

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

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

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

B. "High-risk provider" means a provider the department has determined is high risk in accordance with subsection 2-A. [PL 2023, c. 432, §1 (NEW).]

C. "Person with ownership interest" means a person who has at least a 5% direct or indirect ownership interest in a high-risk provider or a provider in a high-risk provider category. [PL 2023, c. 432, §1 (NEW).]

D. "Provider" has the same meaning as "provider" or "supplier" in 42 Code of Federal Regulations, Section 400.202 (1983) in effect on January 1, 2022. [PL 2023, c. 432, §1 (NEW).]

E. "Provider in a high-risk provider category" has the same meaning as "high categorical risk: Provider and supplier categories" in 42 Code of Federal Regulations, Section 424.518(c)(1) (2020) in effect on December 28, 2020. [PL 2023, c. 432, §1 (NEW).]

F. "State Police" means the Department of Public Safety, Bureau of State Police. [PL 2023, c. 432, §1 (NEW).]

[PL 2023, c. 432, §1 (RPR).]

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

A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2021, c. 400, §1 (NEW).]

B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information. [PL 2021, c. 400, §1 (NEW).]

C. A provider applicant shall submit to having fingerprints taken. The State Police, upon payment by the provider applicant, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety. [PL 2021, c. 400, §1 (NEW).]

D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2021, c. 400, §1 (NEW).]

E. State and national criminal history record information of a provider applicant must be used by the department for the purpose of screening that provider applicant. [PL 2021, c. 400, §1 (NEW).]

F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the department are for official use only and may not be disseminated to any other person or entity. [PL 2021, c. 400, §1 (NEW).]

G. An individual whose enrollment as a MaineCare provider has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the individual's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the individual's fingerprints from the fingerprint file and provide written confirmation of that removal. [PL 2021, c. 400, §1 (NEW).]

[PL 2023, c. 432, §2 (AMD).]

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

A. Within the previous 10-year period:

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

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

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

D. The provider:

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

[PL 2023, c. 432, §3 (NEW).]

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

[PL 2021, c. 400, §1 (NEW).]

## SECTION HISTORY

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

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Maine Legislature and is current through January 1, 2025. The*

*text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.