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Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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March 10, 2020

Senator Geoff Gratwick, Chair
Representative Patricia Hymanson, Chair
Joint Standing Committee on Health and Human Services
#100 State House Station
Augusta, Maine 04333-0100

Dear Senator Gratwick, Representative Hymanson, and Members of the Joint Standing Committee on Health and Human Services:

Please find attached, a summary of the work of the stakeholder group established by Resolve 2019, Chapter 53, *Resolve, To Review the Implementation of the Maine Background Check Center Act*. The Resolve tasked the Department of Health and Human Services, and the Division of Licensing and Certification with assessing the effects of the implementation of the Maine Background Check Center. The stakeholder group also worked to address questions and concerns articulated in a letter from this Committee last year. The Department has not taken a position on the recommendations made by the stakeholder group.

It should be noted that the Legislature did not provide any resources to the Department for the convening, research, and writing of this report.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne M. Lambrew".

Jeanne M. Lambrew, Ph.D.
Commissioner

JML/klv

Attachment

Report to the Legislature pursuant to Resolve 2019, Chapter 53

Introduction

Pursuant to Resolve 2019, Ch. 53 (LD 934), Resolve, To Review the Implementation of the Maine Background Check Center Act, the Department of Health and Human Services convened a stakeholder group to assess the effects of implementation of the Maine Background Check Center Act and make recommendations to the Legislature.

In a companion letter to the Resolve, members of the Joint Standing Committee on Health and Human Services expressed their “support of fingerprint-based criminal background checks for persons who work with vulnerable populations.” Additionally, they expressed the hope that the study group will help “improve the Maine Background Check Center Act in order to ensure the safety of vulnerable populations.” The letter from the Committee additionally included a list of topics that arose in the course of public hearings for four bills related to the Maine Background Check Center. These topics were shared with the work group for consideration and discussion.

As directed, a work group was established that consisted of the Maine Health Care Association, Maine Hospital Association, Maine Long Term Care Ombudsman Program, State Bureau of Identification, Bureau of Motor Vehicles, members of the Legislature, staff from the Division of Licensing and Certification, Home Care and Hospice Alliance of Maine, Maine Association for Community Service Providers as well as a home health, behavioral, and developmental disability organization.

The Maine Background Check Center

The Maine Background Check Center Act (22 MRSA Chapter 1691) was established by the Maine Legislature in 2015 to promote and protect the health and safety of children and adults in need of support and care and was passed with unanimous support. In the three years prior to submission of this legislation, a 40-member stakeholder group and an Executive Advisory Committee worked on this legislation. The stakeholder group included representatives from AARP, area agencies on aging, the Maine Long Term Care Ombudsman program, the Maine Hospital Association, the Maine Healthcare Association, the Maine Hospice Council, the Maine Home Care and Hospice Alliance, the State Bureau of Investigation (SBI), Office of MaineCare Services and other state agencies, the Center for Medicare and Medicaid Services (CMS), the Office of the Attorney General, various providers, advocacy groups and member organizations. The Executive Advisory Committee included Commissioners of DHHS DPFR, DPS, and various representatives of other state agencies.

Currently, the Maine Background Check Center (MBCC) completes two levels of background check:

- A pre-screening, completed at no cost to the employer, which may eliminate some applicants from consideration for hire on the basis of disqualifying offenses listed on publicly available databases: The Maine and National Sex Offender Registries, the Office of the Inspector General’s fraud registry, Maine Excluded Provider Registry (Office of MaineCare Services) and the Maine Registry of Certified Nursing Assistants.

- If the applicant is eligible for employment following the pre-screening, the employer may proceed to request the criminal background check, which at this time includes State Bureau of Identification (SBI) conviction data. This also initiates the rap-back service for any future convictions that are entered on the SBI database.

Definitions

Rap Back Monitoring: automatically and constantly monitoring an individual's Record of Arrest and Prosecution (RAP) within the State of Maine and reporting new results to the MBCC.

Waiver: allows an employer to employ a direct access worker with a disqualifying criminal conviction if granted specific permission by the Department. An employer may not request a waiver of a direct access worker's disqualification for employment due to the direct access worker's appearance on any disqualification registry cited in rule. The MBCC will only approve waivers where the employer has attested that they reasonably determined that the health and safety of a protected individual is not in jeopardy and a denial of a waiver request is not otherwise warranted in accordance with State or federal law.

Portability: the ability of a background check to follow an employee, such that a new background check does not need to be completed by a new employer if a recent check by another employer is still valid.

Workgroup Discussion

Per the Resolve and accompanying letter, below are the tasks assigned to the study group, conversations had, and recommendations made.

Alternate Vendors

The alternate vendor program allows an employer to use a non-MBCC vendor to complete a background check. Currently the MBCC cannot complete national background checks internally, so the AV program was established to allow providers to obtain limited nation-wide searches. It should be noted that alternate vendor information can be questionable, incomplete, and limited in scope as the far majority only report a 7-year criminal history. That said, many feel that limited information is better than none.

The group discussed the history and capabilities of alternate vendors. MBCC staff noted the increased demand on the MBCC to review each vendor to be sure they meet MBCC criteria.

Additionally, the group noted that alternate vendors do not have access to the rap back feature or present employers with an option for requesting a waiver, as the MBCC does not receive conviction data.

Alternate vendors offer employers an efficiency by providing in batch uploads of requests for background checks. Stakeholders recommended that the Department should investigate if this service can this be provided through the MBCC website.

Portability of Checks

The payor for the background check ‘owns’ the report, which prohibits sharing the data with a new employer when a direct access worker transitions to a new employer. This might be circumvented if the employee were to bear the cost of the background check.

If checks are made portable, who the responsible party is for paying for the check should be considered. If it is the employer who is responsible, but other employers are able to piggy-back on a check for the sake of portability, who is responsible when it is time for the 5-year recheck? If the employee is the responsible party, this would not be an issue.

The stakeholder group recommended that the Department should consider access be granted to multiple employers when a person is already the MBCC system (in scenarios where the person has several jobs or has transferred to a different employer) for a reduced fee. The members of the work group adopted a practice of referring to this a “light” background check.

Providers are concerned that an additional cost to the employee would have a negative impact on their ability to recruit employees for low-paying jobs. One option might be employers reimbursing the cost upon hire. A statute change may be required to implement policy changes outlined above.

Fingerprinting

Biometric-based Federal Bureau of Investigation criminal histories are considered the gold standard of criminal background checks. The only way the FBI allows these checks are by the submission of fingerprints. Federal level conviction data provides the broadest scope of information, and therefore can best enhance the safety of vulnerable people. Currently, Federal rap back is not available in Maine, and would require a significant technological investment by the State Bureau of Identification.

The limited locations and availability of sites for collection of fingerprints is a concern for employers, as the process of obtaining fingerprints may present a delay in hiring (Conditional hire may be a solution to address this concern and is allowable under current rule in force). Requiring fingerprinting for all direct access workers would eliminate arguments supporting the alternate vendor option, as this would no longer meet the requirements.

Discrimination

Concerns were raised about waiver requests being denied based on non-substantive or discriminatory reasoning. After review of waiver requests there appears to be no valid concern. As of the time of this report, only a single waiver request has been denied for cause. Others that were not granted were either not completed or rescinded by the employer or applicant.

Comprehensiveness of Checks

The inability to directly access Child Protective Services and Adult Protective Services data presents an administrative and financial burden for employers, as they must manually request a search for substantiated findings through separate agencies. Stakeholders recommended that the Department pursue direct access to databases through a Memorandum of Understanding (MOU) to allow MBCC access to existing databases.

Stakeholders recommended that the Department pursue Bureau of Motor Vehicles (BMV) driving history data through linkage with InforME. This is not required for all categories of direct access worker. This function should be needs-based only, when required by licensee/position; the Department could charge additional fee when this is required.

The work group suggests a phase-in of fingerprinting for currently enrolled employees at the time of five-year recheck. MBCC staff explained that the five-year recheck is driven by federal standards for re-subscription for rap-back monitoring.

Costs

MBCC program changes will incur additional costs in software development. If utilization of the MBCC outpaces funding needs, MBCC could consider decreasing fees. Implementing a lower fee requires rule revision in accordance with 22 MRS, Ch. 1691.

Fingerprinting fees are outside of the Department's control. These are set by Idemia, the Department of Public Safety's fingerprint collection contractor.

Members of the work group asked if costs be subsidized by the Department. Department funding for mandated fingerprint background checks for licensed child care providers (see 22 MRS § 8302-B) has created a precedent.

Recommendations

Rule revisions

- Consider revising fee structure to reflect a lower per-use cost.
- If fingerprinting is required, eliminate alternate vendor program

Statutory changes

- 22MRS Ch. 1691: Remove child care and children's residential as mandated users¹; clarify substance abuse scope (not just "drug treatment centers"); add other licensee groups (to include providers of "direct support professionals".)
- Consider changing language that requires the employer to conduct the background check to allow payment by the employee.

Additional Recommendation

- Use the initial research (crosswalk spreadsheets - attached) completed as part of this project for a more thorough review of the regulatory environment, and better coordinate background check requirements in statute and rule.

Conclusion

After much discussion, the stakeholder group was unable to come to a consensus on the following items:

Fingerprinting – Provider representatives advocated for this as an option, but not as a mandate for all provider types. For the Department, this raises questions regarding how frequently this

¹ This change was passed unanimously by the HHS Committee in LD 2053, and as of March 9, 2020 is passed to be engrossed by the Senate.

option would be selected and the result would be inconsistency in results between providers and the goal of a broader, consistent background check would not be met.

Alternate vendors – Providers supported the continued use of approved alternate vendors that are available at a lower cost. Vendors can do batch uploads instead of manually submitting each applicant, which is a benefit for larger providers. For the Department, use of alternative vendors presents a concern due to the lack of ongoing oversight of the results of background checks and assuring compliance with the disqualifying offenses in rule.

Costs – Providers have expressed concerns over the burden that may be placed on employees in entry level staff positions if the responsibility for paying for background checks were to shift to employees in order to allow portability.

Portability - Providers feel this would be helpful but should not be at the expense of the employee. The Department's concern is that statutes limit who may receive the results of background checks.

Add-Ons - Providers advocated for an option to purchase only rap back services, while conducting general background checks through alternate vendors. Providers also advocated for MBCC to add the functionality of providing BMV data as required for jobs that require transporting clients. The Department notes that requiring all providers to do fingerprint background checks would integrate the rap back feature, which no alternate vendor can provide, so providing a separate option for that service alone would not be required.

| §9054 employers: | §1812-G and §1812-J Direct Care Workers | | | | | | | | | | | | |
|---|---|-------------------------------|----------------------------------|----------------------------------|------------------------------|-----------------------------|--|---|---------------------------------------|--------------------------------------|-------------------------------|------------------------------|----------------------------------|
| | Behavior specialists | Behavior health professionals | Certified residential care aides | Certified residential care aides | Direct support professionals | Mental health professionals | Mental health rehabilitation technicians | Other qualified mental health professionals | Other qualified support professionals | Personal care or support specialists | Registered medical assistants | Residential care specialists | Other DCWs as identified in rule |
| Child care facilities | | X | X | | | | X | | | X | | | X |
| Child placing agencies | | | | | | | | | | | | | |
| Children's residential care facilities | | X | X | X | X | X | | | | | | X | |
| Family child care providers | | | | | | | | | | | | | |
| Nursery schools | | X | X | | | | | | | | | | |
| Hospice providers | | | | | X | | | | | X | X | | X |
| Home health care providers | | | | | X | | | X | X | X | | | X |
| Nursing facilities | | | X | X | X | X | | | | X | X | X | X |
| Personal care agencies | | | | | X | X | | | | | X | | X |
| Placement agencies | | | | | | | | | | | | | |
| Temporary nurse agencies | | | | | X | | | | | X | | | X |
| Adult day care agencies | | | X | | X | | X | X | | X | X | | X |
| Assisted housing programs | | | X | X | X | | | | | | X | X | |
| Residential care facilities | | X | X | X | X | X | | | X | X | X | X | |
| Intermediate care facilities | | | X | X | X | X | X | X | | X | X | X | |
| Mental health services: facilities | | X | X | X | X | X | X | X | X | X | | X | |
| Mental health services: community service providers | | X | X | | | | X | X | X | | | | X |
| Drug treatment centers | | | | | X | | X | X | X | | | | X |

Other position titles:
 Home Health Aide (CNA) Ch 101 40/43
 Employment Specialist 17
 Certified Intentional Peer Support Specialist (CIPSS) 18
Other entities employing direct care workers:
 Temporary nurse agencies

Web link/Data Source

Agency

Searches for:

Notes:

Rapback? 42 USC
§9858f
(CCDBG)

Quick check:

| | | | | | | |
|--|---|-------------|--|---|--|----|
| Professional and Occupational Licensing | https://www.pfr.maine.gov/almsonline/almquery/SearchCase.aspx | DPFR | License status and disciplinary actions (consent agreements) | All OPOP licensees, including medical professionals | | |
| CNA/DCW Registry | https://www.pfr.maine.gov/almsonline/almquery/SearchCase.aspx | DLC | Annotated CNAs/DCWs | | | |
| MaineCare Excluded Providers | https://mainecare.maine.gov/mhpviewer.aspx?FID=MEEEX | OMS | Program Integrity Excluded Providers | | | |
| Maine Sex Offender Registry | http://sor.informe.org/ | DPS/Informe | Registered sex offenders | | | X* |
| Exclusions Database: Office of Inspector General | https://exclusions.oig.hhs.gov/ | US DHHS-OIG | Fraud | Different dataset than the MaineCare Excluded providers | | |
| National Sex Offender Public Website (NSOPW) | https://www.nsopw.gov/ | US DOJ | Registered sex offenders | | | X |

Criminal history:

| | | | | | | |
|--------------------------------------|---|-------------|----------------------|---|---|----|
| Maine State Bureau of Identification | https://www5.informe.org/online/pcr/ | DPS/Informe | Criminal Convictions | Rap sheets contain a record of: misdemeanor convictions; felony convictions; past arrests; current pending charges; dismissed charges; and acquitted charges. | X | X* |
|--------------------------------------|---|-------------|----------------------|---|---|----|

Function inactive:

| | | | | | | |
|---|---|------|---|--|--|----|
| Child Protective Services/Out of Home Investigations: MACWIS/WELFRE | Manual selection (program can issue request electronically) | OCFS | Abuse/neglect findings: Substantiated/indicated | Child Protective Records Research 800-452-1999 | | X* |
|---|---|------|---|--|--|----|

*= And each state where the individual resided in the preceding 5 years

Desired, but not currently active:

| | | | | | | |
|---------------------------|---|------|---|---|--|--|
| Adult Protective Services | No accessible database | OADS | Abuse/neglect findings: Substantiated/indicated | | | |
| Bureau of Motor Vehicles | https://www.maine.gov/bmv/drc/ | SOS | Driver's record check (3 or 10 year period) | MVR (Motor Vehicle Report) includes: Status of drivers license; Traffic accidents; Driving record points; Traffic law violations, convictions, and fines; DUI's in public record; Whether a driver's license is currently valid, suspended or canceled. | | |

| Web link/Data Source | Agency | Searches for: | Notes: | Rapback? | 42 USC §9858f |
|---|---|----------------|--|--------------------------------------|---------------|
| National Instant Criminal Background Check System (NICS); National Data Exchange (N-DEX) System | National Crime Information Center (firearms) | FBI | Biometrically-based national conviction data | Next Generation Identification (NGI) | X X |
| IdentoGo | https://www.identogo.com/ | Private agency | Electronically scanned fingerprinting service: state and federal employees | Under development | X |

| §9054 employers: | DHHS Rule(s) | Additional Maine Statute(s) | CMS Conditions of Participation | OMS Rule(s) |
|---|--|---|--|--|
| Hospice providers | 10-144 CMR Ch. 120 Regulations Concerning the Licensing and Functioning of Hospice Programs | 22 MRS §7706. Criminal background checks | Appendix M. Hospice | Section 43: Hospice Services |
| Home health care providers | 10-144 CMR Ch. 119 Regulations Governing the Licensing and Functioning of Home Health Care Services | | Appendix B. Home Health Agencies | Section 40: Home Health Services |
| Nursing facilities | 10-144 CMR Ch. 110 Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities | | Appendix P Survey Protocol for Long-Term Care Facilities; Appendix PP. Interpretive Guidelines | Section 67: Nursing Facility Services |
| | 10-144 CMR Ch. 128 Certified Nursing Assistant and Direct Care Worker Registry Rule | | | |
| Personal care agencies | 10-144 CMR Ch. 129 Rules and Regulations Governing In-Home Personal Care and Support Workers | 22 MRS §1717. Registration of personal care agencies and placement agencies | | Section 96: Private Duty Nursing and Personal Care Services |
| Placement agencies | 10-148 CMR Ch. 12 Rules for Permanency Guardianship | 22 MRS §7706. Criminal background checks | | |
| Temporary nurse agencies | No specific rule | 22 MRS §2137. Criminal background checks | | Section 96: Private Duty Nursing and Personal Care Services |
| Adult day care agencies | 10-144 CMR Ch. 117 Regulations Governing the Licensing and Functioning of Adult Day Services Programs | 22 MRS §7706. Criminal background checks | | Section 19: Home and Community Benefits for the Elderly and Adults with Disabilities |
| Assisted housing programs | 10-144 CMR Ch. 113 Regulations Governing the Licensing and Functioning of Assisted Housing Programs | 22 MRS §7706. Criminal background checks | | Section 97: Private Non-Medical Institution Services |
| Residential care facilities | | 22 MRS §7706. Criminal background checks | | Section 21: Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder |
| | | | | Section 102: Rehabilitative Services |
| Intermediate care facilities | 10-144 CMR Ch. 118 Regulations Governing the Licensing and Functioning of Intermediate Care Facilities for Persons with Mental Retardation | 22 MRS §7706. Criminal background checks | Appendix J. Survey Procedures and Interpretive Guidelines for Intermediate Care Facilities for Persons with Mental Retardation | Section 50: ICF-MR Services |
| Mental health services: facilities | 14-193 CMR Ch. 6 Licensing of Mental Health Facilities | 34-B MRS §1225. Criminal background checks | Appendix AA. Psychiatric Hospitals-- Interpretive Guidelines and Survey Procedures | Section 46: Psychiatric Hospital Services |
| | 14-193 CMR Ch. 6A Licensing of Mental Health Facilities: PNMI | | | Section 107: Psychiatric Residential Treatment Facility Services |
| Mental health services: community service providers | | 34-B MRS §1225. Criminal background checks | Appendix K. Comprehensive Outpatient Rehabilitation Facilities—Interpretive Guidelines | Section 65: Behavioral Health Services |
| | | | | Section 29: Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder |
| Drug treatment centers | 14-118 CMR Ch. 5 Regulations for Licensing and Certifying of Substance Abuse Treatment Programs | 22 MRS §7706. Criminal background checks | | |
| Child care facilities | 10-148 CMR Ch. 32 Rules for the Licensing of Child Care Facilities | 22 MRS §7706. Criminal background checks | | Section 94: Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) |

| §9054 employers: | DHHS Rule(s) | Additional Maine Statute(s) | CMS Conditions of Participation | OMS Rule(s) |
|--|--|--|--|--------------------|
| Child placing agencies | 10-148 CMR Ch. 19 Rules Providing for Licensing of Child Placing Agencies With and Without Adoption Programs, including Addendum, Home Certification Process | 22 MRS §7706. Criminal background checks | | |
| | 10-148 CMR Ch. 19-A Rules for the Licensure of Private Non-medical Institutions-Child Placing Agencies With and Without Adoption Programs | 22 MRS §7706. Criminal background checks | | |
| | 10-148 CMR Ch. 20 Rules for Licensing of Child Placing Agencies With only Respite Care Programs | 22 MRS §7706. Criminal background checks | | |
| Children's residential care facilities | 10-144 CMR Ch. 36 Children's Residential Care Licensing Rule | 22 MRS §7706. Criminal background checks | | |
| | 10-148 CMR Ch. 8 Rules for the Licensure of Shelter for Homeless Children | 22 MRS §7706. Criminal background checks | | |
| | 10-148 CMR Ch. 9 Rules for the Licensure of Emergency Shelters for Children | 22 MRS §7706. Criminal background checks | | |
| Family child care providers | 10-144 CMR Ch. 33 Family Child Care Provider Licensing Rule | 22 MRS §7706. Criminal background checks | | |
| Nursery schools | 10-148 CMR Ch. 36 Rules for the Licensing of Nursery Schools | 22 MRS §7706. Criminal background checks | | |

Potential DCW, but not mandated:

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|---------------------------|--|--|-----------------------|--|
| Hospitals | 10-14 CMR Ch. 112 Regulations for the Licensing of Hospitals | 22 MRS §1724. Criminal background checks | Appendix A. Hospitals | Ch. II - Section 45: Hospital Services |
| Child care- all types | 10-148 CMR Ch. 6 Child Care Subsidy Policy Manual | | | |
| Foster Care | 10-148 CMR Ch. 16 & 15 Rules for the Licensing of Family Foster Homes for Children, including Ch. 15, Rules Providing for the Licensing of Specialized Children's Foster Homes | | | |
| | 10-148 CMR Ch. 17 Rules for Licensing of Family Foster Homes Providing Respite Care for Children | | | |
| Targeted Case Management | 14-197 CMR Ch. 10 Certification Requirements for Agencies Seeking to Provide Community Based Targeted Case Management for Adults with Mental Retardation and Autism | | | Ch. II - Section 13: Targeted Case Management Services |
| ESRD | 10-144 CMR Ch. 126 Regulations Governing the Licensing and Functioning of End Stage Renal Disease Units/Facilities | | | |
| Ambulatory Surgery Center | 10-144 CMR Ch. 125 Regulations Governing the Licensing of Ambulatory Surgical Facilities | | | |

| Position Title | MaineCare Rule(s) |
|--|--|
| Behavioral health professionals | Section 28 Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations No background checks explicit in rule. |
| Behavior specialists | |
| Certified residential medication aides | Section 17 Community Support Services |
| Certified residential care aides | |
| Community health workers | |
| Direct support professionals: Section 65 | <p>Section 65 Behavioral Health Services</p> <p>65.09-2 Direct Support Professional (DSP)</p> <p>A DSP is a person who:</p> <p>A. Successfully completed the Direct Support Professional curriculum as adopted by DHHS, or demonstrated proficiency through DHHS's approved Assessment of Prior Learning, or has successfully completed the curriculum from the Maine College of Direct Support within six (6) months of date of hire.</p> <p>Prior to providing services to a member alone, a DSP must have completed the following four modules from the College of Direct Support, including computer based and live sessions:</p> <ol style="list-style-type: none"> 1. Introduction to Developmental Disabilities 2. Professionalism 3. Individual Rights and Choice 4. Maltreatment <p>Documentation of completion must be retained in the personnel record.</p> <p>B. Completed the following Department-approved trainings, within the first six (6) months from date of hire and thereafter every thirty six (36) months;</p> <p>C.</p> <ol style="list-style-type: none"> 1. The Regulations Regarding Reportable Events, Adult Protective Investigations and Substantiation Hearings (14-197, Ch. 12) 2. Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine (14-197, Ch. 5) 3. Rights and Basic Protections of a Person with an Intellectual Disability or Autism (Title 34-B §5605) 4. Grievance Training (must be completed before working with members). <p>D. Has a background check consistent with Section 21.10-10;</p> <p>E. Has an adult protective and child protective record check;</p> <p>F. Is at least eighteen (18) years of age;</p> <p>G. Graduated from high school or acquired a GED;</p> <p>H. Has current CPR and First Aid Certification.</p> <p>H. Prior to administering medication, a DSP is legally authorized to assist with the administration of medication if the DSP is certified as a Certified Nursing Assistant-Medications (CNA-M); as a Certified Residential Medication Aide (CRMA), or a Registered Nurse (RN), or otherwise has been trained to administer medications through a training program specifically for Family-Centered or Shared Living model homes and authorized, certified, or approved by DHHS.</p> |
| Direct support professionals: Section 18 | <p>Section 18 Home and Community-Based Services for Adults with Brain Injury</p> <p>18.10-9 Background Check Criteria- Providers must conduct criminal and child and adult protective services background checks on all prospective employees, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Section. Background checks on persons professionally licensed by the State of Maine must include a confirmation that the licensee is in good standing with the appropriate licensing board or entity.</p> <p>The provider shall not hire or retain in any capacity any person who may directly provide services to a member under this section if that person has a record of:</p> <ol style="list-style-type: none"> A. any criminal conviction that involves abuse, neglect or exploitation; B. any criminal conviction in connection to intentional or knowing conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person; C. any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection with any victim; or D. any other criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any criminal conviction based upon reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two (2) years; or E. any criminal conviction within Title 29-A, chapter 23, subchapter 2, article 1, or Title 29-A, chapter 23, subchapter 5. <p>Employment of individuals with records of such convictions more than five (5) years prior to the time of the background check is a matter within the provider's discretion after consideration of the individual's criminal record in relation to the nature of the position. The member receiving services must be prior notified and approve the receipt of services from such staff in writing if the provider decides to hire a staff person with a conviction.</p> <p>The provider shall contact child and adult protective services (including the Office of Aging and Disability Services) units within DHHS, within the parameters of current applicable state and federal law, to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child or adult protective services investigation substantiating abuse, neglect or exploitation by a prospective employee of the provider, it is the provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards.</p> |

| Position Title | MaineCare Rule(s) |
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| Direct support professionals: Section 21 | <p>Section 21 Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder 21.10-8 Background Check Criteria</p> <p>The provider must conduct background checks every two (2) years on all prospective employees, persons contracted or hired, consultants, volunteers, students, and other persons who maybe providing direct support services under this Section. A background check is required for any adult who may be providing direct or indirect services where the member receives Shared Living or Family-Centered Support. Background checks are required for any adult residing in a Family-Centered or Shared Living Home. Background checks on persons professionally licensed by the State of Maine will include a confirmation that the licensee is in good standing with the appropriate licensing board or entity. The provider shall not hire or retain in any capacity any person who may directly provide services to a member under this Section if that person has a record of:</p> <p>A.any criminal conviction that involves abuse, neglect or exploitation; B.any criminal conviction in connection to intentional or knowing conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person; C.any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim; or D.any other criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two (2) years or; E.a habitual offender status under 29-A, M.R.S. §2551-A.</p> <p>The provider shall contact child and adult protective services (including OADS and the Office of Child and Family Services) units within State government to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child or adult protective services investigation substantiating abuse, neglect or exploitation by a prospective employee of the provider, it is the provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards. Within sixty (60) days of the effective date of this rule, all staff and all adults residing with a member must have all background checks completed. All background checks must be completed every twenty-four (24) months thereafter. Costs for background checks are the provider's responsibility.</p> |
| Direct support professionals: Section 29 | <p>Section 29 Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder 29.10-6 Background Check Criteria: The provider must conduct background checks every two years on all employees, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Section. A background check is required for any adult who may be providing direct or indirect services where the member receives Shared Living. Background checks are required for any adult residing in a Shared Living Home. Background checks must be completed before a hire is finalized and prior to the employee working with members. Background checks on persons professionally licensed by the State of Maine will include a confirmation that the licensee is in good standing with the appropriate licensing board or entity. The provider shall not hire or retain in any capacity any person who may directly provide services to a member under this Section if that person has a record of:</p> <p>A.any criminal conviction that involves abuse, neglect or exploitation; or</p> <p>B.any criminal conviction in connection to intentional or knowing conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person;</p> <p>C.any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim; or any other criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two (2) years; or</p> <p>E.any criminal conviction within Title 29-A, chapter 23, subchapter 2, article 1, or Title 29-A, chapter 23, subchapter 5.</p> <p>The provider shall contact child and adult protective services (including OADS and the Office of Child and Family Services) units within State government to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child or adult protective services investigation substantiating abuse, neglect or exploitation by an employee of the provider, it is the provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards. Within 60 days of the effective date of this rule, all staff and all adults residing with a member must have all background checks completed. All background checks must be completed every twenty-four (24) months thereafter. Costs for background checks are the responsibility of the provider.</p> |

| Position Title | MaineCare Rule(s) |
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| Direct support professionals: Section 20 | <p>Section 20 Home and Community Based Waiver for Adults with Other Related Conditions</p> <p>20.10-16Background Check Criteria- Providers must conduct background checks on all prospective employees, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Section. Background checks on persons professionally licensed by the State of Maine will include a confirmation that the licensee is in good standing with the appropriate licensing board or entity. The provider shall not hire or retain in any capacity any person who may directly provide services to a member under this section if that person has a record of:</p> <p>A.any criminal conviction that involves abuse, neglect or exploitation; B.any criminal conviction in connection to intentional or knowing conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person; C.any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection with any victim; or D.any other criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any criminal conviction based upon reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two (2) years; or E.any criminal conviction within Title 29-A, chapter 23, subchapter 2, article 1, or Title 29-A, chapter 23, subchapter 5. Employment of individuals with records of such convictions more than five (5) years prior to the time of the background check is a matter within the provider's discretion after consideration of the individual's criminal record in relation to the nature of the position. The member receiving services must approve the employment of such staff in writing if the provider decides to hire a staff person with a conviction.</p> <p>The provider shall contact child and adult protective services (including the Office of Aging and Disability Services) units within DHHS to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child or adult protective services investigation substantiating abuse, neglect or exploitation by a prospective employee of the provider, it is the provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards.</p> |
| Mental health rehabilitation technicians (MHRT-1, MHRT/C) | Section 17 Community Support Services No background check requirements explicit in rule. |
| Mental health support specialists Other qualified mental health professionals | Section 46 Psychiatric Hospital Services No explicit background check requirements. Lists: 46.01-6Mental Health Clinician A Mental Health Clinician means a Physician, Psychiatrist, Clinical Psychologist, Licensed Clinical Social Worker (LCSW), Licensed Master Social Worker, Licensed Master Social Worker Conditional Clinical (LMSW-CC), Licensed Clinical Professional Counselor (LCPC), Licensed Professional Counselor (LPC), Licensed Marriage Family Therapist (LMFT), Advanced Practice Registered Nurse Psychiatric and Mental Health Practitioner (APRN-PMH-NP), or an Advanced Practice Registered Nurse Psychiatric and Mental Health Clinical Nurse Specialist (APRN-PMH-CNS) when practicing within their scope of licensure to make a diagnosis. |
| Personal care or support specialists | <p>Section 12 Consumer-Directed Attendant Services C.Attendant</p> <p>An attendant must be at least seventeen (17) years old and have the ability to assist with Activities of Daily Living. An attendant cannot be an individual who has a notation on the Maine Registry of Certified Nursing Assistants of (a) any criminal convictions, except for Class D and Class E convictions over ten (10) years old that did not involve as a victim of the act, a patient, client, or resident of a health care entity; or (b) any specific documented findings by the State Survey Agency of abuse, neglect or misappropriation of property of a resident, client or patient.</p> |
| Registered medical assistants | |
| Residential care specialists | |
| | |
| Other DCWs as identified in rule: | |
| <i>Spouse or the parent of a minor child</i> | <p>Section 96 Private Duty Nursing and Personal Care Services</p> <p>"Special circumstances nursing" allows a relative, including a spouse or the parent of a minor child, to be paid to provide nursing services to the Member under this Section. To qualify for this coverage the Member's relative must meet the requirements in (1) and (2) below.</p> <p>1. The relative must: (all of the following are required) a.meet all licensing, training, reporting and other requirements otherwise specified in this Section; and b.be employed by a licensed home health agency; and c.abide by the requirement that an independent nurse or physician must conduct any required assessments and/or develop the plan of care; and d.implement the Member's authorized plan of care; and e.if applicable, expect to continue non-reimbursed family caregiver responsibilities; and f.pass a criminal background check. The family nursing provider must not have any criminal convictions, except for Class D and Class E convictions over 10 years old that did not involve as a victim of the act a patient, client, or resident of a health care entity; or any specific documented findings by the State Survey Agency of abuse, neglect, or misappropriation of property of a resident, client, or patient.</p> |
| <i>Certified Nursing Assistant</i> | |
| <i>Employment Specialist?Certified Employment Specialist</i> | The provider shall contact child and adult protective services (including the Office of Aging and Disability Services) units within DHHS to obtain any record of substantiated allegations of abuse, neglect or exploitation against an employment applicant before hiring the same. In the case of a child or adult protective services investigation substantiating abuse, neglect or exploitation by a prospective employee of the provider, it is the provider's responsibility to decide what hiring action to take in response to that substantiation, while acting in accordance with licensing standards. |
| <i>Certified Intentional Peer Support Specialist (CIPSS)</i> | Section 92, Section 65 |
| <i>Family or Youth Support Specialist</i> | Section 92 |

| Position Title | MaineCare Rule(s) |
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| <i>Certified home health aide</i> | <p>Section 40 Home Health Services 40.01-12Home Health Aide Services are those in-home services that are provided by a certified home health aide and which are delegated and supervised by a registered nurse. A certified home health aide must have satisfactorily completed a training program for certified nurse assistants, consistent with the rules and regulations of the Maine State Board of Nursing. Home health aides employed by a Home Health Agency must also have completed an agency orientation as defined by the regulations Governing the Licensing and Functioning of Home Health Care Services.</p> <p>Section 43 Hospice Services 43.05-1Covered Services E.Home Health Aide Services furnished by certified home health aides and certified nursing assistants. Home health aides may provide personal care and household services essential to the comfort and cleanliness of the member and maintaining a safe and healthy environment to allow implementation of the plan of care. Aide services must be provided under the general supervision of a registered nurse.</p> |
| <i>Qualified Mental Retardation Professional (QMRP)</i> | Section 50 ICF-MR Services |
| Brain injury-title(s) unknown | Section 102 Rehabilitative Services 102.08-5 Professional and Other Qualified Staff N. Other Qualified Staff. Other qualified staff are staff members, other than professional staff defined above, who have appropriate education, training, and experience in treatment of individuals with brain injury as approved by CARF, have a satisfactory criminal background check annually, and work under documented supervision, conducted at least monthly, by the professionals defined above. |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-144 Ch 110 | Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities | 8.D.1. Employee Record on File a. Employment History A record shall be completed for each employee, kept on file in the facility, and shall be available to Department personnel for inspection. Each record shall contain documentation of references and checks, dates of employment, home address, education or background, social security number, occupational license number if applicable, past experience or type of employment, where previously employed, type of position employed for in this facility and last day employed (if no longer in present facility). The current occupational license number, when applicable, shall be on file. | Appendix PP. GUIDANCE Employment Facilities must be thorough in their investigations of the histories of prospective staff. In addition to inquiry of the State nurse aide registry or licensing authorities, the facility should check information from previous and/or current employers and make reasonable efforts to uncover information about any past criminal prosecutions. It has been reported that former nurse aides with a finding of abuse, neglect, misappropriation of resident property, exploitation, or mistreatment may seek employment in other departments of a facility, such as maintenance or laundry services/department, or at another nursing home in a non-nursing capacity. Some States may have additional requirements for criminal background checks and State law may prohibit persons convicted of certain crimes from working in a long-term care facility. The State Survey Agency may use its own authority for assuring facility compliance such as the use of the National Background Check Program or specific State licensure requirements that may address criminal background checks. In addition, some facilities may have more stringent hiring restrictions than what is required by State or Federal law. |
| 10-144 Ch 112 | Regulations for the Licensing of Hospitals | 2.17.1 Violations of federal conditions of participation. When a violation under Section 3.1 has occurred, and a federal statement of deficiencies is issued to the applicant or licensee, the plan of correction accepted by the Centers for Medicare and Medicaid Services shall be accepted by the department. 3.1 Federal standards and certification requirements. All applicants and licensees must comply with the federal standards and certification requirements for hospitals, adopted by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) as set forth in 42 C.F.R. §482.1 through §482.104 and §485.601 through §485.647, revised as of October 1, 2007, which is incorporated herein by reference. 3.1.1 Copies of the federal standards and certification requirements can be found at 42 C.F.R. §482.1 through §482.104 and §485.601 through §485.647, revised as of October 1, 2007, or may be obtained from the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services, 11 State House Station, Augusta, Maine 04333, or the Maine Office of the Secretary of State, 101 State House Station, Augusta, Maine 04333. 3.1.2 A violation of any of the federal standards and certification requirements constitutes a violation of the state of Maine Rules for the Licensing of Hospitals, 10-144 C.M.R. Ch. 112. | Survey Procedures §482.13(c)(3) Screen. Persons with a record of abuse or neglect should not be hired or retained as employees. Survey Procedures §482.13(c)(3) • Examine the extent to which the hospital has a system in place to protect patients from abuse, neglect and harassment of all forms, whether from staff, other patients, visitors or other persons. In particular, determine the extent to which the hospital addresses the following issues. Does the hospital conduct criminal background checks as allowed by State law for all potential new hires? |
| 10-144 Ch 133 | Regulations Governing the Licensing and Functioning of Assisted Housing Programs | 8.3 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.57 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4: 8.3.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and 8.3.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual: 8.3.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or 8.3.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants. 8.4 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of: 8.4.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred; 8.4.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting. 8.5 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules. 8.6 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant. | Appendix PP - Guidance to Surveyors for Long Term Care Facilities §483.12(a) The facility must— §483.12(a)(3) Not employ or otherwise engage individuals who— (i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law; (ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or (iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property. §483.12(a)(4) Report to the State nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff. GUIDANCE Employment NOTE: For purposes of this guidance, "staff" includes employees, the medical director, consultants, contractors, volunteers. Staff would also include caregivers who provide care and services to residents on behalf of the facility, students in the facility's nurse aide training program, and students from affiliated academic institutions, including therapy, social, and activity programs. Facilities must be thorough in their investigations of the histories of prospective staff. In addition to inquiry of the State nurse aide registry or licensing authorities, the facility should check information from previous and/or current employers and make reasonable efforts to uncover information about any past criminal prosecutions. It has been reported that former nurse aides with a finding of abuse, neglect, misappropriation of resident property, exploitation, or mistreatment may seek employment in other departments of a facility, such as maintenance or laundry services/department, or at another nursing home in a non-nursing capacity. Some States may have additional requirements for criminal background checks and State law may prohibit persons convicted of certain crimes from working in a long-term care facility. The State Survey Agency may use its own authority for assuring facility compliance such as the use of the National Background Check Program or specific State licensure requirements that may address criminal background checks. In addition, some facilities may have more stringent hiring restrictions than what is required by State or Federal law. |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-144 Ch 117 | Regulations Governing the Licensing and Functioning of Adult Day Services Programs | <p>4.1 Administrator Requirements.</p> <p>4.1.2.1.Record and reputation for honest and lawful conduct in business and personal affairs. The provider shall authorize the Department to review the records of professional licensing boards or registers, any criminal record, child protective record or adult protective record necessary to determine compliance with these rules;5.6 Personnel Records</p> <p>5.6.1 Employee Records. A record shall be completed for each staff member, kept on file at the program site or at the agency central office, and shall be available to Department personnel for inspection. Each record shall contain documentation of references and background checks, dates of employment, date of birth, home address and telephone number, education or background, social security number, past experience or type of employment, where previously employed, job description of position employed for in this program and the current occupational license number, when applicable, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records, and date of and reason for terminating employment. Records shall be kept at least two (2) years after termination of employment. Records may be computerized.</p> | |
| 10-144 Ch 118 | Regulations Governing the Licensing and Functioning of Intermediate Care Facilities for Persons with Mental Retardation | <p>6.D.7 Personnel Records</p> <p>a. A record must be completed for each employee, and must be available to the Department for review. This record must contain date of employment, birth date, home address, education and background, social security number, occupational license number if applicable, and whatever other information the facility deems appropriate for the position.</p> | <p>§483.420(d)(1)(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.</p> <p>Guidance §483.420(d)(1)(iii) The facility is required to screen potential employees for a prior employment history of child or client abuse, neglect or mistreatment, as well as for any conviction based on those offenses. The abuse, neglect or mistreatment must have been directed toward a child or a client/resident/patient of a health care facility in order for the prohibition of employment to apply.</p> <p>No one with a conviction or substantiated allegation of child or client abuse, neglect or mistreatment regardless of employment date, is employed by the facility. This requirement also applies to acts of abuse, neglect or mistreatment committed by a current ICF/IID employee outside the jurisdiction of the ICF/IID (e.g., in the community or in another health care facility). The facility must follow state guidelines or requirements for background checks to assure that they make every effort to check new employee's background. Where the facility has terminated an employee based upon confirmation that abuse, neglect or mistreatment occurred during the employee's performance, and the termination decision was overturned by either arbitration finding or a court finding, the employee must be returned to a position which does not involve direct contact between that employee and clients of the facility.</p> <p>A person who abused a resident in a nursing facility, and as a result, is barred from employment in the nursing home setting would also be prohibited from employment in the ICF/IID. While facilities are not required to periodically screen existing employees, if the facility becomes aware that such action has been taken against an employee, the facility is required to prohibit continued employment. This is also true of any conviction in a court of law for child, elder, or client (resident, patient) abuse, neglect or mistreatment. Therefore, conviction for abusing one's own child is also a reason employment would be prohibited.</p> |
| 10-144 Ch 119 | Regulations Governing the Licensing and Functioning of Home Health Care Services | <p>6.C.2.The agency may not employ an individual who:</p> <p>a.Has been found by the State Survey Agency to have abused, neglected or misappropriated the property of an individual, corporation or entity in a health care setting, and annotated on the Maine Registry of Certified Nursing Assistants; or</p> <p>b.Has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of the property of an individual, corporation or entity in a health care setting, or</p> <p>c.Has a prior criminal conviction within the last ten (10) years of:</p> <p>(1)A crime for which incarceration of three (3) years or more may be imposed under the laws of the State in which the conviction occurred; or</p> <p>(2)A crime for which incarceration of less than three (3) years may be imposed under the laws of the State in which the conviction occurred involving sexual misconduct or involving abuse, neglect, or exploitation in a setting other than a health care setting.</p> | <p>Appendix B - Guidance to Surveyors: Home Health Agencies §484.100 Condition of participation: Compliance with Federal, State, and local laws and regulations related to the health and safety of patients.</p> <p>The HHA and its staff must operate and furnish services in compliance with all applicable federal, state, and local laws and regulations related to the health and safety of patients. If state or local law provides licensing of HHAs, the HHA must be licensed.</p> <p>Interpretive Guidelines §484.100 Non-compliance with this condition includes: 1) the agency is not currently licensed per State requirements; or 2) the HHA has been cited by a Federal program (other than CMS), or a State or local authority for a non-compliance with licensing requirements. The Federal, State or local authority has made a final determination after all administrative procedures have been completed; all appeals have been finalized; and the findings of the noncompliance with the laws/regulations were upheld and enforced.</p> |
| 10-144 Ch 120 | Regulations Concerning the Licensing and Functioning of Hospice Programs | <p>6.A.2.Policies and procedures: Hospice programs shall develop and maintain policies and procedures that address the following:</p> <p>b.Screening;</p> | <p>Appendix M - Guidance to Surveyors: Hospice</p> <p>L795</p> <p>§418.114(d) Standard: Criminal background checks</p> <p>(1) The hospice must obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records.</p> <p>L796</p> <p>§418.114(d)(2) - Criminal background checks must be obtained in accordance with State requirements. In the absence of State requirements, criminal background checks must be obtained within three months of the date of employment for all states that the individual has lived or worked in the past 3 years.</p> |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-144 Ch 129 | Rules and Regulations Governing In-Home Personal Care and Support Workers | <p>3.B.HIRING</p> <p>Prior to hiring an individual, the agency must contact the Maine Registry of Certified Nursing Assistant to ascertain if the individual has worked as a certified nursing assistant; and if the individual has been the subject of an annotation for a substantiated complaint or conviction of abuse, neglect, or misappropriation of funds in a health care setting. A Personal Care Services Provider may employ an individual for at least the length of time that is required to complete a Registry check.</p> | |
| 14-118 Ch 5 | Regulations for Licensing and Certifying of Substance Abuse Treatment Programs | <p>12. Reference and Background Checks.</p> <p>12.1 The agency shall conduct background checks on all prospective employees, persons contracted or hired, consultants, volunteers, and students. This shall include, but not necessarily be limited to, background checks through the State Bureau of Investigation, Child Protective Services, Adult Protective Services, the Out-of-home Investigations Unit (OOH), formerly the Institutional Abuse Unit, the Maine Registry of Certified Nursing Assistants and other similar registers, the Bureau of Motor Vehicles, and such other relevant and available registers, sources of information or databases.</p> <p>12.1.1 Such background checks shall be conducted at the agency's expense.</p> <p>12.1.2 The agency shall not hire any person who has a prior criminal conviction or disciplinary action by a professional licensing, registration or accrediting body that pertains to client abuse or exploitation. See Title 5 M.R.S.A. §5301 et seq.</p> <p>12.1.3 In the case of an Adult or Child Protective Services, or the Out-of-Home Investigations Unit (OOH), formerly the Institutional Abuse Unit, investigation substantiating abuse, neglect, or exploitation by an employee of the agency, it is the agency's responsibility to decide what personnel action to take in response to said report, in accordance with licensing standards.</p> <p>12.1.4 When the operation of a motor vehicle is expected or reasonably anticipated in the course of an employee, volunteer, or student's work, the agency shall conduct a check of the driving record. The agency shall not permit an employee, volunteer, or student to transport clients if they have a conviction for operating under the influence or any other accident or violation that indicates an unsafe driving history within the past three (3) years.</p> <p>12.1.5 The agency shall acquire and retain evidence that all persons who in the completion of their duties are required or could be reasonably anticipated to operate a motor vehicle, have valid driver's license appropriate to the class of vehicle to be used. If a staff person, in the course of work, is operating a vehicle not provided by the agency, evidence of registration, inspection, and insurance shall be maintained. Such evidence shall be acquired at the commencement of the person's employment and shall be maintained and reviewed periodically.</p> <p>12.1.6 Employment of any individual shall be contingent upon results of the background checks. Background checks must be completed before the employee has any client contact without another individual present.</p> <p>12.1.7 If a positive check is discovered, the agency must have a policy and procedure on how this will be addressed.</p> | |
| 14-191 Ch 8 | Rules for Facilities Providing Adult Day Programs | [No relevant content] | |
| 14-193 Ch 6 | Licensing of Mental Health Facilities | <p>HRM.8.A.5 documentation regarding the individual's criminal abuse history (e.g., checking with SBI, DHS).</p> <p>HRM.8.A.5.a If checks with SBI or DHS produce information regarding an employee, the agency will document in the personnel file its assessment of the seriousness of the information provided and take appropriate actions if indicated.</p> | Appendix N-Psychiatric Residential Treatment Facilities (PRTF) Interpretive Guidance: No content regarding background checks. |
| 14-193 Ch 6A | Licensing of Mental Health Facilities: PNMI | CS.20 There is documented evidence that community support workers are licensed or certified to deliver mental health services as approved by the Division of Licensing at DHHS. | |
| 14-197 CMR Ch. 10 | Certification Requirements for Agencies Seeking to Provide Community Based Targeted Case Management for Adults with Mental Retardation and Autism | <p>D.Recruitment and Selection of Employees</p> <p>1.General Criteria</p> <p>a.The agency shall not hire or retain in any capacity any person who has a prior criminal conviction or disciplinary action by a professional licensing, registration or accrediting body, that pertains to consumer abuse, neglect, or exploitation.</p> <p>b.For those staff who have other types of criminal convictions or negative work history known to the agency, the agency shall document in the individual's personnel file the crime and/or other sanctions, the agency's assessment of the seriousness of the information provided and the agency's rationale for hiring and/or retaining the individual. The agency shall specifically address issues of professional misfeasance, malfeasance, malpractice or other related misconduct; convictions or findings in which substance use or the use of firearms or other weapons were elements; and criminal convictions in which the actual or threatened infliction of personal injury upon another was an element.</p> | |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-148 Ch 7 | Rules for the Authorization of Background Checks for Prospective Adoptive Parents | <p>3.PROCEDURES</p> <p>a.The Department shall, upon receipt of an application to adopt from any family or individual, conduct background checks for each prospective adoptive parent of a minor child in custody. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.</p> <p>1.The criminal history record information from the Maine Criminal Justice Information System must include a record of Maine conviction data.</p> <p>2.The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>b.Each prospective adoptive parent shall submit to having fingerprints taken. The State Police shall forward those fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history checks.</p> <p>c.The subject of a criminal history record check may inspect and review the criminal history record information pursuant to applicable state or federal law.</p> <p>d.State and federal criminal history record information may be used by the Department for the purpose of screening prospective adoptive parents to ensure the safety and well-being of children placed for adoption by the Department.</p> <p>e.Information obtained through the criminal history checks is confidential and for official use only and may not be disseminated outside the Department except to licensed agencies conducting the home study assessments or courts where the petitions to adopt are filed.</p> <p>f.An applicant/s application will be denied if the applicant/s has any felony conviction of child abuse or neglect, spousal abuse, a crime against a child or children (including child pornography) or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. An applicant/s application will be denied if the applicant/s has, within the five years prior to the application date (or after the application date) been convicted of a felony involving physical assault, battery or a drug related offense. In the case of any other criminal convictions, the Department has the sole discretion to determine whether it will approve the application, consent to the proposed adoption, or provide adoption assistance (consistent with the laws and rules for adoption assistance). This paragraph shall not be construed to prohibit the Department from denying an application because of criminal offenses not listed in this paragraph.</p> <p>g.The information from the criminal history check will be provided to the Probate Court upon filing the petition to adopt or upon any request to the District Court for Permanency Guardianship.</p> <p>h.The established fee for the fingerprint process will be the responsibility of the prospective adoptive family. In special circumstances that would present a barrier to the adoption of a specific child, an adoptive family may request assistance from the Department. Approval is required from the DHHS District Program Administrator for any financial assistance toward the fingerprint fee related to the adoption or permanency guardianship of a specific child.</p> | |
| 10-148 Ch 8 | Rules for the Licensure of Shelter for Homeless Children | <p>4.Personnel Qualifications-and Responsibilities</p> <p>a.General Criteria</p> <p>i.Moral Character</p> <p>(a)The facility shall not involve any person in the operation administration, ownership or in the provision of services to children in care who lacks good moral character. The following offenses shall be prima facie evidence of a lack of good moral character:</p> <p>(i)Conviction of any crime involving a substantial misrepresentation of any material fact to the public:</p> <p>(ii)Conviction of any crime which involves a violent act or a threat of a violent act against a person.</p> <p>(iii)Conviction of any crime constituting a sexual offense;</p> <p>(iv)History of substantiated child or adult abuse, neglect or exploitation under the child and adult protection laws of this or any other state.</p> <p>(b)If the facility determines that a person identified as lacking good moral character is rehabilitated and that the children in care would not be endangered by the person's involvement, documentation of evidence shall be placed in the personnel file prior to that person's involvement in any capacity as stated above.</p> | |
| 10-148 Ch 9 | Rules for the Licensure of Emergency Shelters for Children | <p>6.Personnel Qualifications-and Responsibilities</p> <p>a.General Criteria</p> <p>i.Moral Character</p> <p>(a)The facility shall not involve any person in the operation administration, ownership or in the provision of services to children in care who lacks good moral character. The following offenses shall be prima facie evidence of a lack of good moral character:</p> <p>(i)Conviction of any crime involving a substantial misrepresentation of any material fact to the public:</p> <p>(ii)Conviction of any crime which involves a violent act or a threat of a violent act against a person.</p> <p>(iii)Conviction of any crime constituting a sexual offense;</p> <p>(iv)History of substantiated child or adult abuse, neglect or exploitation under the child and adult protection laws of this or any other state.</p> <p>(b)If the facility determines that a person identified as lacking good moral character is rehabilitated and that the children in care would not be endangered by the person's involvement, documentation of evidence shall be placed in the personnel file prior to that person's involvement in any capacity as stated above.</p> | |
| 10-148 Ch 15 and 16 | Rules for the Licensing of Family Foster Homes for Children | <p>H.At the time of initial application, the applicant(s) shall undergo fingerprinting in order to allow the Department to submit required fingerprint-based checks of national crime information databases.</p> <p>I.At the time of initial or renewal application, the applicant shall submit releases signed by each adult member of the household and at the discretion of the Department shall submit releases signed by any person who frequents the home who may have unsupervised access to the foster children permitting the Department to request criminal history records from the Department(s) of Public Safety, State Police, Bureau of Identification; or other law enforcement agencies from any past or present residence including out of state law enforcement agencies.</p> | |
| 10-148 Ch 17 | Rules for Licensing of Family Foster Homes Providing Respite Care for Children | <p>2.LICENSING PROCEDURES</p> <p>F.At the time of application the applicant shall submit releases signed by each adult member of the household permitting the Department to request criminal history records from the Department of Public Safety, State Police, Bureau of Identification.</p> <p>G.Upon receipt of the application, the Department shall request criminal history records from the Department of Public Safety, State Police, Bureau of Identification for each adult member of the household of the applicant.</p> | |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-144 Ch 36 | Rules for the Licensure of Residential Child Care Facilities | <p>B. BACKGROUND CHECKS</p> <p>1. Background check. The facility must conduct background checks for direct access workers and:</p> <p>a. The facility must conduct background checks for each direct access worker, student, intern or volunteer in accordance with the Maine Background Check Center Act at 22 MRS Ch. 1691 and any rules promulgated in accordance with this Act.</p> <p>b. A comprehensive background check must include, in addition to the Maine Background Check Center's Maine criminal history convictions information from the State Bureau of Identification system and the rules promulgated under this Act, the following:</p> <p>i. Maine Child Protective records and out-of-home investigation reports;</p> <p>ii. Sex offender registry reports; and</p> <p>iii. Licensing boards or registry records, if applicable; and</p> <p>iv. Maine Bureau of Motor Vehicles. Check the driving record of personnel whose job responsibilities are expected, or reasonably anticipated to, include the operation of a motor vehicle. Individuals may not transport the residents for a period of three years after the date of a motor vehicle-related conviction, accident or moving violation related to operating under the influence of intoxicants or with an excessive alcohol level.</p> <p>2. Frequency of background checks. The background check must be conducted in accordance with the Maine Background Check Center Act and rules promulgated as a result of this Act at 22 MRS §9054(5).</p> <p>3. Disqualifying offenses. The facility must not involve any person in the operation, administration, ownership or in the provision of services to residents in care if that person has a history that may endanger residents. Prima facie evidence of such a history, includes, but is not limited to, the offenses listed in 22 MRS §9054(11) and any rules promulgated from the Maine Background Check Center Act at 22 MRS Ch. 1691. Disqualifying offenses also include evidence of a current substance use disorder.</p> <p>4. Documentation of Rehabilitation. If the facility determines that a person identified by the above criteria is rehabilitated and that the residents in care would not be endangered by the person's involvement, documentation of evidence must be placed in the personnel file prior to that person's involvement in any capacity and must complete the waiver process pursuant to the Maine Background Check Center Act and rules promulgated under that act .</p> | |
| 10-148 Ch 19 | Rules Providing for Licensing of Child Placing Agencies With and Without Adoption Programs, including Addendum, Home Certification Process | <p>2. LICENSING PROCEDURES</p> <p>G. At the time of applications the Department will request criminal history records from the Department of Public Safety, Bureau of Identification, for all persons who are making application for a license.</p> <p>10. PERSONNEL</p> <p>E. The governing body shall demonstrate to the satisfaction of the Department that all staff have the following qualities to carry out their duties:</p> <p>(3) Good moral character.</p> <p>The governing body may do this by requesting medical, psychiatric or psychological reports criminal records and references which are current and specific to the position being applied for.</p> <p>12. REQUIREMENTS FOR SERVICES TO ADOPTIVE APPLICANTS</p> <p>B. Application</p> <p>(6) Releases signed by each adult member of the household permitting the child placing agency to request criminal history records from the Department of Public Safety, State Police, Bureau of Identification, and to request child protective screenings from the Department of Human Services, or releases signed by each adult member of the household directly to the Departments named above authorizing release of criminal history records to the child placing agency and to the Department of Human Services authorizing release of child protective information to the child placing agency and shall obtain those reports.</p> <p>ADDENDUM TO CHAPTER 19: 2. CERTIFICATION PROCEDURES</p> <p>A. Pre-adoptive parent/s who make application for home certification for children under 18 years of age and who have been determined to be in compliance with applicable certification requirements may receive a certificate from the Agency conducting the review. The certificate shall be issued when a:</p> <p>(1) home study (including criminal and child abuse background checks) has been completed and approved, and (2) the Agency has determined that the pre-adoptive parent/s are suitable candidates for legal risk adoption.</p> | |
| 10-148 Ch 19-A | Rules for the Licensure of Private Non-medical Institutions-Child Placing Agencies With and Without Adoption Programs | <p>2. LICENSING PROCEDURES</p> <p>G. At the time of applications the Department will request criminal history records from the Department of Public Safety, Bureau of Identification, for all persons who are making application for a license.</p> <p>10. PERSONNEL</p> <p>E. The governing body shall demonstrate to the satisfaction of the Department that all staff have the following qualities to carry out their duties:</p> <p>(1) Sufficiently good physical, mental, and emotional health to carry out their duties,</p> <p>(2) Competence in working with children and families, and</p> <p>(3) Good moral character.</p> <p>The governing body may do this by requesting medical, psychiatric or psychological reports criminal records and references which are current and specific to the position being applied for.</p> <p>The Department may request the information referred to in this section for review and approval if no governing body exists.</p> <p>12. REQUIREMENTS FOR SERVICES TO ADOPTIVE APPLICANTS</p> <p>B. Application</p> <p>(6) Releases signed by each adult member of the household permitting the child placing PNMI- Child Placing Agency to request criminal history records from the Department of Public Safety, State Police, Bureau of Identification, and to request child protective screenings from the Department of Health and Human Services, or releases signed by each adult member of the household directly to the Departments named above authorizing release of criminal history records to the PNMI- Child Placing Agency and to the Department of Health and Human Services authorizing release of child protective information to the PNMI- Child Placing Agency and shall obtain those reports.</p> <p>23. HOME CERTIFICATION PROCESS FOR THE PURPOSE OF LEGAL RISK ADOPTION ONLY</p> <p>A. Certification Procedures</p> <p>1) Pre-adoptive parent/s who make application for home certification for children under 18 years of age and who have been determined to be in compliance with applicable certification requirements may receive a certificate from the PNMI- Child Placing Agency conducting the review. The certificate shall be issued when a:</p> <p>(a) home study (including criminal and child abuse background checks) has been completed and approved, and</p> <p>(b) the PNMI- Child Placing Agency has determined that the pre-adoptive parent/s are suitable candidates for legal risk adoption.</p> | |

| Rule Chapter: | Title | Background Check Requirements | State Operations Manual (if applicable) |
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| 10-148 Ch 20 | Rules for Licensing of Child Placing Agencies With only Respite Care Programs | <p>2.LICENSING PROCEDURES</p> <p>G.At the time of application, the Department will request criminal history records from the Department of Public Safety, State Police, Bureau of Identification for all persons who are making application for a license.</p> <p>10.PERSONNEL</p> <p>E.The Department shall determine and the governing body shall demonstrate to the satisfaction of the Department that all staff have the following qualities to carry out his or her duties:</p> <ol style="list-style-type: none"> 1.Sufficiently good physical, mental, and emotional health to carry out their duties. 2.Competence in working with children and families. 3.Good moral character. <p>The governing body may do this by requesting medical, psychiatric or psychological reports, criminal records and references which are current and specific to the position being applied for.</p> | |
| 10-148 Ch 32 | Rules for the Licensing of Child Care Facilities | <p>2.21.Criminal history and child protection reports. Criminal history reports, out of home abuse investigation reports and child protection reports must be obtained for each individual applicant for a license, and for each paid, unpaid, temporary, or regular staff member, director, or volunteer, in a Child Care Facility as required by Section 11. Criminal history reports, out of home abuse investigation reports, and child protection reports must also be obtained for governing body members, trustees, partners, corporate officers, owners or operators who serve in a child caring capacity at the facility.</p> <p>11.2.3.7.Record of SBI (State Bureau of Identification) criminal history report. This must be applied for prior to or at the time of employment;</p> <p>11.2.3.8.Annual motor vehicle check for all persons employed in any Child Care Facility in a capacity involving the transporting of minors as stated in the Child Protection Act, Title 17 M.R.S.A. chapter 92;</p> | |
| 10-148 Ch 33 | Rules for the Certification of Family Child Care Providers | <p>E.Components of a comprehensive background check. Upon notification by the Maine Background Check Center Program, licensees must request comprehensive background checks for providers and other individuals who have unsupervised access to children who are served. A comprehensive background check includes the following database searches:</p> <ol style="list-style-type: none"> 1.Federal Bureau of Investigation fingerprint check; 2.National Crime Information Center's National Sex Offender Registry; 3.The following records and registries in Maine: <ol style="list-style-type: none"> a.The Maine Criminal History Record Information using the State Bureau of Identification's Automated Fingerprint Identification System; b.The Maine Sex Offender Registry; c.Maine child protective records and out-of-home investigation reports; d.Maine adult protective records; and e.Licensing boards or registry records, if applicable. 4.A search of the following records and registries in each state, other than Maine, where an individual resided during the preceding five years: <ol style="list-style-type: none"> a.State criminal records or registries; b.State sex offender records or registries; and c.State child abuse and neglect records or registries. F. Frequency of background checks. The initial background check shall be conducted according to the schedule established by the Maine Background Check Center, and at least every five years thereafter. | |
| 10-148 Ch 36 | Rules for the Licensing of Nursery Schools | <p>U. Criminal history and child protection reports. Criminal history, out of home abuse investigation reports and child protection reports shall be obtained for each individual applicant for a license, and for each paid, unpaid, temporary or regular staff member, director, or volunteer, in a Nursery School. Criminal history, out of home abuse investigation reports and child protection reports shall also be obtained for governing body members, trustees, partners, corporate officers, owners or operators who serve in a child caring capacity at the Nursery School.</p> | |

| Regulated entity | Statute | Content | Internal reference |
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| Behavioral health | 34-B MRS §1225 | <p>§1225. Criminal background checks</p> <p>Beginning October 1, 2010, a facility or health care provider subject to the licensing provisions of section 1203-A, prior to hiring an individual who will work in direct contact with a consumer or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. A facility or provider licensed under section 1203-A is subject to the employment restrictions set out in Title 22, section 1812-G and other applicable federal and state laws when employing direct access personnel, as defined in Title 22, section 1717, subsection 1, paragraph A-2. The facility or health care provider shall pay for the criminal background check required by this section.</p> <p>The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> | <p>§1203-A. Licenses</p> <p>Licenses to operate, conduct or maintain an agency or facility for the provision of mental health services as defined in section 3601 or for the provision of treatment as defined in chapter 6, subchapter 2, including facilities that are private nonmedical institutions, are governed as follows.</p> |
| Residential care facility; assisted housing program, drug treatment center; children's home; child placing agency; any type of child care facility; adult day care program; hospice | 22 MRS §7706 | <p>§7706. Criminal background checks</p> <p>Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a hospice provider subject to chapter 1681, prior to hiring an individual who will work in direct contact with a consumer, or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The entity seeking to employ the individual shall pay for the criminal background check required by this section. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> | |
| Facility or healthcare provider subject to licensing requirements of Chapter 405, 412 and 419 | 22 MRS §1724 | <p>§1724. Criminal background checks</p> <p>Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. A facility or provider subject to licensing under chapter 419 shall conduct a comprehensive background check for individuals employed in positions that have direct access to a consumer's property, personally identifiable information, financial information or resources in accordance with applicable federal and state laws. The comprehensive background check must be conducted in accordance with state law and rules adopted by the department. The facility or health care provider shall pay for the comprehensive or criminal background check required by this section as applicable. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> | <p>Chapter 405: LICENSING OF HOSPITALS AND INSTITUTIONS (hospital, sanatorium, convalescent home, rest home, nursing home, ambulatory surgical facility or other institution for the hospitalization or nursing care of human beings); Chapter 412: LICENSING OF END-STAGE RENAL DISEASE FACILITIES; Chapter 419: HOME HEALTH SERVICES</p> |
| Temporary nursing agencies | 22 MRS §§2137, 2138 | <p>§2137. Criminal background checks</p> <p>Beginning October 1, 2010, a temporary nurse agency, prior to hiring, employing or placing an individual who will work in direct contact with a consumer or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The temporary nurse agency shall pay for the criminal background check required by this section. [2015, c. 196, §10 (AMD); 2015, c. 299, §18 (AMD).]</p> <p>The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> | <p>§2138. Prohibited employment based on disqualifying offenses A temporary nurse agency shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including a certified nursing assistant or a direct care worker. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> |
| Personal care agencies | 22 MRS §1717 | <p>3. Prohibited employment based on disqualifying offenses. A personal care agency or a placement agency shall conduct a comprehensive background check for direct access personnel in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.</p> | |
| Adult day care | 22 MRS §8606 | <p>1. Prohibited employment based on disqualifying offenses. An adult day care program shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.</p> | <p>A-2. "Direct access personnel" means individuals employed in positions that have direct access.</p> |

| Regulated entity | Statute | Content | Internal reference |
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| Veterans' adult day health care program | 22 MRS §9005 | 1. Prohibited employment based on disqualifying offenses. A veterans' adult day health care program shall conduct a comprehensive background check for direct access personnel, as defined in section 1717, subsection 1, paragraph A-2, in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker. | |
| CNA and DCW Registry | 22 MRS §1812-G | 6-A. Background check. Certified nursing assistants and direct care workers are subject to a background check as defined by rules adopted by the department and according to the following: A. A training program for certified nursing assistants or direct care workers must secure or pay for a background check on each individual who applies for enrollment. The individual's current name and all previous names are subject to the background check. A copy of the background check is given to the individual who, upon successful completion of the training, submits it with an application to be listed on the registry as a certified nursing assistant or a registered direct care worker. (1) Prior to enrolling an individual, a training program for certified nursing assistants or direct care workers must notify individuals that a background check will be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a certified nursing assistant or a direct care worker. B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606 and 9005 and Title 34-B, section 1225, licensed, certified or registered providers shall secure and pay for a background check prior to hiring an individual who will work in direct contact with clients, patients or residents, including a certified nursing assistant or a direct care worker. C. The department may secure a background check on certified nursing assistants and registered direct care workers on the registry every 2 years. D. A person or other legal entity that is not otherwise licensed by the department and that employs or places a certified nursing assistant or direct care worker to provide services allowing direct access shall secure and pay for a background check in accordance with state law and rules adopted by the department. | |
| Kinship placement | 22 MRS §4005-G | 5. Background check. Within 14 days of receiving information about a relative pursuant to subsection 4, the department shall conduct a background check on that relative unless the relative has informed the department that the relative does not want to provide a residential placement for the child or to serve as a safe resource under subsection 4, paragraph C for the child. The background check must include, at a minimum, obtaining public criminal history record information as defined in Title 16, section 703, subsection 8 from the Maine Criminal Justice Information System and determining whether the relative has been the subject of a child abuse and neglect finding in this or another state. Notwithstanding any other provision of this chapter, the department is not required to consider residential placement of the child with a relative or use a relative as a safe resource under subsection 4, paragraph C if: A. The department has substantiated any report of child abuse or neglect regarding that relative or a substantially equivalent determination regarding that relative has been made in another state; or B. The relative has been convicted of a criminal offense relevant to the relative's ability to provide a safe placement for the child or serve as a safe resource under subsection 4, paragraph C. | 16 MRS §703 8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information, including information recorded pursuant to section 706. |
| Out of home child abuse investigation | 22 MRS §8354 | 2. Investigate. H. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation team is conducting an investigation of a person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject to licensure by the Department of Education, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the Department of Education shall disclose the following information to the investigation team: (1) Background checks related to the person; 3. Investigative powers of commissioner. The following are investigative powers of the commissioner. B. The commissioner may obtain confidential criminal history record information and other criminal history record information under Title 16, chapter 7 that the commissioner considers relevant to an investigation of out-of-home child abuse or neglect or a suspicious child death. | |
| Marijuana caregivers and dispensaries | 22 MRS §2425 | 1-A. (CONFLICT: Text as amended by PL 2017, c. 447, §16) Criminal history record check. An applicant for a registry identification card who is a primary caregiver, an employee of a primary caregiver or a person authorized to engage in marijuana extraction under section 2423-F, subsection 3 or who is a principal officer, board member or employee of a registered dispensary, marijuana testing facility or manufacturing facility must undergo a criminal history record check annually. | |

| Subject | Title | Section | Sub | Content |
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| Children's residential treatment | 22 | §8110 | 3 | <p>§8110. Criminal history record checks for employees of children's residential care facilities</p> <p>1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation.</p> <p>B. "State Police" means the Department of Public Safety, Bureau of State Police.</p> <p>2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any staff member of a children's residential care facility in order to comply with the federal family first prevention services legislation. For purposes of this section, "staff member" means an individual who is employed by, or has applied for and may be offered employment at, a children's residential care facility, including a contract employee or self-employed individual, whether or not the individual has direct contact with children. "Staff member" does not include a contractor performing maintenance or repairs at the children's residential care facility who does not have unsupervised access to children at the facility.</p> <p>3. Fingerprint-based criminal history obtained. A staff member shall consent to and have the staff member's fingerprints taken. The State Police shall take or cause to be taken the fingerprints of a staff member who has consented under this subsection and shall forward the fingerprints to the Department of Public Safety so that the Department of Public Safety may conduct a state and national criminal history record check on the person. The Department of Public Safety shall forward the results obtained to the department. The State Police shall assess a fee set annually by the Department of Public Safety to be paid by the children's residential care facility or the staff member for each criminal history record check required to be performed under this section. Except for the portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police under this subsection must be paid to the Treasurer of State, who shall apply the money to the expenses of administration of this section by the Department of Public Safety.</p> <p>4. Updates to information. The department may request a subsequent criminal history record check under subsection 3 on a staff member as the department determines appropriate, including continuous notifications of updated criminal history record information if a service providing notifications of updated criminal history record information becomes available.</p> |
| Caregivers administering medical marijuana on school grounds | 22 | §2425-A | 3-A | <p>3-A. Criminal history record check for caregivers administering medical marijuana on school grounds. The department shall request a criminal history record check for a caregiver designated under section 2423-A, subsection 1, paragraph F-1, subparagraph (4), except for a caregiver who is a parent, a legal guardian or a person having legal custody of the qualifying patient. The department may not issue a registry identification card to an applicant who is not permitted to have a disqualifying drug offense or who would be denied an approval, credential, certification, authorization or renewal under Title 20-A, section 6103 or 13011 based on that criminal history record check.</p> <p>The criminal history record check requested under this subsection must include criminal history record information obtained from the Maine Criminal Justice Information System established in Title 16, section 631 and the Federal Bureau of Investigation. The following provisions apply.</p> <p>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.</p> <p>B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>C. A person subject to a criminal history record check under this section shall submit to having fingerprints taken. The State Police, upon payment of the fee, shall take or cause to be taken the person's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the 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.</p> <p>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.</p> <p>E. State and federal criminal history record information may be used by the department for the purpose of screening a child care provider or child care staff member in accordance with this chapter.</p> <p>F. Information obtained pursuant to this subsection is confidential. The results of criminal history record checks received by the department are for official use only and may not be disseminated to any other person or entity.</p> <p>G. If a person is no longer subject to this chapter that person may request in writing that the State Bureau of Identification remove the person's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the person's fingerprints from the fingerprint file and provide written confirmation of that removal.</p> <p>The department, with the Department of Public Safety, Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> |

| Subject | Title | Section | Sub | Content |
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| Child Care Providers | 22 | §8302-A | 1 and 3 | <p>1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:</p> <p>J. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:</p> <p>(1) Who is employed by a child care facility for compensation, including a contract employee or self-employed individual; or</p> <p>(2) Whose activities involve the care or supervision of children for a child care facility or unsupervised access to children who are cared for or supervised by a child care facility.</p> <p>"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the child care facility who does not have unsupervised access to children who are cared for or supervised by the child care facility.</p> <p>2. Rules for family child care providers. Rules for family child care providers must include, and are limited to, rules pertaining to the following:</p> <p>K. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for a family child care provider and each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:</p> <p>(1) Who is employed by a family child care provider for compensation, including a contract employee or self-employed individual;</p> <p>(2) Whose activities involve the care or supervision of children for a family child care provider or unsupervised access to children who are cared for or supervised by a family child care provider; or</p> <p>(3) Who is 18 years of age or older and who resides in the home of a family child care provider.</p> <p>"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the home of a family child care provider who does not have unsupervised access to children who are cared for or supervised by the family child care provider.</p> |
| Child Care Providers | 22 | §8302-C | 1 | <p>§8302-C. Investigation</p> <p>A child care provider and any child care staff member subject to a criminal background check pursuant to sections 8302-A and 8302-B must pass a background check conducted in accordance with this section and rules adopted by the department under section 8302-A. As used in this section, "child care provider" means a person who provides child care in a child care facility, a family child care provider and a person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds. As used in this section, "child care staff member" has the same meaning as described in section 8302-A, subsection 1, paragraph J and section 8302-A, subsection 2, paragraph K.</p> <p>1. Investigation. In accordance with the rules adopted by the department, the department shall request a criminal background check for a child care provider and child care staff members of the child care provider. The criminal background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.</p> <p>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.</p> <p>B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>C. A person subject to a criminal background check under this section shall submit to having fingerprints taken. The State Police, upon payment of the fee, shall take or cause to be taken the person's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the 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.</p> <p>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.</p> <p>E. State and federal criminal history record information may be used by the department for the purpose of screening a child care provider or child care staff member in accordance with this chapter.</p> <p>F. Information obtained pursuant to this subsection is confidential. The results of criminal background checks received by the department are for official use only and may not be disseminated to any other person or entity.</p> <p>G. If a person is no longer subject to this chapter that person may request in writing that the State Bureau of Identification remove the person's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the person's fingerprints from the fingerprint file and provide written confirmation of that removal. The department, with the State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.</p> |

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| Adoptive parents | 22 | §4038-E | 7 | <p>7. Background checks for each permanency guardian seeking to adopt the child. The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption from permanency guardianship, conduct background checks of each permanency guardian of the child and a home study.</p> <p>A. The department may, pursuant to rules adopted pursuant to Title 18-C, section 9-304, subsection 2, request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.</p> <p>(1) 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.</p> <p>(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>(3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the 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.</p> <p>(4) 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.</p> <p>(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.</p> <p>(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section.</p> |
| Permanency guardianship | 22 | §4038-C | | <p>As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian. "Permanency guardian," when used in this section and in section 4038-D and Title 20-A, section 12572, means the person or persons appointed as the permanency guardian.</p> <p>1. Criteria. The District Court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:</p> <p>E. Has submitted to having fingerprints taken for the purposes of a national criminal history record check.</p> |
| Nurses | 32 | §2111 | | <p>§2111. Criminal history record information; fees</p> <p>1. Background check. The board shall request a background check for each person who submits an application for initial licensure or licensure by endorsement under this chapter, including an application for multistate licensure under subchapter 2-A. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.</p> <p>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.</p> <p>B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>C. An applicant shall submit to having fingerprints taken. The State Police, upon payment of a fee established by the board by rule by the 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 the 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.</p> <p>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.</p> <p>E. State and federal criminal history record information may be used by the board for the purpose of screening each applicant. A board action against an applicant under this subsection is subject to the provisions of Title 5, chapter 341.</p> <p>F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the board are for official use only and may not be disseminated to the Interstate Commission of Nurse Licensure Compact Administrators established in section 2177 or to any other person or entity.</p> <p>G. An applicant whose license has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the applicant's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the applicant's fingerprints from the fingerprint file and provide written confirmation of that removal.</p> |
| Maine Background Check Center Act | 22 | §9053. | | <p>5. Background check report. "Background check report" means a comprehensive report generated by the Background Check Center based on a search and analysis of data stored in federal and state criminal record repositories, registry databases or agencies, including, but not limited to, the Federal Bureau of Investigation; the Department of Public Safety, State Bureau of Identification; abuse and neglect, sex offender and employment-related registries; professional licensing authorities; and Medicare and Medicaid exclusion databases. The background check report informs a provider when an offense appears in an individual's record that may disqualify the individual from employment as a direct access worker.</p> |

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| Other Titles | | | | |
| Amusements and Sports: Powers and duties of department (slot machine operators, casino operators) | 8 | §1005 | 2(D) | D. Exchange fingerprint data with, and receive criminal history record information from, the Federal Bureau of Investigation for use in considering an applicant for a license issued pursuant to the provisions of this chapter |
| Conservation: License, fees and requirements; youth camp trip leader exception (guide licenses) | 12 | §12853 | 4-A | 4-A. Background check. The commissioner shall request a background check for each person who applies for a guide license under this section. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System established in Title 16, section 631 and the Federal Bureau of Investigation. |
| Crimes: Commercial beano hall | 17 | §328 | 2(A) | A. The applicant shall submit 2 fingerprint cards bearing the legible rolled and flat impression of the fingerprints of the owner, if the owner is an individual, of any owner who owns or controls a 50% or greater interest in the corporation, partnership or the unincorporated association, and, of the manager, if the manager is not the owner as previously described, prepared by a state or local public law enforcement agency to be forwarded to the State Bureau of Identification for the purpose of conducting state and national criminal history record checks. |
| Osteopaths: Background check for expedited licensure through the Interstate Medical Licensure Compact | 32 | §2571-A | | <p>§2571-A. Background check for expedited licensure through the Interstate Medical Licensure Compact</p> <p>1. Background check. The board shall request a background check for an individual licensed under this chapter who applies for an expedited license under section 18506. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.</p> <p>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.</p> <p>B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.</p> <p>C. An applicant shall submit to having fingerprints taken. The State Police, upon payment by the 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 the 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.</p> <p>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.</p> <p>E. State and federal criminal history record information of an applicant may be used by the board for the purpose of screening that applicant.</p> <p>F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the board are for official use only and may not be disseminated to the Interstate Medical Licensure Compact Commission, established in section 18512, or to any other person or entity.</p> <p>G. An individual whose expedited licensure through the Interstate Medical Licensure Compact under chapter 145 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.</p> |
| Board of licensure in medicine | 32 | §3275-A | | Same as above. |
| Application for and issuance of expedited license (physician seeking licensure) | 32 | §18506 | | |
| General qualifications (real estate appraisers) | 32 | §14021 | | |
| Taxation | 36 | §194-C | | National criminal history record information of providers of contract services (tax assessors) |
| Probate | 18-C | §9-304 | | Investigation; guardian ad litem; registry |
| Education | 20-A | §6103: | | Criminal history record information conviction data (DOE) |
| Adult Use Marijuana | 28-B | §204 | | Criminal history record check (marijuana vendors) |
| Maine Consumer Credit Code | 9-A | §13-110 | | Authority to require license (mortgage loan originators) |
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| Term | 42 CFR 488.301 | 22 MRS §1812-G | 22 MRS §3472 | 10-149 CMR Ch. 5, Section 11 | 10-197 CMR Ch. 12 | 10-144 CMR Ch. 113 |
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| | | | Adult Protective Services Act | Office of Elder Services Program Manual "Statutory definitions are indicated by an *." | Regulations Regarding Reportable Events, Adult Protective Investigations and Substantiation Hearings Regarding Persons with Mental Retardation or Autism | Regulations Governing the Licensing and Functioning of Assisted Housing Programs: Assisted Living Programs |
| Abuse | Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm. | A. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. | 1. Abuse. "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; financial exploitation; or the intentional, knowing or reckless deprivation of essential needs. "Abuse" includes acts and omissions. | (*1) Abuse is the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or exploitation; or the intentional, knowing or reckless deprivation of essential needs. Abuse includes acts and omissions. | A. Abuse means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or exploitation; or depriving an adult with mental retardation or autism of essential needs and doing so intentionally, knowingly or recklessly. Injuries need not be intentionally inflicted to be reportable, and need not leave visible marks or bruises. NOTE: Treatment of an incapacitated or dependent adult by an accredited practitioner of a recognized religious organization is not considered to be abuse, neglect or exploitation solely because such treatment is by spiritual means . See 22 M.R.S.A. §3476. | 2.1 "Abuse" means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs. |
| Neglect | Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress. | I. "Neglect" means a threat to a person's health or welfare by failure to provide goods or services necessary to avoid physical or mental injury or impairment or the threat of injury or impairment. | 11. Neglect. "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these | (*24) Neglect is a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. | LL. Neglect means a threat to the health or welfare of an adult with mental retardation or autism by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these. Neglect includes: (1) the failure by a provider agency to perform a duty that is a work expectation that directly impacts health and safety. For example, if an individual in a provider agency's care requires assistance to change wet clothing, failing to assist him/her in a timely fashion is neglect; (2) the failure to provide adequate shelter, clothes, food and water, emotional support when needed, personal care, medical attention or necessary medication, or glasses, dentures, hearing aids, walkers, etc.; (3) situations where a caregiver is under the influence of drugs or alcohol at the time he/she is providing care and unable to meet the needs of the person served; (4) when the caregiver is emotionally distraught to the extent that he/she is unable to meet the needs of the person served; or (5) failure to address dangerous situations that could hurt an adult with mental retardation or autism, such as failing to cordon off areas where there is falling ice or broken stairs. | 2.32 "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats. |
| Misappropriation of property | Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. | H. "Misappropriation of property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of a client's, patient's or resident's belongings | 9. Exploitation. "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage. | (*16) Exploitation is the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage. | U. Exploitation means the illegal or improper use of an adult with mental retardation or autism or that adult's resources for another's profit or advantage. It includes taking advantage of or using an individual's limitations to illegally, improperly, or unfairly deprive him/her of money, property, or reimbursement, wages, or | 2.21 "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another's profit or advantage. |

| Term | 42 CFR 488.301 | 22 MRS §1812-G | 22 MRS §3472 | 10-149 CMR Ch. 5, Section 11 | 10-197 CMR Ch. 12 | 10-144 CMR Ch. 113 |
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| | | or money without that person's consent. | 9-A. Financial exploitation. "Financial exploitation" means the use of deception, intimidation, undue influence, force or other unlawful means to obtain control over the property of a dependent adult for another's profit or advantage. | | compensation due. Some examples of exploitation are: using a person to do work and paying them little or nothing; manipulating an aggressive individual into hurting someone; or offering to give a person who does not understand the value of money TWO one dollar bills in exchange for ONE twenty dollar bill. | |
| Sexual abuse or exploitation | | | 15. Sexual abuse or sexual exploitation. "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent. | (*33) Sexual abuse or exploitation is contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent. | ZZ. Sexual abuse or exploitation means contact or interaction of a sexual nature involving an incapacitated or dependent adult without the adult's informed consent. Sexual exploitation may include exposing an incapacitated or dependent adult with mental retardation or autism to pornographic material, if the person does not have the capacity to consent, or, if capable of consent, did not consent. Sexual activity between a dependent person and a paid provider of service, whether consensual or not, constitutes sexual abuse or exploitation. | |