The department shall adopt rules that specify disqualifying criminal convictions that prohibit employment for 5 years, disqualifying criminal convictions that prohibit employment for 10 years and disqualifying criminal convictions that prohibit employment for 30 years.

Sec. 17. 22 MRSA §1812-G, sub-§6-C, ¶B, as enacted by PL 2015, c. 196, §9, is amended to read:

B. Nondisqualifying criminal convictions do not prohibit employment as a certified nursing assistant or a direct care access worker.

Sec. 18. 22 MRSA §1812-G, sub-§6-D, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 19. 22 MRSA §1812-G, sub-§8, as amended by PL 2015, c. 196, §9, is repealed.

Sec. 20. 22 MRSA §1812-G, sub-§10, as enacted by PL 2015, c. 196, §9, is amended to read:

10. Complaint investigation. The department may investigate complaints and allegations against certified nursing assistants or ~~registered direct care~~ access workers of abuse, neglect, ~~exploitation~~ or misappropriation of property of a client, patient or resident.

Sec. 21. 22 MRSA §1812-G, sub-§11, as enacted by PL 2015, c. 196, §9, is amended to read:

11. Issue a decision. After an investigation under subsection 10, the department shall issue a written decision that the allegation of abuse, neglect, ~~exploitation~~ or

misappropriation of property of a client, patient or resident is unsubstantiated or substantiated. Each allegation of abuse, neglect or misappropriation of property must be considered separately. A substantiated finding must be based on factors established by department rules. The written decision must include at least the following information:

- A. Whether the allegation is unsubstantiated or substantiated;
- B. A description of the factors supporting a substantiated finding;
- C. If a notation of a substantiated finding is entered on the registry;
- D. A description of the employment prohibition, if any; and
- E. Notice of the right to appeal the department's decision pursuant to subsection 12.

Sec. 22. 22 MRSA §1812-G, sub-§13, as enacted by PL 2015, c. 196, §9, is amended to read:

13. Substantiated finding; lifetime employment ban. A certified nursing assistant or a registered direct care worker with a notation on the registry of a substantiated finding ~~on the registry~~ of abuse of a patient, client or resident is banned for life from employment as either a certified nursing assistant or a direct care worker.

Sec. 23. 22 MRSA §1812-G, sub-§14, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 24. 22 MRSA §1812-G, sub-§15, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 25. 22 MRSA §1812-G, sub-§16, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 26. 22 MRSA §1812-G, sub-§17, as enacted by PL 2015, c. 196, §9, is repealed.

Sec. 27. 22 MRSA §1812-J, as amended by PL 2015, c. 299, §§11 to 17 and c. 494, Pt. D, §3, is further amended by amending the section headnote to read:

§1812-J. ~~Unlicensed assistive persons~~ Direct care workers

Sec. 28. 22 MRSA §1812-J, sub-§1, ¶A-2, as amended by PL 2015, c. 299, §11, is further amended to read:

A-2. "Disqualifying offense" means a substantiation of abuse, neglect or exploitation or a criminal conviction identified in rules adopted by the department that prohibit employment as ~~an unlicensed assistive person~~ a direct care worker.

Sec. 29. 22 MRSA §1812-J, sub-§1, ¶A-3, as amended by PL 2015, c. 299, §11, is further amended to read:

A-3. "Health care and direct access services settings" means settings in which individuals receive services that require direct access by a certified nursing assistant or ~~unlicensed assistive person~~ a direct care worker or other employee in providing direct care and related services.

Sec. 30. 22 MRSA §1812-J, sub-§1, ¶A-4, as enacted by PL 2011, c. 257, §3, is amended to read:

A-4. "High severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for a substantiated finding after investigation of a complaint against ~~an unlicensed assistive person~~ a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident.

Sec. 31. 22 MRSA §1812-J, sub-§1, ¶A-5, as enacted by PL 2011, c. 257, §3, is amended to read:

A-5. "Indicated finding" means an administrative determination made by the department, after investigation of a complaint against ~~an unlicensed assistive person~~ a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of low to moderate severity based on criteria established by the department by rule and that the person is not prohibited from employment as ~~an unlicensed assistive person~~ a direct care worker.

Sec. 32. 22 MRSA §1812-J, sub-§1, ¶A-6, as enacted by PL 2011, c. 257, §3, is amended to read:

A-6. "Low to moderate severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for an indicated finding after investigation of a complaint against ~~an unlicensed assistive person~~ a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident.

Sec. 33. 22 MRSA §1812-J, sub-§1, ¶A-7, as enacted by PL 2011, c. 257, §3, is amended to read:

A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that is included as a notation on the registry but does not prohibit employment as ~~an unlicensed assistive person~~ a direct care worker.

Sec. 34. 22 MRSA §1812-J, sub-§1, ¶B, as amended by PL 2015, c. 299, §12, is further amended to read:

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, which is a list of certified nursing assistants, with notations if applicable, and a list of direct care workers ~~registered for training, education or compliance purposes, or unlicensed assistive persons~~ with notations and is established under section 1812-G.

Sec. 35. 22 MRSA §1812-J, sub-§1, ¶C-1, as enacted by PL 2011, c. 257, §3, is amended to read:

C-1. "Substantiated finding" means an administrative determination made by the department, after investigation of a complaint against ~~an unlicensed assistive person~~ a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of high severity based on criteria established by the department by rule.

Sec. 36. 22 MRSA §1812-J, sub-§1, ¶D, as amended by PL 2015, c. 299, §13, is further amended to read:

D. "~~Unlicensed assistive person~~ Direct care worker" means an unlicensed individual who by virtue of employment has direct access to and provides direct care or direct contact assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct access services settings. "~~Unlicensed assistive person~~ Direct care worker" includes but is not limited to a direct support professional, residential care specialist, behavioral health professional, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct access workers or direct care workers as described in rules adopted by the department. "~~Unlicensed assistive person~~ Direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant.

Sec. 37. 22 MRSA §1812-J, sub-§1, ¶E, as enacted by PL 2011, c. 257, §3, is amended to read:

E. "Unsubstantiated finding" means an administrative determination made by the department, after investigation of a complaint against ~~an unlicensed assistive person~~ a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that no abuse, neglect or misappropriation of property of a client, patient or resident was found to support an indicated finding or a substantiated finding of abuse, neglect or misappropriation of property of a client, patient or resident.

Sec. 38. 22 MRSA §1812-J, sub-§1, ¶F, as enacted by PL 2015, c. 299, §14, is repealed.

Sec. 39. 22 MRSA §1812-J, sub-§1, ¶G is enacted to read:

G. "Registered direct care worker" means an individual listed on the registry. "Registered direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant or a direct care worker listed on the registry with notations for disqualifying offenses.

Sec. 40. 22 MRSA §1812-J, sub-§2, as amended by PL 2015, c. 299, §15, is further amended to read:

2. Complaint investigation. The department may investigate complaints and allegations of abuse, neglect, ~~exploitation~~ or misappropriation of property of a client, patient or resident in a home or health care setting against ~~unlicensed assistive persons~~ direct care workers.

Sec. 41. 22 MRSA §1812-J, sub-§3, as amended by PL 2011, c. 257, §5, is further amended to read:

3. Substantiated finding of complaint; registry listing. When a complaint against ~~an unlicensed assistive person~~ a direct care worker is substantiated by the department and the ~~unlicensed assistive person~~ direct care worker is listed on the registry pursuant to subsection 4, the department's decision becomes final agency action as defined in Title 5, section 8002, subsection 4. The department shall notify the employer of the ~~unlicensed assistive person~~ direct care worker that a substantiated finding of a complaint has been listed as a notation on the registry.

Sec. 42. 22 MRSA §1812-J, sub-§3-A, as enacted by PL 2011, c. 257, §6, is amended to read:

3-A. Indicated finding of complaint; no registry listing. An indicated finding by the department of a complaint against ~~an unlicensed assistive person~~ a direct care worker does not prohibit employment and is not listed as a notation on the registry. The department's complaint investigation decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

Sec. 43. 22 MRSA §1812-J, sub-§4, as amended by PL 2015, c. 299, §16, is further amended to read:

4. Registry listing. The department shall list ~~an unlicensed assistive person employed as a direct care worker~~ direct care workers with a ~~disqualifying offense~~ substantiated finding notation and ~~may register an unlicensed assistive person or direct care worker for training, education and compliance purposes.~~ Disqualifying notations must include but are not limited to the following information:

- A. Documentation of the department's investigation, including the nature of the allegation and the evidence that led the department to substantiate the allegation of abuse, neglect, ~~exploitation~~ or misappropriation of property;
- B. The date of the hearing, if the ~~unlicensed assistive person~~ direct care worker chose to appeal the department finding that the complaint was substantiated; and
- C. The ~~unlicensed assistive person's~~ direct care worker's statement to the department disputing the allegation, if the ~~unlicensed assistive person~~ direct care worker chose to submit one; and
- ~~D. Notations indicating the listed unlicensed assistive person is not in compliance with training or educational requirements.~~

Sec. 44. 22 MRSA §1812-J, sub-§5, as enacted by PL 2009, c. 215, §2, is amended to read:

5. Right to hearing. The department shall notify the ~~unlicensed assistive person~~ direct care worker of the right to request a hearing to contest the finding that the complaint under subsection 3 was substantiated.

Sec. 45. 22 MRSA §1812-J, sub-§6, as amended by PL 2011, c. 257, §7, is repealed.

Sec. 46. 22 MRSA §1812-J, sub-§7, as amended by PL 2015, c. 494, Pt. D, §3, is further amended to read:

7. Prohibited employment based on disqualifying offenses. An employer who employs ~~an unlicensed assistive person~~ a direct care worker to provide direct access services shall conduct a comprehensive background check 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 chapter 1691 and other applicable federal and state laws. The employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

Sec. 47. 22 MRSA §1812-J, sub-§7-A is enacted to read:

7-A. Background check. This subsection governs background checks for direct care workers.

A. A training program for direct care workers may secure or pay for a background check pursuant to chapter 1691 on each individual who applies for enrollment in the program. The background check may check the individual's current name and all previous names. The background check result may be shared with the individual's prospective employer upon successful completion of the program.

(1) Prior to enrolling an individual, a training program for direct care workers must notify individuals that a background check may be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a direct care worker.

B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606, 9005 and 9054 and Title 34-B, section 1225, licensed, certified or registered providers shall secure and pay for a background check prior to hiring an individual who will work in direct contact with clients, patients or residents, including a direct care worker.

C. The department may review the results of a background check completed in accordance with chapter 1691 on a registered direct care worker.

D. A person that is not otherwise licensed by the department that employs or places a direct care worker to provide services allowing direct access shall secure and pay for a background check in accordance with state law and rules adopted by the department.

Sec. 48. 22 MRSA §9053, sub-§2, as enacted by PL 2015, c. 299, §25, is amended to read:

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

Sec. 49. 22 MRSA §9053, sub-§3, as enacted by PL 2015, c. 299, §25, is amended to read:

3. Background check. "Background check" means the collection of personally identifiable information ~~and~~ data and biometric identifiers for comparison with criminal record repositories and registry databases that are relevant to an individual's identity and background, including monitoring for future offenses through a rap back monitoring program.

Sec. 50. 22 MRSA §9053, sub-§5-A is enacted to read:

5-A. Biometric identifier. "Biometric identifier" means a unique and measurable biological, anatomical or physiological characteristic used for identification of an individual, including, but not limited to, fingerprints, retinal or iris scans and palm prints.

Sec. 51. 22 MRSA §9053, sub-§14, as enacted by PL 2015, c. 299, §25, is amended to read:

14. Direct access worker. "Direct access worker" means an individual who by virtue of employment ~~has direct access to a Medicare or Medicaid beneficiary or other protected individual served by a provider subject to this chapter~~ 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:

- A. An individual seeking employment as a direct access worker;
- 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~~ 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 or a worker who is placed with a provider by a temporary nurse agency or a personal care agency or a placement agency registered pursuant to section 1717; ~~and~~
- 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~~ and
- F. A direct care worker pursuant to section 1812-J, subsection 1, paragraph G.

Sec. 52. 22 MRSA §9053, sub-§19, as enacted by PL 2015, c. 299, §25, is repealed and the following enacted in its place:

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

Sec. 53. 22 MRSA §9053, sub-§21-A is enacted to read:

21-A. Hospital. "Hospital" means an entity licensed pursuant to chapter 405.

Sec. 54. 22 MRSA §9053, sub-§24-A is enacted 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. 55. 22 MRSA §9053, sub-§28-A is enacted to read:

28-A. Portability. "Portability" means the ability of a direct access worker to transfer the results of a background check eligibility determination and information from the rap back monitoring program to a new employer.

Sec. 56. 22 MRSA §9053, sub-§29, as amended by PL 2019, c. 660, §6, is further amended to read:

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

Sec. 57. 22 MRSA §9053, sub-§32, as enacted by PL 2015, c. 299, §25, is amended to read:

32. Residential care facility. "Residential care facility" means a residential care facility licensed or exempted from licensing pursuant to chapter 1663.

Sec. 58. 22 MRSA §9053, sub-§32-A is enacted to read:

32-A. Substance use disorder treatment agency. "Substance use disorder treatment agency" means an approved treatment facility or program licensed pursuant to Title 5, chapter 521.

Sec. 59. 22 MRSA §9054, sub-§2, as enacted by PL 2015, c. 299, §25, is amended to read:

2. Employer obligations. An employer subject to this chapter shall use the Background Check Center to conduct a comprehensive background check that includes a criminal history records check for all direct access workers. The employer shall comply with the requirements of this chapter, including, but not limited to, a biometric identifier-based background check, when making employment-related decisions for direct access workers.

Sec. 60. 22 MRSA §9054, sub-§5, as enacted by PL 2015, c. 299, §25, is amended to read:

5. Subsequent background check; 5 years. An employer shall conduct a periodic subsequent background check in accordance with rules adopted pursuant to this chapter. Criminal history record checks for all direct access workers using a biometric identifier must be completed every 5 years subsequent to the ~~date of hire or the~~ anniversary date of a previous background check completed through use of the Background Check Center.

Sec. 61. 22 MRSA §9054, sub-§7, ¶O, as enacted by PL 2015, c. 299, §25, is amended to read:

O. Mental health services facilities or providers; ~~and~~

Sec. 62. 22 MRSA §9054, sub-§7, ¶P, as enacted by PL 2015, c. 299, §25, is amended to read:

P. Drug treatment centers;

Sec. 63. 22 MRSA §9054, sub-§7, ¶Q is enacted to read:

Q. Substance use disorder treatment agencies; and

Sec. 64. 22 MRSA §9054, sub-§7, ¶R is enacted to read:

R. Hospitals.

Sec. 65. 22 MRSA §9054, sub-§8, ¶B, as enacted by PL 2015, c. 299, §25, is repealed.

Sec. 66. 22 MRSA §9054, sub-§8, ¶B-1 is enacted to read:

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. 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. 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;

Sec. 67. 22 MRSA §9054, sub-§8, ¶F, as enacted by PL 2015, c. 299, §25, is amended to read:

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;

Sec. 68. 22 MRSA §9054, sub-§10, as enacted by PL 2015, c. 299, §25, is amended to read:

10. Background check report content. The background check report must inform employers whether the individual submitted for a background check has offenses that disqualify the individual for employment as a direct access worker. The background check report must include information specific to the individual along with information about the source and type of offense sufficient to allow the individual named in the report to challenge the information. The content of the background check report must include, but is not limited to, notice that the individual submitted for a background check ~~has~~ is:

~~A. No disqualifying offenses;~~

A-1. Eligible for hire; or

~~B. A disqualifying offense; or~~

B-1. Ineligible for hire and the length of any ban on employment as a result.

~~C. A criminal charge without disposition that upon final disposition may result in a disqualifying offense.~~

Sec. 69. 22 MRSA §9054, sub-§13, as enacted by PL 2015, c. 299, §25, is amended to read:

13. Waiver; disqualifying offense. In the event that no other federal or state law mandates an employment prohibition by an employer subject to this chapter, an individual who is banned from employment because of a disqualifying criminal offense may initiate a request for a waiver under subsection 8, paragraph H in accordance with a process established by rules adopted pursuant to this chapter under the following circumstances:

A. The individual is seeking to be employed or is currently employed by an employer subject to the requirements of this chapter;

B. The employer has chosen to sponsor the individual's request for the removal of the ban in order to create or maintain an employment relationship; and

C. The employer must attest to the department that the decision to sponsor the waiver request occurred after the employer considered the objectively reasonable factors under subsection 15 and the following factors:

(1) The nature and gravity of the disqualifying offense or offenses;

(2) The time that has passed since the disqualifying offense or offenses;

- (3) The nature of the employment held or sought;
- (4) Whether the criminal conduct was employment-related; and
- (5) A reasonable conclusion that the individual does not pose a threat of harm to a protected individual or others in the care and support of the individual.

The waiver must be sought with respect to the prospective or continued employment by a specific employer that is willing to sponsor the individual's request. An employee seeking a waiver may be conditionally employed in accordance with section 9057, subsection 4 and section ~~9058~~ 9058-A, subsection 3 until the waiver is denied.

Sec. 70. 22 MRSA §9055, sub-§2, as enacted by PL 2015, c. 299, §25, is amended to read:

2. Special revenue account. Revenue generated pursuant to this section must be deposited in a special revenue account in the ~~Division~~ division of ~~Licensing~~ licensing and ~~Regulatory Services~~ certification and dedicated for Background Check Center operations.

Sec. 71. 22 MRSA §9056, sub-§2, as enacted by PL 2015, c. 299, §25, is 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 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. 72. 22 MRSA §9056, sub-§3, as enacted by PL 2015, c. 299, §25, is amended to read:

3. Collection of identifier data. The bureau shall coordinate with the Background Check Center to collect the personally identifiable information and biometric identifier and relevant data of individuals as needed to meet the requirements of the rap back monitoring program or as otherwise required by this chapter and other laws.

Sec. 73. 22 MRSA §9056, sub-§4, ¶A, as enacted by PL 2015, c. 299, §25, is amended to read:

- A. Maintain the personally identifiable information and biometric identifier data in the criminal history records repository;

Sec. 74. 22 MRSA §9056, sub-§4, ¶B, as enacted by PL 2015, c. 299, §25, is amended to read:

B. Compare the personally identifiable data, biometric identifier data or other data ~~or both~~ to criminal records to conduct a criminal record check and disseminate the results of this record check to authorized entities;

Sec. 75. 22 MRSA §9057, sub-§4, ¶D-1 is enacted to read:

D-1. The individual provides evidence to the employer that the individual has submitted the individual's biometric identifier data for the background check;

Sec. 76. 22 MRSA §9057, sub-§4, ¶E, as enacted by PL 2015, c. 299, §25, is amended to read:

E. The employer verifies and documents that the individual has submitted the individual's biometric identifier data required for the background check and the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with this chapter; and

Sec. 77. 22 MRSA §9058, as enacted by PL 2015, c. 299, §25, is repealed.

Sec. 78. 22 MRSA §9058-A is enacted to read:

§9058-A. Grandfathered employees prior to biometric identifier reporting

1. Background check. Beginning October 1, 2024, an employer employing direct access workers 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.

2. Gradual implementation of grandfathered employee background checks with biometric identifier data. The department shall adopt rules under section 9065 describing a staged and orderly process based on the type of provider and the number of direct access workers employed that employers must follow to implement the background checks using biometric identifier data for grandfathered employees consistent with this chapter. The department may grant an employer a deadline extension for good cause shown, which may not be unreasonably withheld.

3. Background check deadline. A grandfathered employee may continue to work in direct access employment for up to 60 calendar days from the date the grandfathered employee's first biometric identifier background check is initiated in accordance with subsection 2 and if:

A. The grandfathered employee signs a consent to release information and agrees in writing to submit to the background check process;

B. The grandfathered employee signs a statement declaring that a background check will not reveal any disqualifying offenses or that an offense that appears is inaccurate;

C. The employer verifies and documents that the grandfathered employee has submitted the biometric identifier data and mandatory identity verification and employment eligibility documents required by rules adopted in accordance with section 9065;

D. The employer initiates the background check by entering the individual into the Background Check Center database as a grandfathered employee; and

E. The grandfathered employee is not identified in the Background Check Center database as a disqualified person.

4. Disqualified grandfathered employee. A grandfathered employee who receives a disqualifying background check report is subject to the provisions of subsection 3 and must be able to correct disqualifying offense information that appears in the background check report through the inaccurate records corrections process within 60 calendar days after the disqualifying report is issued. The grandfathered employee is subject to direct personal supervision during the conditional employment period as described in rules adopted pursuant to this chapter until a final background check report indicates that no disqualifying offenses appear in the updated records.

5. Termination; disqualified grandfathered employees. An employer shall terminate or remove from direct access employment any grandfathered employee who has not submitted the documents required in subsection 3, who refused to submit a biometric identifier or otherwise participate in the background check or who fails to receive a final nondisqualifying background check report in accordance with subsection 4.

Sec. 79. 22 MRSA §9062, sub-§1, ¶B, as enacted by PL 2015, c. 299, §25, is amended to read:

B. Failure or refusal to terminate or remove from direct access employment an employee who is disqualified for employment based on the requirements of this chapter; ~~and~~

Sec. 80. 22 MRSA §9062, sub-§1, ¶C, as enacted by PL 2015, c. 299, §25, is amended to read:

C. Substantial noncompliance with the procedures established by this chapter; ~~and~~

Sec. 81. 22 MRSA §9062, sub-§1, ¶D is enacted to read:

D. Failure to enroll in the Background Check Center.

Sec. 82. 22 MRSA §9066 is enacted to read:

§9066. Portability

1. Portability authorized. A direct access worker may choose to transfer the worker's background check report to another employer. The direct access worker may choose to transfer confidential information contained in the worker's background check report, as long as the background check used a biometric identifier, when:

A. The direct access worker agrees to submit to the requirements of this chapter;

B. The direct access worker signs a statement releasing the confidential information to the new employer;

C. The employer verifies and documents that the direct access worker has submitted the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with this chapter; and

D. The employer ensures the background check was completed within the last 5 years and enters the direct access worker into the rap back monitoring program.