# CHAPTER 1691

# MAINE BACKGROUND CHECK CENTER ACT

## §9051. Short title

This chapter may be known and cited as "the Maine Background Check Center Act." [PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

## §9052. Background Check Center

In order to promote and protect the health and safety of children and adults in need of support and care, the Background Check Center is established within the department to operate an Internet-based system that employers use to access criminal records and other background information to determine the eligibility of individuals to work in direct access positions with vulnerable Maine citizens including children, elderly persons, dependent adults and persons with disabilities. The online system is maintained by the Background Check Center in coordination with the Department of Public Safety, State Bureau of Identification and with other state and federal agencies. [PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

## §9053. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2015, c. 299, §25 (NEW).]

**1. Adult day care program.** "Adult day care program" means an adult day care program licensed pursuant to chapter 1663 or 1679.
[PL 2015, c. 299, §25 (NEW).]

**2. Assisted housing facility.** "Assisted housing facility" means a facility licensed pursuant to chapter 1664 or an independent housing with services program exempt from licensing pursuant to chapter 1663.
[PL 2025, c. 243, §1 (AMD).]

**3. Background check.** "Background check" means the collection of personally identifiable information, data and biometric identifiers for comparison with criminal record repositories and registry databases that are relevant to an individual's identity and background, including monitoring for future offenses through a rap back monitoring program.
[PL 2023, c. 241, §49 (AMD).]

**4. Background Check Center.** "Background Check Center" means the entity established under section 9052 to operate the Internet-based system maintained by the department pursuant to section 9054 that is designed to integrate and analyze data streams from various sources and is used by providers when conducting background checks on potential or current direct access workers.
[PL 2015, c. 299, §25 (NEW).]

**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 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. A completed background check report is recorded in the Background Check Center and informs a provider when a conviction appears in an individual's record that may disqualify the individual from eligibility for employment as a direct access worker.
[PL 2025, c. 243, §2 (AMD).]

**5-A. Biometric identifier.** "Biometric identifier" means a unique and measurable biological, anatomical or physiological characteristic used for identification of an individual, including, but not limited to, fingerprints, retinal or iris scans and palm prints.
[PL 2023, c. 241, §50 (NEW).]

**6. Bureau.** "Bureau" means the Department of Public Safety, State Bureau of Identification.
[PL 2015, c. 299, §25 (NEW).]

**7. Child care facility.**
[PL 2019, c. 660, §1 (RP).]

**8. Child placing agency.**
[PL 2019, c. 660, §2 (RP).]

**9. Children's residential care facility.**
[PL 2019, c. 660, §3 (RP).]

**10. Contingent offer of employment.** "Contingent offer of employment" means an offer of employment as a direct access worker that is based upon receipt of an initial nondisqualifying background check report and that may be withdrawn by the employer if a disqualifying final background check report is issued.
[PL 2025, c. 243, §3 (AMD).]

**11. Criminal charge without disposition.** "Criminal charge without disposition" means a charge that appears on an individual's criminal history record that has not been finally disposed at the time the criminal record is reviewed.
[PL 2015, c. 299, §25 (NEW).]

**12. Direct access.** "Direct access" means access to the property, personally identifiable information, financial information, medical records or treatment information and other resources of an individual or physical access to an individual who is served by a provider subject to this section.
[PL 2025, c. 243, §4 (AMD).]

**13. Direct access employment.** "Direct access employment" or "employment" means any activity involving direct access services, including employment for wages, contracting for temporary staff or use of unsupervised volunteers or students who perform functions similar to those performed by direct access workers, and is the type of employment that provides access that could lead to physical, mental, financial or privacy-related harms on the individual receiving those direct access services.
[PL 2025, c. 243, §5 (AMD).]

**14. Direct access worker.** "Direct access worker" means an individual engaged in direct access employment and includes:

A. [PL 2025, c. 243, §6 (RP).]

A-1. Physicians and physician associates, nurse practitioners and nurses, clinical support staff, pharmacists and pharmacy staff; [PL 2025, c. 243, §6 (NEW); PL 2025, c. 316, §3 (REV).]

A-2. Physical therapists, occupational therapists and rehabilitation service providers; [PL 2025, c. 243, §6 (NEW).]

A-3. Certified nursing assistants and direct care workers pursuant to section 1812-J; [PL 2025, c. 243, §6 (NEW).]

A-4. Residential support staff, behavioral health providers, drug treatment center staff, recreation aides, community support specialists and case managers; [PL 2025, c. 243, §6 (NEW).]

A-5. Administrative staff, including clerical staff, information services staff, finance and billing staff and their supervisors, management, leadership, executives, partners and owners; [PL 2025, c. 243, §6 (NEW).]

A-6. Environmental, operations and facility services staff, including dietary, food services, maintenance, transportation and security staff; and [PL 2025, c. 243, §6 (NEW).]

B. [PL 2025, c. 243, §6 (RP).]

C. [PL 2025, c. 243, §6 (RP).]

D. An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A; a worker who is placed with a provider by a temporary nurse agency; or a worker who is placed with a provider by a personal care agency registered or licensed pursuant to section 1717. [PL 2025, c. 243, §6 (AMD).]

E. [PL 2025, c. 243, §6 (RP).]

F. [PL 2025, c. 243, §6 (RP).]

"Direct access worker" does not include an individual supervised while interacting or engaging with service recipients, such as an individual performing repairs, making deliveries or carrying out installations or similar services who does not have direct access without supervision or an individual performing oversight, such as a surveyor, auditor or ombudsman.
[PL 2025, c. 243, §6 (AMD); PL 2025, c. 316, §3 (REV).]

**15. Disqualifying offense.** "Disqualifying offense" means an event in a person's background that has resulted in a database or registry notation or criminal record report that is relevant to the health and safety of protected individuals and that is included on the list of disqualifying offenses adopted in rules pursuant to this chapter that mandate a prohibition or exclusion from direct access employment.
[PL 2015, c. 299, §25 (NEW).]

**16. Drug treatment center.**
[PL 2025, c. 243, §7 (RP).]

**17. Employer.** "Employer" means a person or other legal entity that employs or places a direct access worker or otherwise provides direct access services. "Employer" includes a provider, a temporary nurse agency and a personal care agency.
[PL 2023, c. 309, §42 (AMD).]

**18. Family child care provider.**
[PL 2019, c. 660, §4 (RP).]

**19. Grandfathered employee.** "Grandfathered employee" means an individual subject to the requirements of this chapter who has been employed prior to the date biometric-based background check capability becomes available, who is subject to section 9058-A and who has not previously submitted biometric identifier data for a background check under this chapter.
[PL 2025, c. 243, §8 (AMD).]

**19-A. Home and community-based service agency.** "Home and community-based service agency" means an entity licensed pursuant to Title 34-B, section 1203-B.
[PL 2025, c. 243, §9 (NEW).]

**20. Home health care provider.** "Home health care provider" means an entity licensed pursuant to chapter 419.
[PL 2015, c. 299, §25 (NEW).]

**21. Hospice provider.** "Hospice provider" means an entity licensed pursuant to chapter 1681.
[PL 2015, c. 299, §25 (NEW).]

**21-A. Hospital.** "Hospital" means an entity licensed pursuant to chapter 405.
[PL 2023, c. 241, §53 (NEW).]

**22. Intermediate care facility for individuals with intellectual disabilities.** "Intermediate care facility for individuals with intellectual disabilities" means a facility licensed pursuant to chapter 405.
[PL 2015, c. 299, §25 (NEW).]

**23. Medicare or Medicaid beneficiary.** "Medicare or Medicaid beneficiary" means a person enrolled in the Medicare or Medicaid program.
[PL 2015, c. 299, §25 (NEW).]

**24. Mental health services facility or provider.** "Mental health services facility or provider" means a facility or agency licensed pursuant to Title 34-B, section 1203-A.
[PL 2015, c. 299, §25 (NEW).]

**24-A. Noncriminal justice submitting entity.** "Noncriminal justice submitting entity" means the agency responsible for initiating requests under the rap back monitoring program.
[PL 2025, c. 243, §10 (AMD).]

**25. Nursery school.**
[PL 2019, c. 660, §5 (RP).]

**26. Nursing facility.** "Nursing facility" means a facility licensed pursuant to chapter 405.
[PL 2015, c. 299, §25 (NEW).]

**27. Personal care agency.**

[PL 2023, c. 309, §43 (AMD); MRSA T. 22 §9053, sub-§27 (RP).]

**27-A. Personal care agency.** "Personal care agency" means an entity licensed pursuant to section 1717, subsection 2-A.
[PL 2023, c. 309, §44 (NEW); PL 2023, c. 309, §45 (AFF).]

**28. Personally identifiable information.** "Personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.
[PL 2015, c. 299, §25 (NEW).]

**28-A. Portability.** "Portability" means the ability of a direct access worker to transfer the results of a background check eligibility determination and information from the rap back monitoring program to a new employer.
[PL 2023, c. 241, §55 (NEW).]

**29. Provider.** "Provider" means a licensed, license-exempt, certified or registered entity that employs direct access workers to provide facility-based, in-home and community-based services under this chapter.
[PL 2025, c. 243, §11 (AMD).]

**30. Protected individual.** "Protected individual" means a person who is in need of support, who is vulnerable to abuse, neglect and exploitation and who receives services offered by providers subject to this chapter. A protected individual requires special protective measures by criminal justice, social services and health care agencies; may be a patient, consumer, beneficiary or resident; and is typically elderly, a child or an individual with disabilities in need of assistance.
[PL 2015, c. 299, §25 (NEW).]

**31. Rap back monitoring program.** "Rap back monitoring program" means a coordinated system used by federal and state agencies to monitor and generate reports for new criminal record events appearing subsequent to an initial background check pursuant to section 9056.
[PL 2015, c. 299, §25 (NEW).]

**32. Residential care facility.** "Residential care facility" means a residential care facility licensed or exempted from licensing pursuant to chapter 1663.
[PL 2023, c. 241, §57 (AMD).]

**32-A. Substance use disorder treatment agency.** "Substance use disorder treatment agency" means an approved treatment facility or program licensed pursuant to Title 5, chapter 521.
[PL 2023, c. 241, §58 (NEW).]

**33. Supervision.** "Supervision" means a supervisor is physically present and immediately able to respond to the needs of protected individuals through an ongoing and verifiable process for the duration of conditional employment.
[PL 2015, c. 299, §25 (NEW).]

**34. Temporary nurse agency.** "Temporary nurse agency" means an agency registered pursuant to chapter 417 or an agency that places temporary health care professionals in direct access positions in the State that is not otherwise required to register in the State.
[PL 2015, c. 299, §25 (NEW).]

**35. Waiver.** "Waiver" means an exemption granted by the department to a specific individual who is banned from employment as a direct access worker for a disqualifying offense.
[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2019, c. 660, §§1-6 (AMD). PL 2023, c. 176, §37 (AMD). PL 2023, c. 241, §§48-58 (AMD). PL 2023, c. 309, §§41-44 (AMD). PL 2023, c. 309, §45 (AFF). PL 2023, c. 646, Pt. A, §§27, 28 (AMD). PL 2025, c. 243, §§1-11 (AMD). PL 2025, c. 316, §3 (REV).

### §9054. Background Check Center; procedures

**1. Bureau responsibilities.** The bureau is responsible for working with the Background Check Center and federal and state agencies to facilitate background checks.
[PL 2015, c. 299, §25 (NEW).]

**2. Employer obligations.** An employer subject to this chapter shall use the Background Check Center to conduct a comprehensive background check that includes a criminal history records check for all direct access workers. The employer shall comply with the requirements of this chapter, including, but not limited to, a biometric identifier-based background check, when making employment-related decisions for direct access workers.
[PL 2023, c. 241, §59 (AMD).]

**3. Direct access worker information.** An employer seeking to hire, place or continue to employ an individual as a direct access worker shall:

A. Obtain personally identifiable information for the individual that is sufficient to secure the required components of the background check using the Background Check Center; [PL 2015, c. 299, §25 (NEW).]

B. Obtain the individual's informed consent and executed consent to release information to all entities as needed to conduct the background check investigation, analysis and monitoring process; [PL 2025, c. 243, §12 (AMD).]

C. Secure a release executed by an individual seeking placement through a temporary nurse agency, personal care agency, placement agency or other agency to obtain the results of existing background checks conducted at the direction and expense of the temporary nurse agency, personal care agency, placement agency or other agency; and [PL 2015, c. 299, §25 (NEW).]

D. Use and distribute department-approved forms as required for all pre-hire and post-employment background checks. [PL 2015, c. 299, §25 (NEW).]

[PL 2025, c. 243, §12 (AMD).]

**4. Placed or temporary direct access workers.** A temporary nurse agency, personal care agency or placement agency engaged in the business of securing or attempting to secure direct access employment for individuals or of securing or attempting to secure a direct access worker for placement with another provider shall:

A. Conduct and pay for the background check process required by this chapter; [PL 2015, c. 299, §25 (NEW).]

B. Upon request, provide the background check record to the provider seeking to fill a position where the direct access employment will take place; and [PL 2015, c. 299, §25 (NEW).]

C. Repeat the background check process for placed direct access workers after placement as mandated by rules adopted pursuant to this chapter, until the employment status shifts away from the placing entity to another entity, in which case the other entity then acquires the burden of paying for and conducting periodic background checks for the direct access workers who remain employed. [PL 2015, c. 299, §25 (NEW).]

[PL 2015, c. 299, §25 (NEW).]

**5. Subsequent background check; 5 years.** An employer shall conduct a periodic subsequent background check in accordance with rules adopted pursuant to this chapter. Criminal history record checks for all direct access workers using a biometric identifier must be completed every 5 years subsequent to the anniversary date of a previous background check completed through use of the Background Check Center.

[PL 2023, c. 241, §60 (AMD).]

**6. Notice.** An employer shall provide a department-approved notice to each individual who is required to participate in a background check.

[PL 2015, c. 299, §25 (NEW).]

**7. Providers; mandatory use.** Use of the Background Check Center is mandatory for the following providers:

A. [PL 2019, c. 660, §7 (RP).]

B. [PL 2019, c. 660, §8 (RP).]

C. [PL 2019, c. 660, §9 (RP).]

D. [PL 2019, c. 660, §10 (RP).]

E. [PL 2019, c. 660, §11 (RP).]

F. Hospice providers; [PL 2015, c. 299, §25 (NEW).]

G. Home health care providers; [PL 2015, c. 299, §25 (NEW).]

H. Nursing facilities; [PL 2015, c. 299, §25 (NEW).]

I. Personal care agencies and placement agencies; [PL 2015, c. 299, §25 (NEW).]

J. Temporary nurse agencies; [PL 2015, c. 299, §25 (NEW).]

K. Adult day care programs; [PL 2015, c. 299, §25 (NEW).]

L. Assisted housing facilities; [PL 2023, c. 176, §38 (AMD).]

M. Residential care facilities; [PL 2015, c. 299, §25 (NEW).]

N. Intermediate care facilities for individuals with intellectual disabilities; [PL 2015, c. 299, §25 (NEW).]

O. Mental health services facilities or providers; [PL 2023, c. 241, §61 (AMD).]

P. [PL 2025, c. 243, §13 (RP).]

Q. Substance use disorder treatment agencies; [PL 2025, c. 243, §14 (AMD).]

R. Hospitals; and [PL 2025, c. 243, §15 (AMD).]

S. Home and community-based service agencies. [PL 2025, c. 243, §16 (NEW).]

[PL 2025, c. 243, §§13-16 (AMD).]

**8. Background Check Center responsibilities.** The Background Check Center's responsibilities include the following:

A. Operating an online portal used by employers to secure background checks for individuals employed as direct access workers; [PL 2015, c. 299, §25 (NEW).]

B. [PL 2023, c. 241, §65 (RP).]

B-1. Collecting fingerprints to determine eligibility of individuals to work in direct access positions in accordance with standards adopted by department rule and in accordance with applicable policies and rules of the Department of Public Safety, Bureau of State Police and the Federal Bureau of Investigation. The Bureau of State Police shall take, or cause to be taken, an individual's fingerprints, along with any other information necessary for a statewide and nationwide criminal history record check. The Bureau of State Police shall make a determination of the existence of any state-level criminal history and, if none is found, the fingerprints must be forwarded to the Federal Bureau of Investigation for a national criminal history record check pertaining to the individual. The Background Check Center shall obtain the results of the state and federal criminal history record check queries from the State Bureau of Identification. Criminal records obtained pursuant to this section and the information contained therein may not be released or otherwise disclosed to any private entity. All fingerprints must be maintained by the State Bureau of Identification and the Federal Bureau of Investigation in accordance with their policies and procedures; [PL 2025, c. 243, §17 (AMD).]

C. Generating background check reports for employers; [PL 2025, c. 243, §17 (AMD).]

D. Monitoring and enforcing compliance with the requirements of this chapter; [PL 2015, c. 299, §25 (NEW).]

E. Providing for a process by which an individual subject to actions taken by the Background Check Center may challenge the accuracy of information in a background check report and correct the information in accordance with rules adopted pursuant to this chapter; [PL 2015, c. 299, §25 (NEW).]

F. Specifying offenses, including offenses that may appear in publicly available criminal record information, that disqualify an individual from employment as a direct access worker for a term of 5, 10 or 30 years or, for disqualifying offenses that occur in health care settings, the lifetime of the individual, including, but not limited to, convictions and other events or notations; [PL 2023, c. 241, §67 (AMD).]

G. Coordinating with federal and state criminal justice agencies as required to facilitate a criminal record rap back monitoring program; and [PL 2015, c. 299, §25 (NEW).]

H. Providing for an independent process to obtain a waiver for a determination of ineligibility based on a criminal history that gives an individual with a disqualifying offense who has been banned from employment pursuant to this chapter the opportunity to demonstrate that the ban should be waived because the individual does not pose a risk to patients, facilities, property or others. A waiver is applicable only to the requesting employer and is not transferable between employers. [PL 2025, c. 243, §17 (AMD).]

[PL 2025, c. 243, §17 (AMD).]

**9. Background check reports.** A background check report under this chapter is considered preliminary until the individual subject to the background check has had the opportunity to challenge or decline to challenge the accuracy of the records obtained, after which the report is considered final. [PL 2015, c. 299, §25 (NEW).]

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

A. All state-level offenses, including criminal charges without disposition; [PL 2023, c. 241, §68 (RP); PL 2025, c. 243, §18 (NEW).]

A-1. [PL 2025, c. 243, §18 (RP).]

B. The presence of federal-level disqualifying offenses without disclosure of the details; [PL 2023, c. 241, §68 (RP); PL 2025, c. 243, §18 (NEW).]

B-1. [PL 2025, c. 243, §18 (RP).]

C. A result of finding of registry disqualifications; and [PL 2023, c. 241, §68 (RP); PL 2025, c. 243, §18 (NEW).]

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

(1) Eligible for hire; or

(2) Ineligible for hire. [PL 2025, c. 243, §18 (NEW).]

[PL 2025, c. 243, §18 (RPR).]

**11. List of disqualifying offenses.** The department shall adopt rules under section 9065 in accordance with the requirements of this chapter and other federal and state laws to create and maintain a list of disqualifying offenses that adversely affect an individual's eligibility for employment as a direct access worker. Disqualifying offenses that prohibit employment as a direct access worker include, but are not limited to:

A. Convictions or notations involving crimes or abuse related to a federally funded health care program or a state-funded health care program that mandate a disqualification from participation or employment with the program; [PL 2015, c. 299, §25 (NEW).]

B. Substantiated findings that the individual has committed an act of patient or resident abuse or neglect, exploitation or a misappropriation of patient or resident property or other types of acts that the department may specify for purposes of protecting vulnerable individuals receiving care or services; [PL 2015, c. 299, §25 (NEW).]

C. Convictions under federal or state law of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service; [PL 2015, c. 299, §25 (NEW).]

D. Convictions under federal or state law of a criminal offense relating to the health and safety of vulnerable individuals receiving care or services; [PL 2015, c. 299, §25 (NEW).]

E. Convictions relating to health care fraud in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any federal, state or local government agency or convictions of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct; [PL 2015, c. 299, §25 (NEW).]

F. Convictions for a Class A, B or C crime in this State or similar crime in another jurisdiction for an offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance; and [PL 2015, c. 299, §25 (NEW).]

G. Convictions relating to other federal or state laws, provisions of this chapter or rules adopted under this chapter that otherwise mandate an employment prohibition. [PL 2015, c. 299, §25 (NEW).]

[PL 2015, c. 299, §25 (NEW).]

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

[PL 2025, c. 243, §19 (AMD).]

**13. Waiver; disqualifying offense.** In the event that no other federal or state law mandates an employment prohibition by an employer subject to this chapter, an individual who is banned from employment because of a disqualifying criminal offense may initiate a request for a waiver under subsection 8, paragraph H in accordance with a process established by rules adopted pursuant to this chapter under the following circumstances:

A. The individual is seeking to be employed or is currently employed by an employer subject to the requirements of this chapter; [PL 2015, c. 299, §25 (NEW).]

B. The employer has chosen to sponsor the individual's request for the removal of the ban in order to create or maintain an employment relationship; and [PL 2015, c. 299, §25 (NEW).]

C. The employer must attest to the department that the decision to sponsor the waiver request occurred after the employer considered the objectively reasonable factors under subsection 15 and the following factors:

(1) The nature and gravity of the disqualifying offense or offenses;

(2) The time that has passed since the disqualifying offense or offenses;

(3) The nature of the employment held or sought;

(4) Whether the criminal conduct was employment-related; and

(5) A reasonable conclusion that the individual does not pose a threat of harm to a protected individual or others in the care and support of the individual. [PL 2015, c. 299, §25 (NEW).]

The waiver must be sought with respect to the prospective or continued employment by a specific employer that is willing to sponsor the individual's request. An employee seeking a waiver may be conditionally employed in accordance with section 9057, subsection 4 and section 9058-A, subsection 3 until the waiver is denied.

[PL 2023, c. 241, §69 (AMD).]

**14. Approval of waiver.** The department shall specify in rule the criteria for issuing a waiver for a disqualifying offense. The waiver determination is based on a consideration of the facts and circumstances of the specific individual's criminal history that include the passage of time, extenuating circumstances, a demonstration of rehabilitation and the relevancy of the particular disqualifying offense with respect to the current or prospective employment with a sponsoring employer. All waivers are contingent on a final determination by the department that the employer has 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 federal or state law. A waiver is applicable only to the requesting employer and is not transferable between employers.
[PL 2025, c. 243, §20 (AMD).]

**15. Waivers; factors.** The department shall specify in rule the minimum factors that an employer must consider when sponsoring a waiver under subsection 13. Any factors that an employer chooses to consider must be objectively reasonable in supporting the attestation that the individual to whom the waiver would apply is unlikely to cause harm to a protected individual or others in the employer's care. Objectively reasonable factors include:

A. The age of the individual applying for a waiver at the time of the disqualifying offense; [PL 2015, c. 299, §25 (NEW).]

B. The amount of time that has passed since the disqualifying offense occurred; [PL 2015, c. 299, §25 (NEW).]

C. The total number and type of disqualifying offenses; [PL 2015, c. 299, §25 (NEW).]

D. Any proven mitigating circumstances surrounding the disqualifying offense; [PL 2015, c. 299, §25 (NEW).]

E. Objective evidence that the individual has successfully completed a criminal rehabilitation program; [PL 2015, c. 299, §25 (NEW).]

F. The relevance of the circumstances pertaining to the disqualifying offense with respect to the nature of the proposed employment; [PL 2015, c. 299, §25 (NEW).]

G. The length and consistency of similar employment post-conviction if applicable; [PL 2015, c. 299, §25 (NEW).]

H. Whether the individual is bonded under federal or state law; and [PL 2015, c. 299, §25 (NEW).]

I. Personal references or recommendations from employers on behalf of the individual. [PL 2015, c. 299, §25 (NEW).]

[PL 2015, c. 299, §25 (NEW).]

**16. Denial or revocation of waiver.** The department shall establish by rule informal and formal review procedures for denial or revocation of a waiver. Denial or revocation of waiver procedures must comply with the Maine Administrative Procedures Act and final determinations may be appealed pursuant to the Maine Administrative Procedures Act in Title 5, Part 18, Chapter 375, subchapter 4. Rules concerning the denial or revocation of waiver procedures include, but are not limited to, the following:

A. The process of filing a waiver request; [PL 2015, c. 299, §25 (NEW).]

B. The time frame for filing a waiver request; [PL 2015, c. 299, §25 (NEW).]

C. The time frame for issuing a waiver request decision; [PL 2015, c. 299, §25 (NEW).]

D. The rules for employment during the waiver request process; and [PL 2015, c. 299, §25 (NEW).]

E. A written determination stating the objectively reasonable factors under subsection 15 explaining the department's determination to grant, deny or revoke a waiver. [PL 2015, c. 299, §25 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 299, §25 (NEW).]

**17. Immunity.** A provider that denies employment for an individual selected for hire or continued employment as a direct access worker, including during any period of conditional employment, and that reasonably relies upon information obtained through a final background check report regarding the individual is not liable in an action brought by the individual based on an employment determination resulting from the information.
[PL 2015, c. 299, §25 (NEW).]

**18. Presumption of good faith.** In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.
[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2019, c. 660, §§7-11 (AMD). PL 2023, c. 176, §38 (AMD). PL 2023, c. 241, §§59-69 (AMD). PL 2025, c. 243, §§12-20 (AMD).

### §9055. Background Check Center funding and fees

After the initial construction and operational phase, the Background Check Center is funded through user fees as provided in this section. [PL 2015, c. 299, §25 (NEW).]

**1. User fee.** The department shall adopt rules to establish Background Check Center user fees. The user fee must reasonably reflect the necessary costs to maintain, operate and develop the Background Check Center. The user fee must be no less than $25 and no more than $150. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 299, §25 (NEW).]

**2. Special revenue account.** Revenue generated pursuant to this section must be deposited in a special revenue account in the division of licensing and certification and dedicated for Background Check Center operations.
[PL 2023, c. 241, §70 (AMD).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2023, c. 241, §70 (AMD).

### §9056. New event monitoring; rap back monitoring program

**1. New disqualifying offenses.** A direct access worker's data must be searched and monitored for new events that may disqualify the individual from employment as a direct access worker.

A. The department shall establish procedures regarding the exchange of data among federal or state criminal justice agencies and the Background Check Center, including criminal offenses not reported in earlier background check reports that upon final disposition disqualify the individual from employment as a direct access worker. [PL 2015, c. 299, §25 (NEW).]

B. The department shall establish procedures to search and monitor applicable registries and databases for notations or new information not reported in earlier background check reports that prohibit or disqualify employment as a direct access worker. [PL 2015, c. 299, §25 (NEW).]
[PL 2015, c. 299, §25 (NEW).]

**2. Rap back monitoring program.** The bureau is authorized to initiate and provide services pursuant to state rap back monitoring to report new criminal record events to the Background Check Center for noncriminal justice purposes. Requests under the rap back monitoring program include the following procedures:

A. The noncriminal justice submitting entity submits to an electronic repository the biometric identifier data of a direct access worker; [PL 2025, c. 243, §21 (AMD).]

B. The electronic repository retains the biometric identifier data for a period of time specified in the State's subscription with the electronic repository; and [PL 2023, c. 241, §71 (NEW).]

C. The electronic repository notifies the noncriminal justice submitting entity of any new criminal record events tied to the biometric identifier data that may disqualify an individual from continued employment as a direct access worker. [PL 2023, c. 241, §71 (NEW).]

[PL 2025, c. 243, §21 (AMD).]

**3. Collection of identifier data.** The bureau shall coordinate with the Background Check Center to collect the personally identifiable information and biometric identifier and relevant data of individuals as needed to meet the requirements of the rap back monitoring program or as otherwise required by this chapter and other laws.

[PL 2023, c. 241, §72 (AMD).]

**4. Dissemination and storage of data.** The Background Check Center and the bureau shall follow protocols established by federal or state law for the use and exchange of information with the rap back monitoring program, the Background Check Center and criminal justice agencies as applicable. The bureau shall:

A. Maintain the personally identifiable information and biometric identifier data in the criminal history records repository; [PL 2023, c. 241, §73 (AMD).]

B. Compare the personally identifiable data, biometric identifier data or other data to criminal records to conduct a criminal record check and disseminate the results of this record check to authorized entities; [PL 2023, c. 241, §74 (AMD).]

C. Exchange data through the rap back monitoring program with the Background Check Center for noncriminal justice purposes; [PL 2015, c. 299, §25 (NEW).]

D. Disseminate criminal record event information, including notifications from the rap back monitoring program, to an authorized entity or in a manner consistent with the requirements of this chapter and federal and state laws; and [PL 2015, c. 299, §25 (NEW).]

E. Secure and coordinate services as needed to effect the provisions and purposes of this chapter. [PL 2015, c. 299, §25 (NEW).]

[PL 2023, c. 241, §§73, 74 (AMD).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2023, c. 241, §§71-74 (AMD). PL 2025, c. 243, §21 (AMD).

## §9057. Employment

**1. Contingent offer of employment.** An employer that has made a contingent offer of employment to a direct access worker shall secure a background check and receive a final background check report prior to allowing the individual to commence employment as a direct access worker, except where the individual is conditionally employed as described in this chapter.

[PL 2015, c. 299, §25 (NEW).]

**2. Opportunity to challenge inaccurate records.** An employer that has made a contingent offer of employment under subsection 1 shall provide the individual subject to a background check a copy of the background check report and afford the individual a reasonable amount of time up to the 60th

calendar day of conditional employment as described in subsection 4 to allow that individual an opportunity to challenge inaccurate information in the background check report.
[PL 2015, c. 299, §25 (NEW).]

**3. Employment determination.** An employer that has made a contingent offer of employment under subsection 1 shall obtain a final nondisqualifying background check report after an individual has been allowed an opportunity to correct or update that individual's record prior to making an employment determination.
[PL 2015, c. 299, §25 (NEW).]

**4. Conditional employment.** In accordance with subsection 2, an employer may employ an individual as a direct access worker on a conditional basis for up to 60 calendar days before the employer receives a final background check report or from the date the employer receives a disqualifying background report on the following conditions:

A. The employer initiates the background check by entering the individual into the Background Check Center database as a conditionally employed worker; [PL 2015, c. 299, §25 (NEW).]

B. The individual is not identified in the Background Check Center database as a disqualified person based on an earlier background check; [PL 2015, c. 299, §25 (NEW).]

C. The individual has agreed to submit to the steps necessary to comply with this chapter, including taking substantial steps toward correcting inaccurate data in the disqualifying background check report if applicable; [PL 2015, c. 299, §25 (NEW).]

D. The individual signs a statement declaring that a background check will not reveal a disqualifying offense or that an offense that appears is inaccurate; [PL 2015, c. 299, §25 (NEW).]

D-1. The individual provides evidence to the employer that the individual has submitted the individual's biometric identifier data for the background check; [PL 2023, c. 241, §75 (NEW).]

E. The employer verifies and documents that the individual has submitted the individual's biometric identifier data required for the background check and the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with this chapter; and [PL 2023, c. 241, §76 (AMD).]

F. The individual is subject to direct personal supervision during the course of the conditional employment as described in rules adopted pursuant to this chapter. [PL 2015, c. 299, §25 (NEW).]

[PL 2023, c. 241, §§75, 76 (AMD).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2023, c. 241, §§75, 76 (AMD).

### §9058. Grandfathered employees

**(REPEALED)**

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2023, c. 241, §77 (RP).

### §9058-A. Grandfathered employees prior to biometric identifier reporting

**1. Background check.** Beginning when biometric-based background check capability becomes available for a specified type of provider, a provider of that type employing direct access workers subject to this section shall use the Background Check Center to secure a background check and a background check report using biometric identifier data for each direct access worker.
[PL 2025, c. 243, §22 (AMD).]

**2. Gradual implementation of grandfathered employee background checks with biometric identifier data.** The department shall adopt rules under section 9065 describing a staged and orderly process based on the type of provider and the number of direct access workers employed that employers must follow to implement the background checks using biometric identifier data for grandfathered employees consistent with this chapter. The department may grant an employer a deadline extension for good cause shown, which may not be unreasonably withheld.
[PL 2023, c. 241, §78 (NEW).]

**3. Background check deadline.** A grandfathered employee may continue to work in direct access employment for up to 60 calendar days from the date the grandfathered employee's first biometric identifier background check is initiated in accordance with subsection 2 and if:

A. The grandfathered employee signs a consent to release information and agrees in writing to submit to the background check process; [PL 2023, c. 241, §78 (NEW).]

B. The grandfathered employee signs a statement declaring that a background check will not reveal any disqualifying offenses or that an offense that appears is inaccurate; [PL 2023, c. 241, §78 (NEW).]

C. The employer verifies and documents that the grandfathered employee has submitted the biometric identifier data and mandatory identity verification and employment eligibility documents required by rules adopted in accordance with section 9065; [PL 2023, c. 241, §78 (NEW).]

D. The employer initiates the background check by entering the individual into the Background Check Center database as a grandfathered employee; and [PL 2023, c. 241, §78 (NEW).]

E. The grandfathered employee is not identified in the Background Check Center database as a disqualified person. [PL 2023, c. 241, §78 (NEW).]

[PL 2023, c. 241, §78 (NEW).]

**4. Disqualified grandfathered employee.** A grandfathered employee who receives a disqualifying background check report is subject to the provisions of subsection 3 and must be able to correct disqualifying offense information that appears in the background check report through the inaccurate records corrections process within 60 calendar days after the disqualifying report is issued. The grandfathered employee is subject to direct personal supervision during the conditional employment period as described in rules adopted pursuant to this chapter until a final background check report indicates that no disqualifying offenses appear in the updated records.
[PL 2023, c. 241, §78 (NEW).]

**5. Termination; disqualified grandfathered employees.** An employer shall terminate or remove from direct access employment any grandfathered employee who has not submitted the documents required in subsection 3, who refused to submit a biometric identifier or otherwise participate in the background check or who fails to receive a final nondisqualifying background check report in accordance with subsection 4.
[PL 2023, c. 241, §78 (NEW).]

SECTION HISTORY

PL 2023, c. 241, §78 (NEW). PL 2025, c. 243, §22 (AMD).

**§9059. Prohibitions**

**1. Prohibited employment.** An employer is subject to the penalties imposed by this chapter for hiring, placing or continuing to employ, other than conditionally as described in this chapter or by rule, an unsupervised direct access worker who has a known disqualifying offense or who has not been subject to a background check and issued a nondisqualifying report from the Background Check Center or who has not been granted a waiver as described in this chapter.
[PL 2015, c. 299, §25 (NEW).]

**2. Refusal to participate; employer.** The Background Check Center shall issue a disqualifying background check report for individuals who refuse to participate in the background check reporting process as described in this chapter, and the employer is subject to the penalties imposed by this chapter for allowing the individual to commence or continue direct access employment.
[PL 2015, c. 299, §25 (NEW).]

**3. Good cause termination.** A disqualifying offense that appears in the record of an individual submitted for a background check or a disqualifying offense that was not reported in an earlier background check report or an offense that an individual concealed from the employer or a failure to obtain or maintain a waiver constitutes good cause for termination of the individual's direct access employment.
[PL 2015, c. 299, §25 (NEW).]

**4. Refusal to participate; employee.** An employee's refusal to participate in the background check reporting process under this chapter constitutes good cause for termination of direct access employment.
[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

**§9060. Documentation**

**1. Employer documentation.** An employer subject to this chapter shall conduct and document the background check process in accordance with the requirements of this chapter and rules adopted pursuant to this chapter.
[PL 2015, c. 299, §25 (NEW).]

**2. Data storage.** An employer shall manage and store, electronically or on paper, the data provided by the Background Check Center in a manner that allows for verification that the employer conducted the background check in compliance with this chapter and other relevant state and federal laws. Employer documentation must be made available to the department upon request.
[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

**§9061. Confidentiality**

A criminal background check record and other personally identifiable information provided to an employer in compliance with this chapter are confidential. An employer may use this information only to determine the eligibility of an individual for new or continued employment, and the personally identifiable information or background check record may not be disseminated in any way that does not comply with this chapter or other applicable laws. [PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

**§9062. Penalties**

**1. Conduct subject to penalties.** An employer may be subject to the penalties under this chapter for any of the following:

A. Failure to conduct a mandatory background check; [PL 2015, c. 299, §25 (NEW).]

B. Failure or refusal to terminate or remove from direct access employment an employee who is disqualified for employment based on the requirements of this chapter; [PL 2023, c. 241, §79 (AMD).]

C. Substantial noncompliance with the procedures established by this chapter; and [PL 2023, c. 241, §80 (AMD).]

D. Failure to enroll in the Background Check Center. [PL 2023, c. 241, §81 (NEW).]

[PL 2023, c. 241, §§79-81 (AMD).]

**2. Fines.** An employer who fails to comply with the provisions of this chapter is subject to the penalties set out under this subsection.

A. An employer who fails to secure a background check in accordance with this chapter or knowingly employs a disqualified individual for direct access employment commits a civil violation for which a fine of not less than $500 but not more than $10,000 per day may be adjudged, beginning on the first day the violation occurs and for each day of continued violation. Each day constitutes a separate offense. [PL 2015, c. 299, §25 (NEW).]

B. An employer is subject to the penalties under paragraph A if that employer conditionally employs an individual before receiving verification that the individual has met the requirements of conditional employment described in this chapter. [PL 2015, c. 299, §25 (NEW).]

C. An employer who fails to comply with the confidentiality requirements and conditional employment requirements of this chapter commits a civil violation for which a fine of not less than $500 but not more than $5,000 may be adjudged for each violation. [PL 2015, c. 299, §25 (NEW).]

[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2023, c. 241, §§79-81 (AMD).

## §9063. Administrative penalties

**1. Licensing actions.** The penalties and fines described in this chapter do not limit the State's licensing authority to pursue an adverse action against an employer who fails to comply with or who commits a civil violation described in this chapter.

[PL 2015, c. 299, §25 (NEW).]

**2. Licensing penalties.** An employer's failure to comply with the requirements of this chapter may be subject to the following administrative penalties in addition to any other remedies authorized by law:

A. Denial of a license or certification or registration needed to provide services to protected individuals; [PL 2015, c. 299, §25 (NEW).]

B. Termination or revocation of the license or certification or registration relied upon to provide services to protected individuals; and [PL 2015, c. 299, §25 (NEW).]

C. Revocation of rate agreements or service contracts with the State relevant to services authorized by the license or certification. [PL 2015, c. 299, §25 (NEW).]

[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

## §9064. Appeal by employer

The imposition of sanctions, other than licensing sanctions, pursuant to this chapter may be appealed by an employer pursuant to Title 5, chapter 375. [PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

**§9065. Rules; contracts**

**1. Rules.** The Department of Public Safety and the Department of Health and Human Services shall each adopt rules necessary to achieve the purposes of this chapter. As appropriate, each department shall keep the other department informed regarding rule-making activity. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 299, §25 (NEW).]

**2. Contract for services.** In accordance with state laws and rules governing contracting for services, the Department of Public Safety and the Department of Health and Human Services may contract with federal and state agencies and nongovernmental entities as necessary to carry out the purposes of this chapter.
[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW).

**§9066. Portability**

**1. Portability authorized.** A direct access worker may choose to transfer the worker's background check report to another employer. The direct access worker may choose to transfer confidential information contained in the worker's background check report, as long as the background check used a biometric identifier, when:

A. The direct access worker agrees to submit to the requirements of this chapter; [PL 2023, c. 241, §82 (NEW).]

B. The direct access worker signs a statement releasing the confidential information to the new employer; [PL 2023, c. 241, §82 (NEW).]

C. The employer verifies and documents that the direct access worker has submitted the mandatory identity verification and employment eligibility documents required by rules adopted in accordance with this chapter; and [PL 2023, c. 241, §82 (NEW).]

D. The employer ensures the background check was completed within the last 5 years and enters the direct access worker into the rap back monitoring program. [PL 2023, c. 241, §82 (NEW).]

[PL 2023, c. 241, §82 (NEW).]

SECTION HISTORY

PL 2023, c. 241, §82 (NEW).