

§9053. Definitions**(CONFLICT)****(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2015, c. 299, §25 (NEW).]

1. Adult day care program. "Adult day care program" means an adult day care program licensed pursuant to chapter 1663 or 1679.
[PL 2015, c. 299, §25 (NEW).]

2. (CONFLICT: Text as amended by PL 2023, c. 176, §37) Assisted housing facility. "Assisted housing facility" means a facility licensed pursuant to chapter 1663.
[PL 2023, c. 176, §37 (AMD).]

2. (CONFLICT: Text as amended by PL 2023, c. 241, §48) Assisted housing program. "Assisted housing program" means a program or facility licensed pursuant to chapter 1663 or an independent housing with services program exempt from licensing pursuant to chapter 1663.
[PL 2023, c. 241, §48 (AMD).]

3. Background check. "Background check" means the collection of personally identifiable information, data and biometric identifiers for comparison with criminal record repositories and registry databases that are relevant to an individual's identity and background, including monitoring for future offenses through a rap back monitoring program.
[PL 2023, c. 241, §49 (AMD).]

4. Background Check Center. "Background Check Center" means the entity established under section 9052 to operate the Internet-based system maintained by the department pursuant to section 9054 that is designed to integrate and analyze data streams from various sources and is used by providers when conducting background checks on potential or current direct access workers.
[PL 2015, c. 299, §25 (NEW).]

5. Background check report. "Background check report" means a comprehensive report generated by the Background Check Center based on a search and analysis of data stored in federal and state criminal record repositories, registry databases or agencies, including, but not limited to, the Federal Bureau of Investigation; the Department of Public Safety, State Bureau of Identification; abuse and neglect, sex offender and employment-related registries; professional licensing authorities; and Medicare and Medicaid exclusion databases. The background check report informs a provider when an offense appears in an individual's record that may disqualify the individual from employment as a direct access worker.
[PL 2015, c. 299, §25 (NEW).]

5-A. Biometric identifier. "Biometric identifier" means a unique and measurable biological, anatomical or physiological characteristic used for identification of an individual, including, but not limited to, fingerprints, retinal or iris scans and palm prints.
[PL 2023, c. 241, §50 (NEW).]

6. Bureau. "Bureau" means the Department of Public Safety, State Bureau of Identification.
[PL 2015, c. 299, §25 (NEW).]

7. Child care facility.
[PL 2019, c. 660, §1 (RP).]

8. Child placing agency.
[PL 2019, c. 660, §2 (RP).]

9. Children's residential care facility.

[PL 2019, c. 660, §3 (RP).]

10. Contingent offer of employment. "Contingent offer of employment" means an offer of employment as a direct access worker that is based upon receipt of a final nondisqualifying background check report and that may be withdrawn if a disqualifying final background check report is issued.

[PL 2015, c. 299, §25 (NEW).]

11. Criminal charge without disposition. "Criminal charge without disposition" means a charge that appears on an individual's criminal history record that has not been finally disposed at the time the criminal record is reviewed.

[PL 2015, c. 299, §25 (NEW).]

12. Direct access. "Direct access" means access to the property, personally identifiable information, financial information and resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other protected individual served by a provider subject to this chapter.

[PL 2015, c. 299, §25 (NEW).]

13. Direct access employment. "Direct access employment" or "employment" means any activity involving direct access services including employment for wages, contracting for temporary staff or use of unsupervised volunteers or students who perform functions similar to those performed by direct access workers.

[PL 2015, c. 299, §25 (NEW).]

14. Direct access worker. "Direct access worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance or has direct access regardless of setting. "Direct access worker" does not include an individual performing repairs, deliveries, installations or similar services who does not have direct access without supervision. "Direct access worker" includes but is not limited to the following individuals:

A. An individual seeking employment as a direct access worker; [PL 2015, c. 299, §25 (NEW).]

B. An employee who is employed upon the effective date of this chapter and who is required to have a background check in accordance with section 9058-A; [PL 2023, c. 241, §51 (AMD).]

C. A former employee who consents, prior to leaving employment, to periodic review of that employee's criminal background for a fixed time; [PL 2015, c. 299, §25 (NEW).]

D. **(CONFLICT: Text as amended by PL 2023, c. 241, §51)** An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A or a worker who is placed with a provider by a temporary nurse agency or a personal care agency or a placement agency registered pursuant to section 1717; [PL 2023, c. 241, §51 (AMD).]

D. **(CONFLICT: Text as repealed and replaced by PL 2023, c. 309, §41)** An independent contractor pursuant to Title 26, section 1043, subsection 11, paragraph E or Title 39-A, section 102, subsection 13-A; a worker who is placed with a provider by a temporary nurse agency; or a worker who is placed with a provider by a personal care agency registered or licensed pursuant to section 1717; and [PL 2023, c. 309, §41 (RPR).]

E. A volunteer, student or other person with direct access who routinely performs unsupervised functions similar to those performed by a direct access worker for a provider; and [PL 2023, c. 241, §51 (AMD).]

F. A direct care worker pursuant to section 1812-J, subsection 1, paragraph G. [PL 2023, c. 241, §51 (NEW).]

[PL 2023, c. 241, §51 (AMD); PL 2023, c. 309, §41 (AMD).]

15. Disqualifying offense. "Disqualifying offense" means an event in a person's background that has resulted in a database or registry notation or criminal record report that is relevant to the health and

safety of protected individuals and that is included on the list of disqualifying offenses adopted in rules pursuant to this chapter that mandate a prohibition or exclusion from direct access employment.

[PL 2015, c. 299, §25 (NEW).]

16. Drug treatment center. "Drug treatment center" means a facility licensed pursuant to chapter 1663.

[PL 2015, c. 299, §25 (NEW).]

17. Employer. "Employer" means a person or other legal entity that employs or places a direct access worker or otherwise provides direct access services. "Employer" includes a provider, a temporary nurse agency and a personal care agency.

[PL 2023, c. 309, §42 (AMD).]

18. Family child care provider.

[PL 2019, c. 660, §4 (RP).]

19. Grandfathered employee. "Grandfathered employee" means an individual subject to the requirements of this chapter who has been employed prior to October 1, 2023, is subject to section 9058-A and has not previously submitted biometric identifier data for a background check under this chapter.

[PL 2023, c. 241, §52 (RPR).]

20. Home health care provider. "Home health care provider" means an entity licensed pursuant to chapter 419.

[PL 2015, c. 299, §25 (NEW).]

21. Hospice provider. "Hospice provider" means an entity licensed pursuant to chapter 1681.

[PL 2015, c. 299, §25 (NEW).]

21-A. Hospital. "Hospital" means an entity licensed pursuant to chapter 405.

[PL 2023, c. 241, §53 (NEW).]

22. Intermediate care facility for individuals with intellectual disabilities. "Intermediate care facility for individuals with intellectual disabilities" means a facility licensed pursuant to chapter 405.

[PL 2015, c. 299, §25 (NEW).]

23. Medicare or Medicaid beneficiary. "Medicare or Medicaid beneficiary" means a person enrolled in the Medicare or Medicaid program.

[PL 2015, c. 299, §25 (NEW).]

24. Mental health services facility or provider. "Mental health services facility or provider" means a facility or agency licensed pursuant to Title 34-B, section 1203-A.

[PL 2015, c. 299, §25 (NEW).]

24-A. Noncriminal justice submitting entity. "Noncriminal justice submitting entity" means the agency responsible for initiating requests under the rap back monitoring program pursuant to federal implementation guidance documents.

[PL 2023, c. 241, §54 (NEW).]

25. Nursery school.

[PL 2019, c. 660, §5 (RP).]

26. Nursing facility. "Nursing facility" means a facility licensed pursuant to chapter 405.

[PL 2015, c. 299, §25 (NEW).]

27. (TEXT EFFECTIVE UNTIL 7/1/25) (TEXT REPEALED 7/1/25) Personal care agency.

"Personal care agency," as it pertains to a registered entity, means an entity registered pursuant to section 1717, subsection 2.

This subsection is repealed July 1, 2025.

[PL 2023, c. 309, §43 (AMD).]

27-A. (TEXT EFFECTIVE 7/01/24) Personal care agency. "Personal care agency" means an entity licensed pursuant to section 1717, subsection 2-A.

[PL 2023, c. 309, §44 (NEW); PL 2023, c. 309, §45 (AFF).]

28. Personally identifiable information. "Personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

[PL 2015, c. 299, §25 (NEW).]

28-A. Portability. "Portability" means the ability of a direct access worker to transfer the results of a background check eligibility determination and information from the rap back monitoring program to a new employer.

[PL 2023, c. 241, §55 (NEW).]

29. Provider. "Provider" means a licensed, license-exempt, certified or registered entity that employs direct access workers to provide long-term care and in-home and community-based services under this chapter.

[PL 2023, c. 241, §56 (AMD).]

30. Protected individual. "Protected individual" means a person who is in need of support, who is vulnerable to abuse, neglect and exploitation and who receives services offered by providers subject to this chapter. A protected individual requires special protective measures by criminal justice, social services and health care agencies; may be a patient, consumer, beneficiary or resident; and is typically elderly, a child or an individual with disabilities in need of assistance.

[PL 2015, c. 299, §25 (NEW).]

31. Rap back monitoring program. "Rap back monitoring program" means a coordinated system used by federal and state agencies to monitor and generate reports for new criminal record events appearing subsequent to an initial background check pursuant to section 9056.

[PL 2015, c. 299, §25 (NEW).]

32. Residential care facility. "Residential care facility" means a residential care facility licensed or exempted from licensing pursuant to chapter 1663.

[PL 2023, c. 241, §57 (AMD).]

32-A. Substance use disorder treatment agency. "Substance use disorder treatment agency" means an approved treatment facility or program licensed pursuant to Title 5, chapter 521.

[PL 2023, c. 241, §58 (NEW).]

33. Supervision. "Supervision" means a supervisor is physically present and immediately able to respond to the needs of protected individuals through an ongoing and verifiable process for the duration of conditional employment.

[PL 2015, c. 299, §25 (NEW).]

34. Temporary nurse agency. "Temporary nurse agency" means an agency registered pursuant to chapter 417 or an agency that places temporary health care professionals in direct access positions in the State that is not otherwise required to register in the State.

[PL 2015, c. 299, §25 (NEW).]

35. Waiver. "Waiver" means an exemption granted by the department to a specific individual who is banned from employment as a direct access worker for a disqualifying offense.

[PL 2015, c. 299, §25 (NEW).]

SECTION HISTORY

PL 2015, c. 299, §25 (NEW). PL 2019, c. 660, §§1-6 (AMD). PL 2023, c. 176, §37 (AMD). PL 2023, c. 241, §§48-58 (AMD). PL 2023, c. 309, §§41-44 (AMD). PL 2023, c. 309, §45 (AFF).

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