

## CHAPTER 1471

### GENERAL PROVISIONS

#### **§5304. Definitions**

For purposes of this Part and Part 2, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1973, c. 793, §12 (NEW).]

**1. Agreement.** "Agreement" means a legally binding document between 2 parties including such document as is commonly referred to as purchase of services, contract, grant or accepted proposal. [PL 1973, c. 793, §12 (NEW).]

**1-A. Adult developmental services.** "Adult developmental services" has the same meaning as in Title 34-B, section 1001, subsection 1-A. [PL 2011, c. 542, Pt. A, §41 (NEW).]

**2. Office.** "Office" means the Office of Child and Family Services, Department of Health and Human Services.

[PL 2013, c. 368, Pt. CCCC, §5 (AMD).]

**3. Bureau of Elder and Adult Services.**

[PL 2011, c. 657, Pt. BB, §10 (RP).]

**4. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services or the commissioner's successors.

[RR 2021, c. 2, Pt. B, §212 (COR).]

**5. Committee.**

[PL 2023, c. 405, Pt. A, §68 (RP).]

**6. Council.**

[PL 2023, c. 405, Pt. A, §69 (RP).]

**7. Department.** "Department" means the Maine Department of Health and Human Services.

[PL 1973, c. 793, §12 (NEW); PL 1975, c. 293, §4 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

**8. Director.** "Director" means the director, Bureau of Resource Development, Maine Department of Health and Human Services.

[PL 1973, c. 793, §12 (NEW); PL 1975, c. 293, §§4, 5 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

**9. Director, Bureau of Elder and Adult Services.**

[PL 2011, c. 657, Pt. BB, §11 (RP).]

**10. Elderly or Older People.** "Elderly" or "Older People" are synonymous and mean persons 60 years of age or more, or those persons otherwise defined as elderly or older for the purpose of eligibility for assistance or services under specific federal or state laws and programs.

[PL 1973, c. 793, §12 (NEW).]

**11. Human services.** "Human services" means any facilities, functions, programs or services administered or supported, financially or otherwise, by State Government, including, but not limited to, the following services, including services to older people funded by Title IV or Title VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other services to older people:

A. Children's, youth, family and social services; [PL 1973, c. 793, §12 (NEW).]

B. Any service, health, medical care, rehabilitation or social welfare, administered or supported currently or in the future by the department; and [PL 1973, c. 793, §12 (NEW).]

C. Any income maintenance, income supplement, public assistance, general assistance, welfare or donated food program or the Supplemental Nutrition Assistance Program. [PL 2023, c. 405, Pt. C, §15 (AMD).]

[PL 2023, c. 405, Pt. C, §15 (AMD).]

**12. Household.** "Household" means household as defined for purposes of the state income tax.

[PL 1973, c. 793, §12 (NEW).]

**13. Household income.** "Household income" means all income received by all persons of a household, as defined for income tax purposes, in a calendar year while members of the household. [PL 1973, c. 793, §12 (NEW).]

**14. Income.** "Income" means the sum of Maine adjusted gross income determined in accordance with Title 36, Part 8, the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, the gross amount of any pension or annuity including railroad retirement benefits, all payments received under the Federal Social Security Act, state unemployment insurance laws and veterans' disability pensions, nontaxable interest received from the Federal Government or any of its instrumentalities, workers' compensation and the gross amount of "loss of time" insurance, cash public assistance and relief. It does not include gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency or property tax relief for the elderly.

[PL 1987, c. 769, Pt. A, §79 (AMD).]

**15. Nonprofit organization.** "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood or community region of the State of Maine.

[PL 1981, c. 470, Pt. A, §118 (AMD).]

**16. Public.** "Public" means municipal, county and other governmental bodies which are political subdivisions within the State of Maine.

[PL 1973, c. 793, §12 (NEW).]

**17. Social services.** "Social services" means any facilities, functions, programs or services administered or supported financially or otherwise, by State Government including, but not limited to, the following social services, including services to older people funded by Title IV or Title VI, or their successors or amendments or additions thereto of the United States Social Security Act, as amended, and excepting all other service to older people:

A. Any service listed in Part 2 of the March 1973 Report to the Appropriations Committee, pages 6 to 9, 106th Legislature, with recommendations to adopt basic policies to guide the appropriation of state funds for social services; [PL 1973, c. 793, §12 (NEW).]

B. Any service designated as a priority social service pursuant to section 6110; [PL 1973, c. 793, §12 (NEW).]

C. Any service commonly practiced under public or private auspices by registered social workers, professional social workers, human service workers and social workers. [PL 1973, c. 793, §12 (NEW).]

[P&SL 1975, c. 90, §C, §5 (AMD).]

**18. Rural area.** "Rural area" means a geographical area or place of less than 10,000 inhabitants. "Rural population" consists of all persons living in places of less than 10,000 inhabitants incorporated

as cities, villages, boroughs and towns, including those persons living in the rural portions of extended cities, unincorporated places of less than 10,000 inhabitants and other territory, incorporated or unincorporated.

[P&SL 1975, c. 90, §C, §2 (NEW).]

**19. Extended city.** "Extended city" means a city containing one or more areas, each of at least 5 square miles in extent and with a population density of less than 100 persons per square mile according to the 1970 census. The area or areas shall constitute at least 25% of the land area of the legal city or total 5 square miles or more.

[P&SL 1975, c. 90, §C, §2 (NEW).]

#### SECTION HISTORY

PL 1973, c. 793, §12 (NEW). P&SL 1975, c. 90, §§SEC.C,2,5 (AMD). PL 1975, c. 293, §§4,5 (AMD). PL 1981, c. 470, §A118 (AMD). PL 1983, c. 409, §2 (AMD). PL 1987, c. 769, §A79 (AMD). PL 1989, c. 329, §§19,20 (AMD). PL 1991, c. 824, §A47 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2011, c. 542, Pt. A, §41 (AMD). PL 2011, c. 657, Pt. BB, §§10, 11 (AMD). PL 2013, c. 368, Pt. CCCC, §5 (AMD). RR 2021, c. 2, Pt. B, §212 (COR). PL 2023, c. 405, Pt. A, §§68, 69 (AMD). PL 2023, c. 405, Pt. C, §15 (AMD).

#### §5305. State agencies to cooperate

State agencies shall cooperate fully with the bureau in carrying out this Part and Part 2. The bureau is authorized to request such personnel, financial assistance, facilities and data as are reasonably required to assist the bureau to fulfill the bureau's powers and duties. [PL 2023, c. 405, Pt. A, §70 (AMD).]

State agencies proposing to develop, establish, conduct or administer programs or to assist programs relating to this Part and Part 2 shall, prior to carrying out such actions, consult with the bureau. All agencies of State Government shall advise the bureau of their proposed administrative, fiscal and legislative activities relating to this Part and Part 2. State agencies, in the implementation of their activities relating to this Part, shall keep the bureau fully informed of their progress. [PL 1973, c. 793, §12 (NEW).]

#### SECTION HISTORY

PL 1973, c. 793, §12 (NEW). PL 2023, c. 405, Pt. A, §70 (AMD).

#### §5306. Agreements with community agencies

All funds disbursed by the department to a community agency for the purpose of financially supporting a human service shall be covered by a written agreement, pursuant to the same provisions specified for the department in Title 34, section 12. [PL 1981, c. 493, §2 (AMD); PL 1995, c. 560, Pt. K, §82 (AMD); PL 1995, c. 560, Pt. K, §83 (AFF); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

#### SECTION HISTORY

PL 1977, c. 307, §1 (NEW). PL 1981, c. 493, §2 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV).

#### §5307. Background check for high-risk provider applicants under the MaineCare program

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

A. "Final adverse action" has the same meaning as in 42 Code of Federal Regulations, Section 424.502 (2008) in effect on November 19, 2008. [PL 2023, c. 432, §1 (NEW).]

- B. "High-risk provider" means a provider the department has determined is high risk in accordance with subsection 2-A. [PL 2023, c. 432, §1 (NEW).]
  - C. "Person with ownership interest" means a person who has at least a 5% direct or indirect ownership interest in a high-risk provider or a provider in a high-risk provider category. [PL 2023, c. 432, §1 (NEW).]
  - D. "Provider" has the same meaning as "provider" or "supplier" in 42 Code of Federal Regulations, Section 400.202 (1983) in effect on January 1, 2022. [PL 2023, c. 432, §1 (NEW).]
  - E. "Provider in a high-risk provider category" has the same meaning as "high categorical risk: Provider and supplier categories" in 42 Code of Federal Regulations, Section 424.518(c)(1) (2020) in effect on December 28, 2020. [PL 2023, c. 432, §1 (NEW).]
  - F. "State Police" means the Department of Public Safety, Bureau of State Police. [PL 2023, c. 432, §1 (NEW).]
- [PL 2023, c. 432, §1 (RPR).]

**2. Background check.** The department shall request a background check for a MaineCare provider applicant who is a high-risk provider, a provider in a high-risk provider category or a person with ownership interest. The applicant subject to the background check is responsible for the fees associated with the background check. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

- A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2021, c. 400, §1 (NEW).]
- B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information. [PL 2021, c. 400, §1 (NEW).]
- C. A provider applicant shall submit to having fingerprints taken. The State Police, upon payment by the provider applicant, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety. [PL 2021, c. 400, §1 (NEW).]
- D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2021, c. 400, §1 (NEW).]
- E. State and national criminal history record information of a provider applicant must be used by the department for the purpose of screening that provider applicant. [PL 2021, c. 400, §1 (NEW).]
- F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the department are for official use only and may not be disseminated to any other person or entity. [PL 2021, c. 400, §1 (NEW).]
- G. An individual whose enrollment as a MaineCare provider has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the individual's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall

remove the individual's fingerprints from the fingerprint file and provide written confirmation of that removal. [PL 2021, c. 400, §1 (NEW).]

[PL 2023, c. 432, §2 (AMD).]

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

A. Within the previous 10-year period:

- (1) The MaineCare program has imposed a payment suspension on the provider based on credible allegations of fraud, waste or abuse;
- (2) The United States Department of Health and Human Services, Office of Inspector General or another state's Medicaid program has excluded the provider from Medicaid;
- (3) A Medicare contractor revoked the provider's billing privileges and the provider is attempting to:
  - (a) Enroll as a new provider; or
  - (b) Establish billing privileges for a new service location; or
- (4) The provider was subject to a final adverse action; [PL 2023, c. 432, §3 (NEW).]

B. Within the previous 6-month period, the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services lifted a temporary moratorium for a particular provider type that prevented the provider from enrolling as a MaineCare provider and that provider is now a MaineCare provider applicant; [PL 2023, c. 432, §3 (NEW).]

C. The United States Department of Health and Human Services, Office of Inspector General excluded the provider from Medicare; or [PL 2023, c. 432, §3 (NEW).]

D. The provider:

- (1) Owes \$1,000 or more to the department as a result of a Medicaid overpayment that is not currently under appeal or in a payment plan;
- (2) Has been terminated or is otherwise precluded from billing Medicaid; or
- (3) Has been excluded from any federal health care program. [PL 2023, c. 432, §3 (NEW).]

[PL 2023, c. 432, §3 (NEW).]

**3. Rules.** The department, following consultation with the State Bureau of Identification, shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 400, §1 (NEW).]

## SECTION HISTORY

PL 2021, c. 400, §1 (NEW). PL 2023, c. 432, §§1-3 (AMD).

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