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MEMORANDUM

TO: Criminal Records Review Committee

FROM: John Feeney, Chief Operating Office, Office of Child and Family Services

DATE: November 8, 2021

SUBJECT: Office of Child and Family Services (OCFS) Findings Process

Disqualifying Crimes in Health and Human Services Programs

22 Ch. 1691 §9051-9065 Maine Background Check Center Act (MBCCA) is the governing statutory authority for 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.”

22 Ch. 1691 §9054. Background Check Center: procedures, provides a list of disqualifying offense.

22 Ch. 1691 §9065. Rules: contracts, directs the Department to adopt rules necessary to achieve the purpose of the chapter. The Department promulgated [10-144 ch.60 Maine Background Check Center Rule](#) which includes a Table of Disqualifying Crimes.

MBCCA is administered by Division of Licensing and Certification and requires all persons and agencies listed below to follow 22 §1812-G. Each of the sections included below do reference requirements for a background check.

Personal care agencies and placement agencies (22 §1717)
Unlicensed assistive persons (22 §1812-J)
Temporary nurse agencies (22 §2138)
Home health care providers (22 §2149-A)
Assisted housing programs (22 §7851)
Adult day care programs (22 §8606)
Veterans adult day care programs (22 §9005)

34-B Behavioral and Developmental Services -§1225 requires “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.”
Individuals providing these behavioral health services are subject to MBCCA.

Child Care Facilities and Family Child Care Providers statutory authority for background checks is 22 Ch. 1673 §8302-C and 42 USC 9858f(b). The specific disqualifying offenses come from the 42 USC 9858f(b) and disqualify an individual from lifetime employment. Ch. 1673 gives the Department authority to promulgate rules, [10-148 ch.34 Background Check Rule](#) (provisionally adopted) further identifies misdemeanor criminal convictions occurring within the preceding 10 years that make an individual ineligible.

22 Ch. 1673 §8302-B and 42 USC 9858f(b) Unlicensed Child Care Subsidy Providers follow same requirements as licensed child care providers.

22 Ch. 1071 4005-G provides requirements for background checks for kinship care providers.

22 Ch.1699 Children’s Homes §8110 and 42 USC 671(20) Authority for background checks for Children’s Residential Care Facilities, Children’s Residential Care Facilities with secure capacity, Shelters for Homeless Youth, Children’s Emergency Shelters, Family Foster Home, Specialized Foster Home. The specific disqualifying offenses come from 42 USC 671(20).