

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

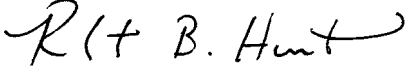
No. 1157

H.P. 762

House of Representatives, March 20, 2025

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

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.


ROBERT B. HUNT
Clerk

Presented by Representative SHAGOURY of Hallowell.

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

2 **Sec. 1. 22 MRSA §9053, sub-§2**, as repealed and replaced by PL 2023, c. 646, Pt.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

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

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

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

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

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23 nondisqualifying background check report and that may be withdrawn by the employer if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

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

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

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

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

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

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

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

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

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

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

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

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

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

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-A;~~

21 ~~C. A former employee who consents, prior to leaving employment, to periodic review~~
22 ~~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; a worker who is placed with~~
25 ~~a provider by a temporary nurse agency; or a worker who is placed with a provider by~~
26 ~~a personal care agency registered or licensed pursuant to section 1717.5;~~

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; and~~

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

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

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

37 **Sec. 8. 22 MRSA §9053, sub-§19**, as repealed and replaced by PL 2023, c. 241,
38 §52, is amended to read:

39 **19. Grandfathered employee.** "Grandfathered employee" means an individual
40 subject to the requirements of this chapter who has been employed prior to ~~October 1, 2023,~~
41 the date biometric-based background check capability becomes available, who is subject to

1 section 9058-A and who has not previously submitted biometric identifier data for a
2 background check under this chapter.

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

4 **19-A. Home and community-based service agency.** "Home and community-based
5 service agency" means an entity licensed pursuant to Title 34-B, section 1203-B.

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

8 **24-A. Noncriminal justice submitting entity.** "Noncriminal justice submitting
9 entity" means the agency responsible for initiating requests under the rap back monitoring
10 program ~~pursuant to federal implementation guidance documents.~~

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

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

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

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

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

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

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

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

28 R. Hospitals; and

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

30 S. Home and community-based service agencies.

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

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;

37 B-1. Collecting fingerprints to determine eligibility of individuals to work in direct
38 access positions in accordance with standards adopted by department rule; and in
39 accordance with applicable policies and rules of the Department of Public Safety,

1 Bureau of State Police and the Federal Bureau of Investigation. The Bureau of State
2 Police shall take, or cause to be taken, an individual's fingerprints, along with any other
3 information necessary for a statewide and nationwide criminal history record check.
4 The Bureau of State Police shall make a determination of the existence of any state-
5 level criminal history and, if none is found, the fingerprints must be forwarded to the
6 Federal Bureau of Investigation for a national criminal history record check pertaining
7 to the individual. The Background Check Center shall obtain the results of the state and
8 federal criminal history record check queries from the State Bureau of Identification.
9 Criminal records obtained pursuant to this section and the information contained
10 therein may not be released or otherwise disclosed to any private entity. All fingerprints
11 must be maintained by the State Bureau of Identification and the Federal Bureau of
12 Investigation in accordance with their policies and procedures, and the Background
13 Check Center shall obtain the results of the fingerprinting queries from the State Bureau
14 of Identification;

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

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

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

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

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

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

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

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

42 A. All state-level offenses, including criminal charges without deposition;

43 B. The presence of federal-level disqualifying offenses without disclosure of the
44 details;

1 C. A result of finding of registry disqualifications; and

2 D. The status of the individual, based on the outcome of the background check report,
3 as:

4 (1) Eligible for hire; or

5 (2) Ineligible for hire.

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

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

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

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

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

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

37 A. The noncriminal justice submitting entity submits to an electronic repository the
38 biometric identifier data of a direct access worker;

39 B. The electronic repository retains the biometric identifier data for a period of time
40 specified in the State's subscription with the electronic repository; and

41 C. The electronic repository notifies the noncriminal justice submitting entity of any
42 new criminal record events tied to the biometric identifier data that may disqualify an
43 individual from continued employment as a direct access worker.

