



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1439

S.P. 541

In Senate, June 1, 2015

**An Act To Establish a Secure Internet-based Background Check
Center for Providers of Long-term Care, Child Care and In-home
and Community-based Services**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BURNS of Washington.

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

2 **Sec. 1. 22 MRSA §1717, sub-§1, ¶¶A-1 to A-3** are enacted to read:

3 A-1. "Direct access" means access to the property, personally identifiable
4 information, financial information or resources of an individual or physical access to
5 an individual who is a Medicare or Medicaid beneficiary or other individual served
6 by a provider subject to this chapter.

7 A-2. "Direct access personnel" means individuals employed in positions that have
8 direct access.

9 A-3. "Direct care worker" means a worker who by virtue of employment has direct
10 access to provide direct contact assistance with activities of daily living for
11 individuals in homes, assisted living centers, residential care facilities, hospitals and
12 other health care settings. "Direct care worker" does not include a certified nursing
13 assistant employed in that person's capacity as a certified nursing assistant.

14 **Sec. 2. 22 MRSA §1717, sub-§1, ¶C**, as amended by PL 2007, c. 324, §2, is
15 further amended to read:

16 C. "Personal care agency" means a business entity or subsidiary of a business entity
17 that is not otherwise licensed by the Division of Licensing and Regulatory Services
18 and that hires and employs ~~unlicensed assistive~~ direct access personnel ~~or individuals~~
19 who work in direct contact with clients, patients or residents to provide assistance
20 with activities of daily living and related tasks to individuals in the places in which
21 they reside, either permanently or temporarily. An individual who hires and employs
22 ~~unlicensed assistive~~ direct access personnel ~~or individuals who work in direct contact~~
23 with clients, patients or residents to provide care for that individual is not a personal
24 care agency, except when permitted by rule of the department.

25 **Sec. 3. 22 MRSA §1717, sub-§1, ¶D**, as amended by PL 2007, c. 324, §2, is
26 repealed.

27 **Sec. 4. 22 MRSA §1717, sub-§2**, as amended by PL 2007, c. 324, §2, is further
28 amended to read:

29 **2. Registration of personal care agencies and placement agencies.** Beginning
30 August 1, 1998, a personal care agency not otherwise licensed by the department shall
31 register with the department. Beginning January 1, 2008, a placement agency not
32 otherwise licensed by the department shall register with the department. The department
33 shall adopt rules establishing the annual registration fee, which must be ~~at least~~ between
34 \$25 and \$250. Rules adopted pursuant to this subsection are routine technical rules as
35 defined in Title 5, chapter 375, subchapter 2-A.

36 **Sec. 5. 22 MRSA §1717, sub-§3**, as amended by PL 2011, c. 257, §1, is repealed
37 and the following enacted in its place:

38 **3. Prohibited employment based on disqualifying offenses.** A personal care
39 agency or a placement agency shall conduct a comprehensive background check for

1 direct access personnel in accordance with state law and rules adopted by the department
2 and is subject to the employment restrictions set out in section 1812-G and other
3 applicable federal and state laws when hiring, employing or placing direct access
4 personnel, including, but not limited to, a certified nursing assistant or a direct care
5 worker.

6 **Sec. 6. 22 MRSA §1717, sub-§3-A** is enacted to read:

7 **3-A. Verification of listing on the registry.** Prior to hiring a certified nursing
8 assistant or a direct care worker, a personal care agency or a placement agency shall
9 check the Maine Registry of Certified Nursing Assistants and Direct Care Workers
10 established pursuant to section 1812-G and verify that a certified nursing assistant or
11 direct care worker listed on the registry has no disqualifying notations.

12 The department may adopt rules necessary to implement this subsection. Rules adopted
13 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
14 subchapter 2-A.

15 **Sec. 7. 22 MRSA §1717, sub-§4, ¶B,** as amended by PL 2007, c. 324, §2, is
16 further amended to read:

17 B. A person who operates a personal care agency or placement agency in violation of
18 the employment prohibitions in subsection 3 or 3-A commits a civil violation for
19 which a fine of not less than \$500 per day of operation in violation but not more than
20 \$10,000 per day may be adjudged, beginning on the first day that a violation occurs.
21 Each day of violation constitutes a separate offense.

22 **Sec. 8. 22 MRSA §1724, first ¶,** as reallocated by RR 2009, c. 2, §49, is
23 amended to read:

24 Beginning October 1, 2010, a facility or health care provider subject to the licensing
25 or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an
26 individual who will work in direct contact with a consumer, criminal history record
27 information on that individual, including, at a minimum, criminal history record
28 information from the Department of Public Safety, State Bureau of Identification. A
29 facility or provider subject to licensing under chapter 419 shall conduct a comprehensive
30 background check for direct access personnel. The comprehensive background check
31 must be conducted in accordance with state law and rules adopted by the department.
32 The facility or health care provider shall pay for the comprehensive or criminal
33 background check required by this section as applicable.

34 **Sec. 9. 22 MRSA §1812-G, sub-§6,** as amended by PL 2009, c. 215, §1, is
35 repealed and the following enacted in its place:

36 **6. Registry notations.** An individual with a disqualifying offense, including a
37 substantiated complaint or a disqualifying criminal conviction, may not work as a
38 certified nursing assistant or a direct care worker, and an employer is subject to penalties
39 for employing a disqualified or otherwise ineligible person in accordance with applicable
40 federal or state laws.

1 **Sec. 10. 22 MRSA §1812-G, sub-§6-A** is enacted to read:

2 **6-A. Background check.** Certified nursing assistants and direct care workers are
3 subject to a background check as defined by rules adopted by the department and
4 according to the following:

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

11 (1) Prior to enrolling an individual, a training program for certified nursing
12 assistants or direct care workers shall notify individuals that a background check
13 will be conducted and that certain disqualifying offenses, including criminal
14 convictions, may prohibit an individual from working as a certified nursing
15 assistant or a direct care worker.

16 B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 and 9005 and Title
17 34-B, section 1225, licensed, certified or registered providers shall secure and pay for
18 a background check prior to hiring an individual who will work in direct contact with
19 clients, patients or residents, including a certified nursing assistant or a direct care
20 worker.

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

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

27 **Sec. 11. 22 MRSA §1812-J, sub-§1, ¶¶A-2 and A-3**, as enacted by PL 2011, c.
28 257, §3, are amended to read:

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

32 A-3. "Health care and direct care ~~are~~ access services settings" means settings in which
33 individuals receive services that require direct access by a certified nursing assistant
34 or unlicensed assistive person is or other employee in providing direct care in that
35 assistant's or person's capacity as a certified nursing assistant or an unlicensed
36 assistive person and related services.

37 **Sec. 12. 22 MRSA §1812-J, sub-§1, ¶B**, as amended by PL 2011, c. 257, §3, is
38 further amended to read:

39 B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct
40 Care Workers, which is a list of certified nursing assistants, with notations if
41 applicable, and a list of direct care workers registered for training, education or

1 compliance purposes, or unlicensed assistive persons with notations and is
2 established under section 1812-G.

3 **Sec. 13. 22 MRSA §1812-J, sub-§1, ¶D**, as amended by PL 2011, c. 257, §3, is
4 further amended to read:

5 D. "Unlicensed assistive person" ~~or "direct care worker"~~ means an unlicensed
6 individual employed who by virtue of employment has direct access to provide
7 hands-on and provides direct care or direct contact assistance with activities of daily
8 living or other services to individuals in homes, assisted living programs, residential
9 care facilities, hospitals and other health care and direct care access services settings.
10 "Unlicensed assistive person" ~~and "direct care worker" include~~ includes but ~~are~~ is not
11 limited to a direct support professional, residential care specialist, personal support
12 specialist, mental health support specialist, mental health rehabilitation technician,
13 behavior specialist, other qualified mental health professional, certified residential
14 medication aide and registered medical assistant and other direct access workers or
15 direct care workers as described in rules adopted by the department. "Unlicensed
16 assistive person" ~~and "direct care worker" do~~ does not include a certified nursing
17 assistant employed in the capacity of a certified nursing assistant.

18 **Sec. 14. 22 MRSA §1812-J, sub-§1, ¶F** is enacted to read:

19 F. "Direct care worker" means a worker employed to provide direct contact
20 assistance with activities of daily living for individuals in homes, assisted living
21 centers, residential care facilities, hospitals and other health care settings. "Direct
22 care worker" includes an unlicensed assistive person but does not include a certified
23 nursing assistant employed in the capacity of a certified nursing assistant.

24 **Sec. 15. 22 MRSA §1812-J, sub-§2**, as enacted by PL 2009, c. 215, §2, is
25 amended to read:

26 **2. Complaint investigation.** The department may investigate complaints and
27 allegations of abuse, neglect, exploitation or misappropriation of property of a client,
28 patient or resident in a home or health care setting against unlicensed assistive persons
29 ~~employed or placed by a licensed, certified or registered agency or facility.~~

30 **Sec. 16. 22 MRSA §1812-J, sub-§4**, as enacted by PL 2009, c. 215, §2, is
31 amended to read:

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

37 A. Documentation of the department's investigation, including the nature of the
38 allegation and the evidence that led the department to substantiate the allegation of
39 abuse, neglect, exploitation or misappropriation of property;

40 B. The date of the hearing, if the unlicensed assistive person chose to appeal the
41 department finding that the complaint was substantiated; ~~and~~

1 C. The unlicensed assistive person's statement to the department disputing the
2 allegation, if the unlicensed assistive person chose to submit one; and

3 D. Notations indicating the listed unlicensed assistive person is not in compliance
4 with training or educational requirements.

5 **Sec. 17. 22 MRSA §1812-J, sub-§7**, as amended by PL 2011, c. 257, §8, is
6 repealed and the following enacted in its place:

7 **7. Prohibited employment based on disqualifying offenses.** An employer who
8 employs an unlicensed assistive person to provide direct access services shall conduct a
9 comprehensive background check in accordance with state law and rules adopted by the
10 department and is subject to the employment restrictions set out in section 1812-G and
11 other applicable federal and state laws. The employer is subject to penalties for
12 employing a disqualified or otherwise ineligible person in accordance with applicable
13 federal or state laws.

14 An employment ban based on a disqualifying offense is a lifetime employment ban.

15 **Sec. 18. 22 MRSA §2137, first ¶**, as enacted by PL 2009, c. 621, §5, is amended
16 to read:

17 Beginning October 1, 2010, a temporary nurse agency ~~shall obtain~~, prior to hiring,
18 employing or placing an individual who will work in direct contact with a consumer;
19 ~~criminal history record information on that individual, including, or who has direct access~~
20 to a consumer's property, personally identifiable information, financial information or
21 resources, shall obtain a comprehensive background check in accordance with applicable
22 federal and state laws. The comprehensive background check must include, at a
23 minimum, criminal history record information from the Department of Public Safety,
24 State Bureau of Identification. The temporary nurse agency shall pay for the criminal
25 background check required by this section.

26 **Sec. 19. 22 MRSA §2138**, as amended by PL 2011, c. 257, §16, is repealed and
27 the following enacted in its place:

28 **§2138. Prohibited employment based on disqualifying offenses**

29 A temporary nurse agency shall conduct a comprehensive background check for
30 direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in
31 accordance with state law and rules adopted by the department and is subject to the
32 employment restrictions set out in section 1812-G and other applicable federal and state
33 laws when hiring, employing or placing direct access personnel, including a certified
34 nursing assistant or a direct care worker.

35 The department may adopt rules necessary to implement this section. Rules adopted
36 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,
37 subchapter 2-A.

38 **Sec. 20. 22 MRSA §2149-A, sub-§2**, as amended by PL 2011, c. 257, §17, is
39 repealed and the following enacted in its place:

1 **2. Prohibited employment based on disqualifying offenses.** A home health care
2 provider shall conduct a comprehensive background check for direct access personnel, as
3 defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and
4 rules adopted by the department and is subject to the employment restrictions set out in
5 section 1812-G and other applicable federal and state laws when hiring, employing or
6 placing direct access personnel, including a certified nursing assistant or a direct care
7 worker.

8 The department may adopt rules necessary to implement this subsection. Rules adopted
9 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
10 subchapter 2-A.

11 **Sec. 21. 22 MRSA §7706, first ¶**, as reallocated by RR 2009, c. 2, §61, is
12 amended to read:

13 Beginning October 1, 2010, a facility or health care provider subject to the licensing
14 or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a
15 hospice provider subject to chapter 1681 ~~shall obtain~~, prior to hiring an individual who
16 will work in direct contact with a consumer, ~~criminal history record information on that~~
17 ~~individual, including~~, or who has direct access to a consumer's property, personally
18 identifiable information, financial information or resources, shall obtain a comprehensive
19 background check in accordance with applicable federal and state laws. The
20 comprehensive background check must include, at a minimum, criminal history record
21 information from the Department of Public Safety, State Bureau of Identification. The
22 entity seeking to employ the individual shall pay for the criminal background check
23 required by this section.

24 **Sec. 22. 22 MRSA §7851, sub-§4**, as enacted by PL 2003, c. 634, §6, is amended
25 to read:

26 **4. Prohibited employment based on disqualifying offenses.** A licensed assisted
27 housing program ~~may not hire as unlicensed assistive personnel as defined in section~~
28 ~~1717, subsection 1, paragraph D an individual who is prohibited from employment as a~~
29 ~~certified nursing assistant pursuant to section 1812-G, subsection 6 or 7 shall conduct a~~
30 comprehensive background check for direct access personnel, as defined in section 1717,
31 subsection 1, paragraph A-2, in accordance with state law and rules adopted by the
32 department and is subject to the employment restrictions set out in section 1812-G and
33 other applicable federal and state laws when hiring, employing or placing direct access
34 personnel, including a certified nursing assistant or a direct care worker.

35 The department may adopt rules necessary to implement this subsection. Rules adopted
36 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
37 subchapter 2-A.

38 **Sec. 23. 22 MRSA §8606**, as amended by PL 2011, c. 257, §18, is repealed and
39 the following enacted in its place:

1 **§9053. Definitions**

2 As used in this chapter, unless the context otherwise indicates, the following terms
3 have the following meanings.

4 **1. Adult day care program.** "Adult day care program" means an adult day care
5 program licensed pursuant to chapter 1663 or 1679.

6 **2. Assisted housing program** "Assisted housing program" means a program or
7 facility licensed pursuant to chapter 1663.

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

12 **4. Background Check Center.** "Background Check Center" means the entity
13 established under section 9052 to operate the Internet-based system maintained by the
14 department pursuant to section 9054 that is designed to integrate and analyze data streams
15 from various sources and is used by providers when conducting background checks on
16 potential or current direct access workers.

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

26 **6. Bureau.** "Bureau" means the Department of Public Safety, State Bureau of
27 Identification.

28 **7. Child care facility.** "Child care facility" means a child care facility licensed
29 pursuant to chapters 1661 and 1673.

30 **8. Child placing agency.** "Child placing agency" means a child placing agency
31 licensed pursuant to chapter 1663.

32 **9. Children's residential care facility.** "Children's residential care facility" means a
33 children's home licensed pursuant to chapter 1663.

34 **10. Contingent offer of employment.** "Contingent offer of employment" means an
35 offer of employment as a direct access worker that is based upon receipt of a final
36 nondisqualifying background check report and that may be withdrawn if a disqualifying
37 final background check report is issued.

1 **11. Criminal charge without disposition.** "Criminal charge without disposition"
2 means a charge that appears on an individual's criminal history record that has not been
3 finally disposed at the time the criminal record is reviewed.

4 **12. Direct access.** "Direct access" means access to the property, personally
5 identifiable information, financial information and resources of an individual or physical
6 access to an individual who is a Medicare or Medicaid beneficiary or other protected
7 individual served by a provider subject to this chapter.

8 **13. Direct access employment.** "Direct access employment" or "employment"
9 means any activity involving direct access services including employment for wages,
10 contracting for temporary staff or use of unsupervised volunteers or students who perform
11 functions similar to those performed by direct access workers.

12 **14. Direct access worker.** "Direct access worker" means an individual who by
13 virtue of employment has direct access to a Medicare or Medicaid beneficiary or other
14 protected individual served by a provider subject to this chapter. "Direct access worker"
15 does not include an individual performing repairs, deliveries, installations or similar
16 services who does not have direct access without supervision. "Direct access worker"
17 includes but is not limited to the following individuals:

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

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

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

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

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

30 **15. Disqualifying offense.** "Disqualifying offense" means an event in a person's
31 background that has resulted in a database or registry notation or criminal record report
32 that is relevant to the health and safety of protected individuals and that is included on the
33 list of disqualifying offenses adopted in rules pursuant to this chapter that mandate a
34 prohibition or exclusion from direct access employment.

35 **16. Drug treatment center.** "Drug treatment center" means a facility licensed
36 pursuant to chapter 1663.

37 **17. Employer.** "Employer" means a person or other legal entity that employs or
38 places a direct access worker or otherwise provides direct access services. "Employer"
39 includes a provider, a temporary nurse agency, a personal care agency and a placement
40 agency.

1 **18. Family child care provider.** "Family child care provider" means a child care
2 provider certified pursuant to chapter 1673.

3 **19. Grandfathered employee.** "Grandfathered employee" means an individual
4 subject to the requirements of this chapter who has been employed prior to the effective
5 date of this chapter and is subject to section 9058.

6 **20. Home health care provider.** "Home health care provider" means an entity
7 licensed pursuant to chapter 419.

8 **21. Hospice provider.** "Hospice provider" means an entity licensed pursuant to
9 chapter 1681.

10 **22. Intermediate care facility for individuals with intellectual disabilities.**
11 "Intermediate care facility for individuals with intellectual disabilities" means a facility
12 licensed pursuant to chapter 405.

13 **23. Medicare or Medicaid beneficiary.** "Medicare or Medicaid beneficiary" means
14 a person enrolled in the Medicare or Medicaid program.

15 **24. Mental health services facility or provider.** "Mental health services facility or
16 provider" means a facility or agency licensed pursuant to Title 34-B, section 1203-A.

17 **25. Nursery school.** "Nursery school" means a nursery school licensed pursuant to
18 chapter 1675.

19 **26. Nursing facility.** "Nursing facility" means a facility licensed pursuant to chapter
20 405.

21 **27. Personal care agency and placement agency.** "Personal care agency" and
22 "placement agency" mean an entity registered pursuant to section 1717.

23 **28. Personally identifiable information.** "Personally identifiable information"
24 means information that permits the identity of an individual to whom the information
25 applies to be able to be reasonably inferred or known by either direct or indirect means.

26 **29. Provider.** "Provider" means a licensed, certified or registered entity that
27 employs direct care workers to provide long-term care, child care and in-home and
28 community-based services under this chapter.

29 **30. Protected individual.** "Protected individual" means a person who is in need of
30 support, who is vulnerable to abuse, neglect and exploitation and who receives services
31 offered by providers subject to this chapter. A protected individual requires special
32 protective measures by criminal justice, social services and health care agencies; may be
33 a patient, consumer, beneficiary or resident; and is typically elderly, a child or an
34 individual with disabilities in need of assistance.

35 **31. Rap back monitoring program.** "Rap back monitoring program" means a
36 coordinated system used by federal and state agencies to monitor and generate reports for

1 new criminal record events appearing subsequent to an initial background check pursuant
2 to section 9056.

3 **32. Residential care facility.** "Residential care facility" means a residential care
4 facility licensed pursuant to chapter 1663.

5 **33. Supervision.** "Supervision" means a supervisor is physically present and
6 immediately able to respond to the needs of protected individuals through an ongoing and
7 verifiable process for the duration of conditional employment.

8 **34. Temporary nurse agency.** "Temporary nurse agency" means an agency
9 registered pursuant to chapter 417 or an agency that places temporary health care
10 professionals in direct access positions in the State that is not otherwise required to
11 register in the State.

12 **§9054. Background Check Center; procedures**

13 **1. Bureau responsibilities.** The bureau is responsible for working with the
14 Background Check Center and federal and state agencies to facilitate background checks.

15 **2. Employer obligations.** An employer subject to this chapter shall use the
16 Background Check Center to conduct a comprehensive background check that includes a
17 criminal history records check for all direct access workers. The employer shall comply
18 with the requirements of this chapter when making employment-related decisions for
19 direct access workers.

20 **3. Direct access worker information.** An employer seeking to hire, place or
21 continue to employ an individual as a direct access worker shall:

22 A. Obtain personally identifiable information for the individual that is sufficient to
23 secure the required components of the background check using the Background
24 Check Center;

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

28 C. Secure a release executed by an individual seeking placement through a
29 temporary nurse agency, personal care agency, placement agency or other agency to
30 obtain the results of existing background checks conducted at the direction and
31 expense of the temporary nurse agency, personal care agency, placement agency or
32 other agency; and

33 D. Use and distribute department-approved forms as required for all pre-hire and
34 post-employment background checks.

35 **4. Placed or temporary direct access workers.** A temporary nurse agency,
36 personal care agency or placement agency engaged in the business of securing or
37 attempting to secure direct access employment for individuals or of securing or
38 attempting to secure a direct access worker for placement with another provider shall:

39 A. Conduct and pay for the background check process required by this chapter;

1 B. Upon request, provide the background check record to the provider seeking to fill
2 a position where the direct access employment will take place; and

3 C. Repeat the background check process for placed direct access workers after
4 placement as mandated by rules adopted pursuant to this chapter, until the
5 employment status shifts away from the placing entity to another entity, in which
6 case the other entity then acquires the burden of paying for and conducting periodic
7 background checks for the direct access workers who remain employed.

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

13 **6. Notice.** An employer shall provide a department-approved notice to each
14 individual who is required to participate in a background check.

15 **7. Providers; mandatory use.** Use of the Background Check Center is mandatory
16 for the following providers:

17 A. Child care facilities;

18 B. Child placing agencies;

19 C. Children's residential care facilities;

20 D. Family child care providers;

21 E. Nursery schools;

22 F. Hospice providers;

23 G. Home health care providers;

24 H. Nursing facilities;

25 I. Personal care agencies and placement agencies;

26 J. Temporary nurse agencies;

27 K. Adult day care programs;

28 L. Assisted housing programs;

29 M. Residential care facilities;

30 N. Intermediate care facilities for individuals with intellectual disabilities;

31 O. Mental health services facilities or providers; and

32 P. Drug treatment centers.

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

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

1 B. Coordinating with the bureau and other federal or state agencies as applicable to
2 obtain data regarding criminal record information and notations that represent
3 disqualifying offenses on relevant databases and registries;

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

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

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

12 F. Specifying offenses, including offenses that may appear in publicly available
13 criminal record information, that disqualify an individual from employment as a
14 direct access worker, including, but not limited to, convictions and other events or
15 notations; and

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

18 **9. Background check reports.** A background check report under this chapter is
19 considered preliminary until the individual subject to the background check has had the
20 opportunity to challenge or decline to challenge the accuracy of the records obtained,
21 after which the report is considered final.

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

29 A. No disqualifying offenses;

30 B. A disqualifying offense; or

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

33 **11. List of disqualifying offenses.** The department shall adopt rules under section
34 9065 in accordance with the requirements of this chapter and other federal and state laws
35 to create and maintain a list of disqualifying offenses that adversely affect an individual's
36 eligibility for employment as a direct access worker. Disqualifying offenses that prohibit
37 employment as a direct access worker include, but are not limited to:

38 A. Convictions or notations involving crimes or abuse related to a federally funded
39 health care program or a state-funded health care program that mandate a
40 disqualification from participation or employment with the program;

1 B. Substantiated findings that the individual has committed an act of patient or
2 resident abuse or neglect, exploitation or a misappropriation of patient or resident
3 property or other types of acts that the department may specify for purposes of
4 protecting vulnerable individuals receiving care or services;

5 C. Convictions under federal or state law of a criminal offense relating to neglect or
6 abuse of patients in connection with the delivery of a health care item or service;

7 D. Convictions under federal or state law of a criminal offense relating to the health
8 and safety of vulnerable individuals receiving care or services;

9 E. Convictions relating to health care fraud in connection with the delivery of a
10 health care item or service or with respect to any act or omission in a health care
11 program operated by or financed in whole or in part by any federal, state or local
12 government agency or convictions of a criminal offense consisting of a felony
13 relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other
14 financial misconduct;

15 F. Convictions for a Class A, B or C crime in this State or similar crime in another
16 jurisdiction for an offense relating to the unlawful manufacture, distribution,
17 prescription or dispensing of a controlled substance; and

18 G. Convictions relating to other federal or state laws, provisions of this chapter or
19 rules adopted under this chapter that otherwise mandate an employment prohibition.

20 **12. Appeal by individual.** The department shall establish procedures in accordance
21 with the provisions of the Maine Administrative Procedure Act to ensure that each
22 individual submitted for a background check in compliance with this chapter has the
23 opportunity to challenge and correct errors in records created and generated by the
24 Background Check Center.

25 **13. Immunity.** A provider that denies employment for an individual selected for
26 hire or continued employment as a direct access worker, including during any period of
27 conditional employment, and that reasonably relies upon information obtained through a
28 final background check report regarding the individual is not liable in an action brought
29 by the individual based on an employment determination resulting from the information.

30 **14. Presumption of good faith.** In a proceeding regarding immunity from liability,
31 there is a rebuttable presumption of good faith.

32 **§9055. Background Check Center funding and fees**

33 After the initial construction and operational phase, the Background Check Center is
34 funded through user fees as provided in this section.

35 **1. User fee.** The department shall adopt rules to establish Background Check Center
36 user fees. The user fee must reasonably reflect the necessary costs to maintain, operate
37 and develop the Background Check Center. The user fee must be no less than \$55 and no
38 more than \$150. Rules adopted pursuant to this subsection are routine technical rules as
39 defined in Title 5, chapter 375, subchapter 2-A.

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

4 **§9056. New event monitoring; rap back monitoring program**

5 **1. New disqualifying offenses.** A direct access worker's data must be searched and
6 monitored for new events that may disqualify the individual from employment as a direct
7 access worker.

8 A. The department shall establish procedures regarding the exchange of data among
9 federal or state criminal justice agencies and the Background Check Center, including
10 criminal offenses not reported in earlier background check reports that upon final
11 disposition disqualify the individual from employment as a direct access worker.

12 B. The department shall establish procedures to search and monitor applicable
13 registries and databases for notations or new information not reported in earlier
14 background check reports that prohibit or disqualify employment as a direct access
15 worker.

16 **2. Rap back monitoring program.** The bureau is authorized to initiate and provide
17 services pursuant to federal or state rap back monitoring to report new criminal record
18 events to the Background Check Center for noncriminal justice purposes.

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

23 **4. Dissemination and storage of data.** The Background Check Center and the
24 bureau shall follow protocols established by federal or state law for the use and exchange
25 of information with the rap back monitoring program, the Background Check Center and
26 criminal justice agencies as applicable. The bureau shall:

27 A. Maintain the personally identifiable information in the criminal history records
28 repository;

29 B. Compare the personally identifiable data or other data or both to criminal records
30 to conduct a criminal record check and disseminate the results of this record check to
31 authorized entities;

32 C. Exchange data through the rap back monitoring program with the Background
33 Check Center for noncriminal justice purposes;

34 D. Disseminate criminal record event information, including notifications from the
35 rap back monitoring program, to an authorized entity or in a manner consistent with
36 the requirements of this chapter and federal and state laws; and

37 E. Secure and coordinate services as needed to effect the provisions and purposes of
38 this chapter.

1 **§9057. Employment**

2 **1. Contingent offer of employment.** An employer that has made a contingent offer
3 of employment to a direct access worker shall secure a background check and receive a
4 final background check report prior to allowing the individual to commence employment
5 as a direct access worker, except where the individual is conditionally employed as
6 described in this chapter.

7 **2. Opportunity to challenge inaccurate records.** An employer that has made a
8 contingent offer of employment under subsection 1 shall provide the individual subject to
9 a background check a copy of the background check report and afford the individual a
10 reasonable amount of time up to the 60th calendar day of conditional employment as
11 described in subsection 4 to allow that individual an opportunity to challenge inaccurate
12 information in the background check report.

13 **3. Employment determination.** An employer that has made a contingent offer of
14 employment under subsection 1 shall obtain a final nondisqualifying background check
15 report after an individual has been allowed an opportunity to correct or update that
16 individual's record prior to making an employment determination.

17 **4. Conditional employment.** In accordance with subsection 2, an employer may
18 employ an individual as a direct access worker on a conditional basis for up to 60
19 calendar days before the employer receives a final background check report or from the
20 date the employer receives a disqualifying background report on the following
21 conditions:

22 A. The employer initiates the background check by entering the individual into the
23 Background Check Center database as a conditionally employed worker;

24 B. The individual is not identified in the Background Check Center database as a
25 disqualified person based on an earlier background check;

26 C. The individual has agreed to submit to the steps necessary to comply with this
27 chapter, including taking substantial steps toward correcting inaccurate data in the
28 disqualifying background check report if applicable;

29 D. The individual signs a statement declaring that a background check will not reveal
30 a disqualifying offense or that an offense that appears is inaccurate;

31 E. The employer verifies and documents that the individual has submitted the
32 mandatory identity verification and employment eligibility documents required by
33 rules adopted in accordance with this chapter; and

34 F. The individual is subject to direct personal supervision during the course of the
35 conditional employment as described in rules adopted pursuant to this chapter.

36 **§9058. Grandfathered employees**

37 **1. Background check.** An employer employing direct access workers on the
38 effective date of this chapter shall use the Background Check Center to secure a
39 background check and a background check report for each direct access worker within
40 365 calendar days after the Background Check Center becomes operational.

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

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

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

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

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

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

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

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

30 **5. Termination; disqualified grandfathered employees.** An employer shall
31 terminate or remove from direct access employment any grandfathered employee who
32 has not submitted the documents required in subsection 3 or who fails to receive a final
33 nondisqualifying background check report in accordance with subsection 4.

34 **§9059. Prohibitions**

35 **1. Prohibited employment.** An employer is subject to the penalties imposed by this
36 chapter for hiring, placing or continuing to employ, other than conditionally as described
37 in this chapter or by rule, an unsupervised direct access worker who has a known
38 disqualifying offense or who has not been subject to a background check and issued a
39 nondisqualifying report from the Background Check Center.

1 **2. Refusal to participate; employer.** The Background Check Center shall issue a
2 disqualifying background check report for individuals who refuse to participate in the
3 background check reporting process as described in this chapter, and the employer is
4 subject to the penalties imposed by this chapter for allowing the individual to commence
5 or continue direct access employment.

6 **3. Good cause termination.** A disqualifying offense that appears in the record of an
7 individual submitted for a background check or a disqualifying offense that was not
8 reported in an earlier background check report or an offense that an individual concealed
9 from the employer constitutes good cause for termination of the individual's direct access
10 employment.

11 **4. Refusal to participate; employee.** An employee's refusal to participate in the
12 background check reporting process under this chapter constitutes good cause for
13 termination of direct access employment.

14 **§9060. Documentation**

15 **1. Employer documentation.** An employer subject to this chapter shall conduct and
16 document the background check process in accordance with the requirements of this
17 chapter and rules adopted pursuant to this chapter.

18 **2. Data storage.** An employer shall manage and store, electronically or on paper, the
19 data provided by the Background Check Center in a manner that allows for verification
20 that the employer conducted the background check in compliance with this chapter and
21 other relevant state and federal laws. Employer documentation must be made available to
22 the department upon request.

23 **§9061. Confidentiality**

24 A criminal background check record and other personally identifiable information
25 provided to an employer in compliance with this chapter are confidential. An employer
26 may use this information only to determine the eligibility of an individual for new or
27 continued employment, and the personally identifiable information or background check
28 record may not be disseminated in any way that does not comply with this chapter or
29 other applicable laws.

30 **§9062. Penalties**

31 **1. Conduct subject to penalties.** An employer may be subject to the penalties under
32 this chapter for any of the following:

33 A. Failure to conduct a mandatory background check;

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

37 C. Substantial noncompliance with the procedures established by this chapter.

1 **2. Fines.** An employer who fails to comply with the provisions of this chapter is
2 subject to the penalties set out under this subsection.

3 A. An employer who fails to secure a background check in accordance with this
4 chapter or knowingly employs a disqualified individual for direct access employment
5 commits a civil violation for which a fine of not less than \$500 but not more than
6 \$10,000 per day may be adjudged, beginning on the first day the violation occurs and
7 for each day of continued violation. Each day constitutes a separate offense.

8 B. An employer is subject to the penalties under paragraph A if that employer
9 conditionally employs an individual before receiving verification that the individual
10 has met the requirements of conditional employment described in this chapter.

11 C. An employer who fails to comply with the confidentiality requirements and
12 conditional employment requirements of this chapter commits a civil violation for
13 which a fine of not less than \$500 but not more than \$5,000 may be adjudged for
14 each violation.

15 **§9063. Administrative penalties**

16 **1. Licensing actions.** The penalties and fines described in this chapter do not limit
17 the State's licensing authority to pursue an adverse action against an employer who fails
18 to comply with or who commits a civil violation described in this chapter.

19 **2. Licensing penalties.** An employer's failure to comply with the requirements of
20 this chapter may be subject to the following administrative penalties in addition to any
21 other remedies authorized by law:

22 A. Denial of a license or certification or registration needed to provide services to
23 protected individuals;

24 B. Termination or revocation of the license or certification or registration relied upon
25 to provide services to protected individuals; and

26 C. Revocation of rate agreements or service contracts with the State relevant to
27 services authorized by the license or certification.

28 **§9064. Appeal by employer**

29 The imposition of sanctions, other than licensing sanctions, pursuant to this chapter
30 may be appealed by an employer pursuant to Title 5, chapter 375.

31 **§9065. Rules; contracts**

32 **1. Rules.** The Department of Public Safety and the Department of Health and
33 Human Services shall each adopt rules necessary to achieve the purposes of this chapter.
34 As appropriate, each department shall keep the other department informed regarding
35 rule-making activity. Rules adopted pursuant to this subsection are routine technical rules
36 as defined in Title 5, chapter 375, subchapter 2-A.

37 **2. Contract for services.** In accordance with state laws and rules governing
38 contracting for services, the Department of Public Safety and the Department of Health

1 and Human Services may contract with federal and state agencies and nongovernmental
2 entities as necessary to carry out the purposes of this chapter.

3 **Sec. 26. 34-B MRSA §1225, first ¶**, as reallocated by RR 2009, c. 2, §94, is
4 amended to read:

5 Beginning October 1, 2010, a facility or health care provider subject to the licensing
6 provisions of section 1203-A ~~shall obtain~~, prior to hiring an individual who will work in
7 direct contact with a consumer, ~~criminal history record information on that individual,~~
8 ~~including~~, or who has direct access to a consumer's property, personally identifiable
9 information, financial information or resources, shall obtain a comprehensive background
10 check in accordance with applicable federal and state laws. The comprehensive
11 background check must include, at a minimum, criminal history record information from
12 the Department of Public Safety, State Bureau of Identification. A facility or provider
13 licensed under section 1203-A is subject to the employment restrictions set out in Title
14 22, section 1812-G and other applicable federal and state laws when employing direct
15 access personnel, as defined in Title 22, section 1717, subsection 1, paragraph A-2. The
16 facility or health care provider shall pay for the criminal background check required by
17 this section.

18 SUMMARY

19 This bill establishes an interagency comprehensive background check program to
20 protect Maine citizens vulnerable to abuse, neglect or exploitation by individuals in
21 positions of trust who are charged with the physical and financial care of these
22 individuals. Providers are required to perform background checks prior to hiring new
23 direct care workers as well as current on direct access personnel.

24 The bill creates the Background Check Center, which allows direct access care
25 providers to secure background information from abuse and neglect databases, sex
26 offender registries, the registry of certified nursing assistants and direct care workers,
27 professional licensing authorities, Medicare and Medicaid exclusion databases and
28 criminal history record repositories.

29 The bill enables the Background Check Center to provide a report that identifies
30 offenses that disqualify an individual from employment as a direct access worker.

31 The bill authorizes a system of continued criminal record monitoring through a rap
32 back program to ensure that employers are informed of any new disqualifying criminal
33 offense that may occur after a direct access worker's initial background check.

34 The bill provides for a conditional employment process that allows direct access
35 workers to correct inaccurate background check report records and procedures to
36 gradually implement background checks for current employees.

37 The bill outlines compliance requirements including penalties and the impact of
38 violations on provider licensing for noncompliance with the requirements.

1 The bill amends existing background check and prohibited employment laws to use
2 consistent language across all areas affected by the laws.