

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 432

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H.P. 265

House of Representatives, February 2, 2023

### **An Act to Clarify MaineCare Program Requirements Regarding Certain High-risk Health Care Providers**

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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*  
ROBERT B. HUNT  
Clerk

Presented by Representative MADIGAN of Waterville.

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

2 **Sec. 1. 22 MRSA §5307, sub-§1**, as enacted by PL 2021, c. 400, §1, is repealed  
3 and the following enacted in its place:

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Final adverse action" has the same meaning as in 42 Code of Federal Regulations,  
7 Section 424.502 (2008) in effect on November 19, 2008.

8 B. "High-risk provider" means a provider the department has determined is high risk  
9 in accordance with subsection 2-A.

10 C. "Person with ownership interest" means a person who has at least a 5% direct or  
11 indirect ownership interest in a high-risk provider or a provider in a high-risk provider  
12 category.

13 D. "Provider" has the same meaning as "provider" or "supplier" in 42 Code of Federal  
14 Regulations, Section 400.202 (1983) in effect on January 1, 2022.

15 E. "Provider in a high-risk provider category" has the same meaning as "high  
16 categorical risk: Provider and supplier categories" in 42 Code of Federal Regulations,  
17 Section 424.518(c)(1) (2020) in effect on December 28, 2020.

18 F. "State Police" means the Department of Public Safety, Bureau of State Police.

19 **Sec. 2. 22 MRSA §5307, sub-§2**, as enacted by PL 2021, c. 400, §1, is amended to  
20 read:

21 **2. Background check.** The department shall request a background check for a  
22 MaineCare provider ~~applicants~~ applicant who are ~~is a high-risk providers or provider, a~~  
23 provider in a high-risk provider categories as those terms are defined by department rule  
24 category or a person with ownership interest. The applicant subject to the background  
25 check is responsible for the fees associated with the background check. The background  
26 check must include criminal history record information obtained from the Maine Criminal  
27 Justice Information System and the Federal Bureau of Investigation.

28 A. The criminal history record information obtained from the Maine Criminal Justice  
29 Information System must include a record of public criminal history record information  
30 as defined in Title 16, section 703, subsection 8.

31 B. The criminal history record information obtained from the Federal Bureau of  
32 Investigation must include other state and national criminal history record information.

33 C. A provider applicant shall submit to having fingerprints taken. The State Police,  
34 upon payment by the provider applicant, shall take or cause to be taken the applicant's  
35 fingerprints and shall forward the fingerprints to the State Bureau of Identification so  
36 that bureau can conduct state and national criminal history record checks. Except for  
37 the portion of the payment, if any, that constitutes the processing fee charged by the  
38 Federal Bureau of Investigation, all money received by the State Police for purposes  
39 of this paragraph must be paid over to the Treasurer of State. The money must be  
40 applied to the expenses of administration incurred by the Department of Public Safety.

1 D. The subject of a Federal Bureau of Investigation criminal history record check may  
2 obtain a copy of the criminal history record check by following the procedures outlined  
3 in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state  
4 criminal history record check may inspect and review the criminal history record  
5 information pursuant to Title 16, section 709.

6 E. State and national criminal history record information of a provider applicant must  
7 be used by the department for the purpose of screening that provider applicant.

8 F. Information obtained pursuant to this subsection is confidential. The results of  
9 background checks received by the department are for official use only and may not be  
10 disseminated to any other person or entity.

11 G. An individual whose enrollment as a MaineCare provider has expired and who has  
12 not applied for renewal may request in writing that the State Bureau of Identification  
13 remove the individual's fingerprints from the bureau's fingerprint file. In response to a  
14 written request, the bureau shall remove the individual's fingerprints from the  
15 fingerprint file and provide written confirmation of that removal.

16 **Sec. 3. 22 MRSA §5307, sub-§2-A** is enacted to read:

17 **2-A. High-risk provider adjustments by the department.** The department shall  
18 adjust the categorical risk for a provider to high if any of the following conditions exist:

19 A. Within the previous 10-year period:

20 (1) The MaineCare program has imposed a payment suspension on the provider  
21 based on credible allegations of fraud, waste or abuse;

22 (2) The United States Department of Health and Human Services, Office of  
23 Inspector General or another state's Medicaid program has excluded the provider  
24 from Medicaid;

25 (3) A Medicare contractor revoked the provider's billing privileges and the provider  
26 is attempting to:

27 (a) Enroll as a new provider; or

28 (b) Establish billing privileges for a new service location; or

29 (4) The provider was subject to a final adverse action;

30 B. Within the previous 6-month period, the United States Department of Health and  
31 Human Services, Centers for Medicare and Medicaid Services lifted a temporary  
32 moratorium for a particular provider type that prevented the provider from enrolling as  
33 a MaineCare provider and that provider is now a MaineCare provider applicant;

34 C. The United States Department of Health and Human Services, Office of Inspector  
35 General excluded the provider from Medicare; or

36 D. The provider:

37 (1) Owes \$1,000 or more to the department as a result of a Medicaid overpayment  
38 that is not currently under appeal or in a payment plan;

39 (2) Has been terminated or is otherwise precluded from billing Medicaid; or

40 (3) Has been excluded from any federal health care program.

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## **SUMMARY**

This bill clarifies the MaineCare program requirements with regard to certain high-risk providers. It also requires a person with a certain level of ownership interest in a high-risk provider to submit to a fingerprint-based criminal history record background check.