

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

This document describes what was included as of December 2010 in Arizona statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Arizona has 14 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 five 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, personal care service providers, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the five listed facility or provider types are fingerprinted
Rap back	Not addressed.
Provisional employment	The statutes and regulations indicate that the State allows for provisional employment, but do not specify the provisional employment period.
Definition of direct patient access employee	In Arizona, the following are considered direct patient access employees and required to get criminal background checks: facility or provider employees, owners, and contracted persons who provide direct care, home health services, or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	State statutes and regulations indicate that criminal history background check results expire but do not specify the expiration period.

Key Feature	Description
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> 1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1)) 2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2)) 3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3)) 4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4)) 	<ol style="list-style-type: none"> 1. Not addressed. 2. State statutes and regulations may bar LTC employment for convictions of some of these federally mandated disqualifying crimes, but do not cover all possible such crimes. 3. Not addressed 4. State statutes and regulations may bar LTC employment for convictions of some of these federally mandated disqualifying crimes, but do not cover all possible such crimes.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Arizona identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.</p>
<p>Opportunity to contest accuracy of background check findings</p>	<p>Not addressed.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>Not addressed.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>The State’s process takes into account the following: elapsed time since the disqualifying conviction took place, extenuating circumstances, and rehabilitation.</p>
<p>Independence of appeal or review process</p>	<p>The State provides independence of the appeal or review process.</p>

State Statutes and Regulations

Citation	Description
Arizona Revised Statutes (ARS) § 36.411	This has to do with the requirement that owners and employees of residential care institutions, nursing care institutions, and home health agencies, or contracted persons who provide direct care, home health services, or supportive services have a valid fingerprint clearance card or apply for same within 20 days of employment.
ARS § 41-1758.03	This is about issuance of fingerprint clearance cards and disqualifying offenses.
ARS §§ 41-1758.07 and 41-619.55	This has to do with appeals and good cause exceptions.
ARS § 36-446.04; Arizona Administrative Code (AAC) § R4-33-109	This deals with the fingerprint clearance requirement for licensure as a nursing care institution administrator or certification as an assisted living facility manager.
ARS § 36-594.01	This has to do with the fingerprint clearance requirement for employees and volunteers of facilities and programs for people with developmental disabilities, as well as for applicants for certification as a home- or community-based service provider.
ARS § 36-594.0	This has to do with the fingerprint clearance requirement for anyone seeking a license to become an adult developmental home provider.
ARS § 36-207	This has to do with the fingerprint clearance requirement for employees and volunteers in State hospitals (including the Arizona Community Protection and Treatment Center).
ARS § 46-141	This has to do with the fingerprint clearance requirement for employees and volunteers who provide direct services to vulnerable adults served by licensees of the Department of Economic Security (DES), as well as DES contractors.
ARS 13-907	This is about expungement.
AAC R9-10-703(B)(9) and R9-10-7-6(E)(2)(b)	These are regulations regarding fingerprint clearance requirements for people working in assisted living facilities.
AAC R9-10-904(D)(4), R9-10-905(A)(10)(d) and R9-10-905(D)(3)	These are regulations regarding fingerprint clearance requirements for people working in nursing care institutions.
AAC R13-11-101 – R13-11-113	This is about Board of Fingerprinting regulations.
AAC R13-1-101 – R13-1-109	These are Department of Public Safety regulations regarding criminal history records.
AAC R13-1-401	These are Department of Public Safety regulations regarding non-criminal justice fingerprint processing charges.

Key

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§§ - Sections

Appendix A – State-identified Disqualifying Convictions

A person who is subject to registration as a sex offender in this State or any other jurisdiction, or who is awaiting trial, is disqualified.

A person is disqualified if he or she has been convicted of committing, attempting, soliciting, facilitating, or conspiring to commit one or more of the following offenses in this State or the same or similar offenses in another State or jurisdiction:

- sexual abuse of a vulnerable adult,
- incest,
- homicide, including first or second degree murder, manslaughter, and negligent homicide,
- sexual assault,
- sexual exploitation of a minor,
- sexual exploitation of a vulnerable adult,
- commercial sexual exploitation of a minor,
- commercial sexual exploitation of a vulnerable adult or child,
- child abuse,
- felony child neglect,
- sexual conduct with a minor,
- molestation of a child,
- molestation of a vulnerable adult,
- dangerous crimes against children as defined in Arizona Revised Statutes Title 13, Criminal Code Section 13-705,
- exploitation of minors involving drug offenses,
- taking a child for the purpose of prostitution,
- neglect or abuse of a vulnerable adult,
- sex trafficking,
- sexual abuse,
- production, publication, sale, possession, and presentation of obscene items,
- furnishing harmful items to minors,
- furnishing harmful items to minors by internet activity,
- obscene or indecent telephone communications to minors for commercial purposes,
- luring a minor for sexual exploitation,
- enticement of persons for purposes of prostitution,
- procurement by false pretenses of person for purposes of prostitution,
- procuring or placing persons in a house of prostitution,
- receiving earnings of a prostitute,

- causing one's spouse to become a prostitute,
- detention of persons in a house of prostitution for debt,
- keeping or residing in a house of prostitution or employment in prostitution,
- pandering,
- transporting persons for the purpose of prostitution, polygamy, and concubinage,
- portraying an adult as a minor,
- admitting minors to public displays of sexual conduct,
- any felony offense involving contributing to the delinquency of a minor,
- unlawful sale or purchase of children,
- child bigamy,
- any felony offense involving domestic violence as defined in Arizona Revised Statutes Title 13, Criminal Code Section 13-3601 except a felony offense involving criminal damage in an amount of more than \$250 but less than \$1,000 if the offense was committed before the effective date of this section,
- any felony assault or related offense as defined in Arizona Revised Statutes Title 13, Chapter 12, if committed within five years of applying for a Level I fingerprint clearance card,
- felony drug- or alcohol-related offenses if committed within five years of applying for a Level I fingerprint clearance card,
- felony indecent exposure,
- felony public sexual indecency,
- terrorism, and
- any offense involving a violent crime as defined in Arizona Revised Statutes Title 13, Criminal Code Section 13-901.03.