

§1812-J. Direct care workers

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

A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry. [PL 2009, c. 215, §2 (NEW).]

A-1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. [PL 2011, c. 257, §3 (NEW).]

A-2. "Disqualifying offense" means a substantiation of abuse, neglect or exploitation or a criminal conviction identified in rules adopted by the department that prohibit employment as a direct care worker. [PL 2023, c. 241, §28 (AMD).]

A-3. "Health care and direct access services settings" means settings in which individuals receive services that require direct access by a certified nursing assistant or a direct care worker or other employee in providing direct care and related services. [PL 2023, c. 241, §29 (AMD).]

A-4. "High severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for a substantiated finding after investigation of a complaint against a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident. [PL 2023, c. 241, §30 (AMD).]

A-5. "Indicated finding" means an administrative determination made by the department, after investigation of a complaint against a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of low to moderate severity based on criteria established by the department by rule and that the person is not prohibited from employment as a direct care worker. [PL 2023, c. 241, §31 (AMD).]

A-6. "Low to moderate severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for an indicated finding after investigation of a complaint against a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident. [PL 2023, c. 241, §32 (AMD).]

A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that is included as a notation on the registry but does not prohibit employment as a direct care worker. [PL 2023, c. 241, §33 (AMD).]

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, which is a list of certified nursing assistants, with notations if applicable, and a list of direct care workers with notations and is established under section 1812-G. [PL 2023, c. 241, §34 (AMD).]

C. "State survey agency" means the agency specified in 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs and authorized to investigate and substantiate complaints against certified nursing assistants. [PL 2011, c. 257, §3 (AMD).]

C-1. "Substantiated finding" means an administrative determination made by the department, after investigation of a complaint against a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of high severity based on criteria established by the department by rule. [PL 2023, c. 241, §35 (AMD).]

D. "Direct care worker" means an unlicensed individual who by virtue of employment has direct access to and provides direct care or direct contact assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct access services settings. "Direct care worker" includes but is not limited to a direct support professional, residential care specialist, behavioral health professional, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct access workers or direct care workers as described in rules adopted by the department. "Direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant. [PL 2023, c. 241, §36 (AMD).]

E. "Unsubstantiated finding" means an administrative determination made by the department, after investigation of a complaint against a direct care worker of abuse, neglect or misappropriation of property of a client, patient or resident, that no abuse, neglect or misappropriation of property of a client, patient or resident was found to support an indicated finding or a substantiated finding of abuse, neglect or misappropriation of property of a client, patient or resident. [PL 2023, c. 241, §37 (AMD).]

F. [PL 2023, c. 241, §38 (RP).]

G. "Registered direct care worker" means an individual listed on the registry. "Registered direct care worker" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant or a direct care worker listed on the registry with notations for disqualifying offenses. [PL 2023, c. 241, §39 (NEW).]

[PL 2023, c. 241, §§28-39 (AMD).]

2. Complaint investigation. The department may investigate complaints and allegations of abuse, neglect or misappropriation of property of a client, patient or resident in a home or health care setting against direct care workers.

[PL 2023, c. 241, §40 (AMD).]

2-A. Department decision after investigation of complaint. Based on criteria established by rule, the department, after investigation of a complaint of abuse, neglect or misappropriation of property of a client, patient or resident, shall:

A. Make a substantiated finding; [PL 2011, c. 257, §4 (NEW).]

B. Make an indicated finding; or [PL 2011, c. 257, §4 (NEW).]

C. Make an unsubstantiated finding. [PL 2011, c. 257, §4 (NEW).]

[PL 2011, c. 257, §4 (NEW).]

3. Substantiated finding of complaint; registry listing. When a complaint against a direct care worker is substantiated by the department and the direct care worker is listed on the registry pursuant to subsection 4, the department's decision becomes final agency action as defined in Title 5, section 8002, subsection 4. The department shall notify the employer of the direct care worker that a substantiated finding of a complaint has been listed as a notation on the registry.

[PL 2023, c. 241, §41 (AMD).]

3-A. Indicated finding of complaint; no registry listing. An indicated finding by the department of a complaint against a direct care worker does not prohibit employment and is not listed as a notation on the registry. The department's complaint investigation decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

[PL 2023, c. 241, §42 (AMD).]

4. Registry listing. The department shall list direct care workers with a substantiated finding notation. Disqualifying notations must include but are not limited to the following information:

A. Documentation of the department's investigation, including the nature of the allegation and the evidence that led the department to substantiate the allegation of abuse, neglect or misappropriation of property; [PL 2023, c. 241, §43 (AMD).]

B. The date of the hearing, if the direct care worker chose to appeal the department finding that the complaint was substantiated; and [PL 2023, c. 241, §43 (AMD).]

C. The direct care worker's statement to the department disputing the allegation, if the direct care worker chose to submit one. [PL 2023, c. 241, §43 (AMD).]

D. [PL 2023, c. 241, §43 (RP).]
[PL 2023, c. 241, §43 (AMD).]

5. Right to hearing. The department shall notify the direct care worker of the right to request a hearing to contest the finding that the complaint under subsection 3 was substantiated. [PL 2023, c. 241, §44 (AMD).]

6. Petition for removal of a substantiated finding of abuse, neglect or misappropriation of property. [PL 2023, c. 241, §45 (RP).]

7. Prohibited employment based on disqualifying offenses. An employer who employs a direct care worker to provide direct access services shall conduct a comprehensive background check 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 chapter 1691 and other applicable federal and state laws. The employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

A. [PL 2015, c. 299, §17 (RP).]

B. [PL 2015, c. 299, §17 (RP).]

C. [PL 2011, c. 257, §8 (RP).]
[PL 2023, c. 241, §46 (AMD).]

7-A. Background check. This subsection governs background checks for direct care workers.

A. A training program for direct care workers may secure or pay for a background check pursuant to chapter 1691 on each individual who applies for enrollment in the program. The background check may check the individual's current name and all previous names. The background check result may be shared with the individual's prospective employer upon successful completion of the program.

(1) Prior to enrolling an individual, a training program for direct care workers must notify individuals that a background check may be conducted and that certain disqualifying offenses, including criminal convictions, may prohibit an individual from working as a direct care worker. [PL 2023, c. 241, §47 (NEW).]

B. Pursuant to sections 1717, 1724, 2137, 2149-A, 7706, 8606, 9005 and 9054 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 direct care worker. [PL 2023, c. 241, §47 (NEW).]

C. The department may review the results of a background check completed in accordance with chapter 1691 on a registered direct care worker. [PL 2023, c. 241, §47 (NEW).]

D. A person that is not otherwise licensed by the department that employs or places a 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. [PL 2023, c. 241, §47 (NEW).]
[PL 2023, c. 241, §47 (NEW).]

8. Rules. The department may 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 2009, c. 215, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 215, §2 (NEW). PL 2011, c. 257, §§3-8 (AMD). PL 2015, c. 299, §§11-17 (AMD). PL 2015, c. 494, Pt. D, §3 (AMD). PL 2023, c. 241, §§27-47 (AMD).

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