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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO HUMAN SERVICES -- PROFESSIONAL RESPONSIBILITY--CRIMINAL
RECORDS REVIEW

Introduced By: Representatives Bennett, Ackerman, Cassar, Jackson, and Hawkins

Date Introduced: February 26, 2020

Referred To: House Judiciary

(Governor/Executive Office of Health and Human Services)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.6-1 and 12-1.6-2 of the General Laws in Chapter 12-1.6 entitled
2 "National Criminal Records Check System" are hereby amended to read as follows:

3 **12-1.6-1. Automated fingerprint identification system database.**

4 The department of attorney general may establish and maintain an automated fingerprint
5 identification system database that would allow the department to store and maintain all fingerprints
6 submitted in accordance with the national criminal records check system. The automated
7 fingerprint identification system database would provide for an automatic notification if, and when,
8 a subsequent criminal arrest fingerprint card is submitted to the system that matches a set of
9 fingerprints previously submitted in accordance with a national criminal records check. If the
10 aforementioned arrest results in a conviction, the department shall immediately notify those
11 individuals and entities with which that individual is associated and who are required to be notified
12 of disqualifying information concerning national criminal records checks as provided in chapters
13 17, 17.4, 17.7.1 of title 23 or § 23-1-52, [7.2 of title 42 or §§ 42-7.2-18.2 and 42-7.2-18.4](#). The
14 information in the database established under this section is confidential and not subject to
15 disclosure under chapter 38-2.

16 **12-1.6-2. ~~Long-term healthcare workers~~ Long-term healthcare workers, high-risk**
17 **Medicaid providers, and personal care attendants.**

18 The department of attorney general shall maintain an electronic, web-based system to assist

1 facilities, licensed under chapters 17, 17.4, 17.7.1 of title 23 or § 23-1-52 [and the executive office](#)
2 [of health and human services \(EOHHS\) under §§ 42-7.2-18.1 and 42-7.2-18.3](#), required to check
3 relevant registries and conduct national criminal records checks of routine contact patient
4 employees, [personal care attendants and high-risk providers](#). The department of attorney general
5 shall provide for an automated notice, as authorized in § 12-1.6-1, to those facilities [or to EOHHS](#)
6 if a routine-contact patient employee, [personal care attendant or high-risk provider](#) is subsequently
7 convicted of a disqualifying offense, as described in the relevant licensing statute [or in §§ 42-7.2-](#)
8 [18.2 and 42-7.2-18.4](#). The department of attorney general may charge a facility a one-time, set-up
9 fee of up to one hundred dollars (\$100) for access to the electronic web-based system under this
10 section.

11 SECTION 2. Chapter 42-7.2 of the General Laws entitled "Office of Health and Human
12 Services" is hereby amended by adding thereto the following sections:

13 **42-7.2-18.1. Professional responsibility -- Criminal records check for high-risk**
14 **providers.**

15 [\(a\) As a condition of enrollment and/or continued participation as a Medicaid provider,](#)
16 [applicants to become and/or remain a provider shall be required to undergo a criminal records check](#)
17 [including a national criminal records check supported by fingerprints by the level of screening](#)
18 [based on risk of fraud, waste or abuse as determined by the executive office of health and human](#)
19 [services \(EOHHS\) for that category of Medicaid provider.](#)

20 [\(b\) Establishment of risk categories. EOHHS, in consultation with the department of](#)
21 [attorney general, shall establish through regulation, risk categories for Medicaid providers and](#)
22 [provider categories who pose an increased financial risk of fraud, waste or abuse to the](#)
23 [Medicaid/CHIP program, in accordance with § 42 C.F.R. §§ 455.434 and 455.450.](#)

24 [\(c\) High risk categories, as determined by EOHHS, may include:](#)

25 [\(1\) Newly enrolled home health agencies that have not been Medicare certified;](#)

26 [\(2\) Newly enrolled durable medical equipment providers;](#)

27 [\(3\) New or revalidating providers that have been categorized by EOHHS as high risk;](#)

28 [\(4\) New or revalidating providers with payment suspension histories;](#)

29 [\(5\) New or revalidating providers with office of inspector general exclusion histories;](#)

30 [\(6\) New or revalidating providers with qualified overpayment histories; or](#)

31 [\(7\) New or revalidating providers applying for enrollment post debarment or moratorium](#)
32 [\(federal or state-based\).](#)

33 [\(d\) Upon the state Medicaid agency determination that a provider or an applicant to become](#)
34 [a provider, or a person with a five percent \(5%\) or more direct or indirect ownership interest in the](#)

1 provider, meets EOHHS's criteria for criminal records checks as a high risk to the Medicaid program.
2 EOHHS shall require that each such provider or applicant to become a provider, undergo a national
3 criminal records check supported by fingerprints.

4 (e) EOHHS shall require such a high risk Medicaid provider or applicant to become a
5 provider, or any person with a five percent (5%) or more direct or indirect ownership interest in the
6 provider, to submit to a national criminal records check supported by fingerprints within thirty (30)
7 days upon request from the Centers for Medicare and Medicaid or EOHHS.

8 (f) The Medicaid providers requiring the national criminal records check shall apply to the
9 department of attorney general, bureau of criminal identification (BCI) to be fingerprinted. The
10 fingerprints shall be transmitted to the federal bureau of investigation (FBI) for a national criminal
11 records check. The results of the national criminal records check shall be made available to the
12 applicant undergoing a record check and submitting fingerprints.

13 (g) Upon the discovery of any disqualifying information, as defined in § 42-7.2-18.2 and
14 as in accordance with the regulations promulgated by EOHHS, the BCI unit of the department of
15 attorney general will inform the applicant, in writing, of the nature of the disqualifying information,
16 and, without disclosing the nature of the disqualifying information, will notify the EOHHS, in
17 writing, that disqualifying information has been discovered.

18 (h) In those situations in which no disqualifying information has been found, the BCI unit
19 of the department of attorney general shall inform the applicant and EOHHS, in writing, of this
20 fact.

21 (i) The applicant shall be responsible for the cost of conducting the national criminal
22 records check through the BCI unit of the department of attorney general.

23 **42-7.2-18.2. Professional responsibility -- Criminal records check disqualifying**
24 **information for high-risk providers.**

25 (a) Information produced by a national criminal records check pertaining to conviction, for
26 the following crimes will result in notification to EOHHS, disqualifying the applicant from being
27 a Medicaid provider: murder, voluntary manslaughter, involuntary manslaughter, first degree
28 sexual assault, second degree sexual assault, third degree sexual assault, assault on persons sixty
29 (60) years of age or older, assault with intent to commit specified felonies (murder, robbery, rape,
30 burglary, or the abominable and detestable crime against nature), felony assault, patient abuse,
31 neglect or mistreatment of patients, burglary, first degree arson, robbery, felony drug offenses,
32 felony larceny, felony banking law violations, felony obtaining money under false pretenses, felony
33 embezzlement, abuse, neglect and/or exploitation of adults with severe impairments, exploitation
34 of elders, or a crime under section 1128a of the Social Security Act (42 U.S.C. 1320a-7(a)). An

1 applicant against whom disqualifying information has been found, for purposes of appeal, may
2 provide a copy of the national criminal records check to EOHHS, who shall make a judgment
3 regarding the approval of or the continued status of that person as a provider.

4 (b) For purposes of this section, “conviction” means, in addition to judgments of conviction
5 entered by a court subsequent to a finding of guilty or a plea of guilty, those instances where the
6 defendant has entered a plea of nolo contendere and has received a sentence of probation and those
7 instances where a defendant has entered into a deferred sentence agreement with the attorney
8 general.

9 **42-7.2-18.3. Professional responsibility -- Criminal records check for personal care**
10 **aides.**

11 (a) Any person seeking employment to provide care to elderly or individuals with
12 disabilities who is, or may be required to be, licensed, registered, trained or certified with the office
13 of Medicaid if that employment involves routine contact with elderly or individuals with disabilities
14 without the presence of other employees, shall undergo a national criminal records check supported
15 by fingerprints. The applicant will report to the department of attorney general, BCI unit to submit
16 their fingerprints. The fingerprints shall be submitted to the FBI by the BCI unit of the department
17 of attorney general. The national criminal records check shall be initiated prior to, or within one
18 week of, employment.

19 (b) The director of the office of Medicaid may, by rule, identify those positions requiring
20 criminal records checks. The identified employee, through EOHHS, shall apply to the BCI unit of
21 the department of attorney general for a national criminal records check. Upon the discovery of any
22 disqualifying information, as defined in § 42-7.2-18.4 and in accordance with the rule promulgated
23 by the director of Medicaid, the BCI unit of the department of attorney general will inform the
24 applicant, in writing, of the nature of the disqualifying information, and, without disclosing the
25 nature of the disqualifying information, will notify EOHHS in writing, that disqualifying
26 information has been discovered.

27 (c) An applicant against whom disqualifying information has been found, for purposes of
28 appeal, may provide a copy of the national criminal history check to EOHHS who shall make a
29 judgment regarding the approval of the applicant.

30 (d) In those situations, in which no disqualifying information has been found, the BCI unit
31 of the department of attorney general shall inform the applicant and EOHHS, in writing, of this
32 fact.

33 (e) EOHHS shall maintain on file evidence that criminal records checks have been initiated
34 on all applicants subsequent to July 1, 2020.

1 (f) The applicant shall be responsible for the cost of conducting the national criminal
2 records check through the BCI unit of the department of attorney general.

3 **42-7.2-18.4. Professional responsibility -- Criminal records check disqualifying**
4 **information for personal care aides.**

5 (a) Information produced by a national criminal records check pertaining to conviction for
6 the following crimes will result in a letter to the applicant and the executive office of health and
7 human services (EOHHS), disqualifying the applicant: murder, voluntary manslaughter,
8 involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree
9 sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit
10 specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against
11 nature), felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree
12 arson, robbery, felony drug offenses, felony larceny, or felony banking law violations, felony
13 obtaining money under false pretenses, felony embezzlement, abuse, neglect and/or exploitation of
14 adults with severe impairments, exploitation of elders, or a crime under section 1128a of the Social
15 Security Act (42 U.S.C. 1320a-7(a)).

16 (b) For purposes of this section, "conviction" means, in addition to judgments of conviction
17 entered by a court subsequent to a finding of guilty or a plea of guilty, those instances where the
18 defendant has entered a plea of nolo contendere and has received a sentence of probation and those
19 instances where a defendant has entered into a deferred sentence agreement with the attorney
20 general.

21 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would require patient contact employees, personal care attendants and high-risk
2 providers to undergo a national criminal records check and would disqualify those people from
3 such employment if they have a criminal record for crimes of violence or other offenses listed.

4 This act would take effect upon passage.

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