

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 9, 2021
To: Joint Standing Committee on Health & Human Services
From: Anna Broome, Legislative Analyst

LD 121 An Act To Require a Background Check for High-risk Health Care Providers under MaineCare Program

SUMMARY: This bill requires MaineCare provider applicants who are high-risk providers or who are in high-risk provider categories to undergo criminal history background checks. “High-risk” in this context is determined in routine technical rules. The background check must include criminal history record information from the Maine Criminal Justice Information System and the FBI, and a fingerprint background check. The subject of the criminal history record may obtain a copy of the criminal history record check. The criminal history record information may be used by the department to screen the provider applicant. The information is confidential only to be used by the department for official use. The department shall adopt rules in consultation with the State Bureau of Identification.

ISSUES FROM TESTIMONY:

- DHHS: ACA requires fingerprint criminal background checks for high risk Medicaid providers when enrolling in MaineCare as a provider. Providers are defined in federal regulations – Home Health Agencies, DME, Medicare Diabetes Prevention programs and opioid treatment programs that have not been fully and continuously certified by SAMHSA since October, 2018 (categorical) as well as who become high risk (attached to the testimony). Risk is for fraud, waste and abuse. Background check requirement applies to the owner not everyone who works for the provider. The deadline was July 1, 2018 and OMS is currently noncompliant. DHHS is currently drafting rules.

DRAFTING ISSUES:

- The bill requires a background check and specifies what should be checked, who should pay, and the confidentiality of the information. ¶E states that the department may use it for screening applicants. Similar language to child care providers although they are required to “pass” the background check; this language appears more flexible?
- PRE review from JUD committee for ¶F if a majority of the committee supports the bill (creates a new record that is confidential).

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- Draft rules available from the department?
DHHS: “The rule is currently in the APA process. It was drafted, sent to the AG’s office for pre-review, and policy just got back the pre-review memo two days ago. The OAG has consistently advised the Department that once the APA process has started, the sharing of the rule and the receipt of comments on the rule should be only via the public notice and public comment processes within the APA.”

FISCAL IMPACT:

OFPR preliminary fiscal impact statement: one-time GF appropriation of \$23,579 in FY22 with an FMAP allocation match of \$70,736 for technological changes required in the Maine Integrated Health Management System. Additional costs to the Department of Public Safety associated with performing the background checks can be absorbed within existing budgeted resources. Fiscal note needed.