Information in State statutes and regulations relevant to the National Background Check Program: Maine

This document describes what was included as of January 2011 in Maine statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Maine has 10 relevant statutes and regulations, all of which were used in gathering information for this document, and which are listed below in the State Statutes and Regulations section.

Key Feature	Description
Specific facility and provider types	The State covers eight of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), namely: skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, personal care service providers, adult day care providers, residential care providers, and intermediate care facilities for the mentally retarded.
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	Maine does not have a definition of direct patient access employee. However, in Maine, the following individuals are required to have criminal background checks: unlicensed assistive personnel and unlicensed health care assistive personnel who are employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living centers, residential care facilities, hospitals, and other health care settings. This does not include certified nursing assistants employed as certified nursing assistants.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Not addressed.

Key Feature	Description
Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:	
1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))	1. Not addressed.
2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))	2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.
3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))	3. Not addressed.
4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))	4. Not addressed.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Maine identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.
Opportunity to contest accuracy of background check findings	Not addressed.
Ability to remove hiring prohibition based on rehabilitation factors	The State does not provide the ability to remove a hiring prohibition based on rehabilitation.
Rehabilitation/mitigation process for negative fitness determinations	Not addressed.
Independence of appeal or review process	Not clear.

State Statutes and Regulations

Citation	Description
Maine Revised Statutes Annotated Tittle 22 (22 M.R.S.A.) §§ 7706, 7704, and 7801	This is about requiring criminal history record information for individuals who will work with residential care facilities, assisted housing programs, adult day care programs, and hospice programs prior to hiring.
22 M.R.S.A. § 2149-A	This lists the criminal convictions that bar an individual from being hired by a home health care agency.
22 M.R.S.A. § 1717	This indicates that personal care providers and placement agencies may not hire or place an individual who is not a certified nursing assistant (CNA) to provide hands-on assistance with activities of daily living to individuals in homes, assisted living centers, residential care facilities, hospitals, or other health care settings if the individual in question formerly worked as a CNA and has an adverse notation in the Maine Registry of CNAs (MRCNA), or if the individual has been convicted of certain crimes.
22 M.R.S.A. §§ 2136–2139	This lists some of the criminal convictions that bar an individual from being hired by a temporary nursing agency.
22 M.R.S.A. § 1812-J	This deals with the inclusion of substantiated complaints against unlicensed assistive personnel (in addition to CNAs) in the MRCNA.
22 M.R.S.A. § 2131.1-A	This deals with health care institutions, facilities, and organizations (prior to hiring) verifying that a CNA is listed on the MRCNA with no annotations that would prohibit his or her hiring.
10-144 Code of Maine Regulations (CMR) 113 §§ 8.2 – 8.6	This is about the employment of CNAs and unlicensed assistive personnel in hospitals, nursing facilities, home health agencies, and assisted housing programs.
10-144 CMR 110 § 8.C.5	This lists criminal convictions that bar an individual from being hired by a skilled nursing facility or nursing facility.
10-144 CMR 119 § 6.C	This is about background checks and hiring restrictions on CNAs and home health aides at home health agencies.
10-144 CMR 128 §§ 1 – 6	These are regulations governing the MRCNA.

Key
§ - Section
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Appendix A – State-identified Disqualifying Convictions

Maine statutes and regulations identify five major categories of disqualifying convictions. The disqualifying convictions are classified as either permanent barrier crimes or 10-year barrier crimes.

Permanent barrier crimes include
- abuse,
- neglect,
- and misappropriation of property in a health care setting.

Ten-year barrier crimes include
- crimes for which incarceration of 3 years or more may have been imposed under the laws where the conviction occurred,
- and crimes for which incarceration of less than 3 years may have been imposed under the laws where the conviction occurred, if the conviction involved sexual misconduct or abuse, neglect, or exploitation in a setting other than a health care setting.