

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

This document describes what was included as of December 2010 in Arkansas statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Arkansas has five 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, LTC hospitals, personal care service 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 and other States' registries.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment, but do not clarify the provisional employment period.
Definition of direct patient access employee	Arkansas does not have a definition of direct patient access employee. However, in Arkansas, the following individuals are required to have criminal background checks: employees who have unsupervised access to residents/clients of a service provider and provide care to residents/clients of a service provider on behalf of, under supervision of, or by arrangement with the service provider, or are employed by a service provider to provide care to residents (clients) of the service provider, to include temporary employees placed by an employment agency. Note: All employees with direct access are included. Volunteers, family members, and administrative staff with no access are not included in this definition.
Provision of criminal background check results to employee	State statutes and regulations indicate that the State provides results to employees; our research, however, did not find any information indicating that the results are provided at no cost to the employee.
Expiration of criminal history background check results	State statutes and regulations indicate that criminal history background check results expire every five years.

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. Arkansas 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>The State provides a way to contest the accuracy of background check findings.</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>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

State Statutes and Regulations

Citation	Description
Arkansas Code Annotated (A.C.A.) § 20-33-213	This is about criminal history and registry records checks required.
A.C.A. § 20-38-101 – 20-38-112	This provides specifics on criminal background check procedures for many types of entities.
A.C.A. § 12-12-1013	This is about the right to review and challenge criminal history information maintained by the State Police.
Arkansas Administrative Rules (AR Admin. r.) #016.06	These are regulations for the background check program.
AR Admin. r #007.05.09-001	This is about conducting criminal history records checks for home health, hospice, and private care agencies in Arkansas.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are:

- Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy,
- capital murder,
- murder,
- negligent homicide,
- kidnapping,
- false imprisonment of the first degree,
- permanent detention or restraint,
- robbery,
- battery,
- assault,
- coercion,
- introduction of controlled substance into body of another person,
- terroristic threatening,
- terroristic act,
- any sexual offense,
- voyeurism,
- death threats concerning a school employee or student,
- incest,

- domestic battery,
- interference with visitation,
- interference with court-ordered custody,
- endangering the welfare of an incompetent person,
- endangering the welfare of a minor,
- contributing to the delinquency of a minor,
- contributing to the delinquency of a juvenile,
- permitting abuse of a minor,
- soliciting money or property from incompetents,
- engaging children in sexually explicit conduct for use in visual or print media,
- pandering or possessing visual or print medium depicting sexually explicit conduct involving a child,
- transportation of minors for prohibited sexual conduct,
- employing or consenting to the use of a child in a sexual performance,
- producing, directing, or promoting a sexual performance by a child,
- computer crimes against minors,
- felony abuse of an endangered or impaired person,
- theft of property,
- theft of services,
- theft by receiving,
- forgery,
- criminal impersonation,
- financial identity fraud,
- arson,
- burglary,
- breaking or entering,
- resisting arrest,
- felony interference with a law enforcement officer,
- cruelty to animals,
- felony violation of the Uniform Controlled Substances Act,
- public display of obscenity,
- promoting obscene materials,
- promoting obscene performance,
- obscene performance at a live public show,
- prostitution,
- patronizing a prostitute,
- promotion of prostitution,
- stalking,

- criminal use of a prohibited weapon,
- simultaneous possession of drugs and firearms, and
- unlawful discharge of a firearm from a vehicle.