

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

This document describes what was included as of June 2011 in California statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. California has 17 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 six 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, adult day care, residential care providers, and intermediate care facilities for the mentally retarded (ICF-MRs).
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the six listed facility or provider types are fingerprinted.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	In California, LTC facility and provider types have separate specific requirements that determine who is considered a direct patient access employee and therefore requires a background check. For providers administered by the Department of Social Services, to include adult day care and residential care facilities for the elderly, any staff person, volunteer, or employee who has contact with clients or the potential for direct contact with clients must undergo a background check. For Department of Health-administered providers, such as home health agencies and skilled nursing facilities, only staff with direct care access require background checks. Staff with direct care access refers to all facility staff who are trained and experienced in the care of persons and who directly provide program and nursing services to clients.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Statutes and regulations indicate that criminal background check results expire, but do not clarify 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. Not addressed. 3. Not addressed. 4. Not addressed.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. California identifies many specific 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 takes rehabilitation into account in negative fitness determinations.</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
California Welfare & Institutions Code §§ 15670 – 15675 and § 15660	This is about criminal background check requirements for nurse assistants and certified home health aides (in the Elder Abuse and Dependent Adult Civil Protection Act).
California Health and Safety Code (H.S.C.) § 1569.17	This is about criminal background check requirements for operators, managers, and certain employees of residential care facilities for the elderly, which fall under the authority of the Department of Social Services (DSS).
California H.S.C. § 1569.58	This is about exclusion from employment by DSS.
California H.S.C. §§ 1338.5, 1337	This is about criminal background checks for certified nursing assistants in skilled nursing facilities and nursing facilities, which fall under the authority of the Department of Public Health (DPH).
California H.S.C. § 1728.1	This is about criminal background check requirements for owners, administrators, program directors, and fiscal officers of home health agencies.
California H.S.C. §§ 1736.1 – 1736.7	This is about criminal background check requirements for home health aides, which fall under the authority of DPH.
California H.S.C. § 1265.5	This is about criminal background check requirements for licensees and employees of ICF-MRs, which fall under the authority of DPH.
California H.S.C. § 1416.26	This is about the criminal background check requirement for licensure as nursing home administrator.
California H.S.C. § 1743.9	This is about criminal background check requirements for owners, administrators, program directors, and fiscal officers of private duty nursing agencies.
California H.S.C. § 1522 (see California H.S.C. § 1502(a))	This is about criminal background checks for licensees, administrators, certain employees, and others working in adult day care programs.
California Penal Code (P.C.) § 1203.4	This deals with expungement.
California P.C. §§ 4852.01 – 4852.21	This is about requirements and procedures for obtaining a certificate of rehabilitation and pardon, which, with other factors, may result in an employment bar being lifted by DSS.
California Code of Regulations (C.R.) Title 22 §§ 87355 – 87356	These regulations are about criminal background checks and hiring exclusions for employees of residential care facilities for the elderly; disqualifying crimes; and exemptions.
California C.R. Title 22 § 87819	This regulation is about criminal background checks for the licensees, chief executive officers, administrators, supervisors, and all persons or employees who have contact with the residents of residential care facilities for the chronically ill.

Citation	Description
California C.R. Title 22 §§ 82019 – 82019.1	This regulation is about adult day care criminal clearance and exemption.
California C.R. Title 22 § 74749(b)(2)	This regulation is about home health aide certification and criminal records.
California C.R. Title 22 § 71851	This regulation is about procedures and criteria for denying or revoking certification of a certified nursing assistant

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are:

- For residential care facilities for the elderly only: Any crime other than a minor traffic violation for which the fine was less than \$300 and an exemption has not been granted.
- For owners, administrators, program directors, and fiscal officers of private duty nursing agencies only: A felony or any crime that evidences an unfitness to provide private duty nursing services.
- For home health agencies only: A felony or any crime that evidences an unfitness to provide home health services.
- For adult day care facilities only: Conviction of any crime other than a minor traffic violation or arrest for any of the following:
 - any crime requiring registry as a sex offender,
 - assault with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury,
 - willfully causing physical injury to a spouse, child, former spouse, mother or father of one's child, co-habitant, or former co-habitant by physical force,
 - criminal child abuse or neglect as described in Penal Code § 273a(b), or
 - "any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated."
- For certified home health aides and licensees of ICF-MRs:
 - murder with malice aforethought,
 - voluntary manslaughter,
 - mayhem,
 - torture,
 - kidnapping,
 - violation of Penal Code § 209,

- representation of oneself as able to obtain the release of a kidnap victim for purposes of obtaining a ransom or reward,
- taking of hostage,
- robbery,
- assault with intent to commit mayhem, rape, sodomy, oral copulation, or various other unlawful sexual acts,
- administration of chloroform, ether, laudanum, or any controlled substance, anesthetic, or intoxicating agent with intent thereby to enable or assist himself or herself or any other person to commit a felony,
- sexual battery,
- assault with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury,
- rape,
- rape of one's spouse,
- rape when voluntarily acting in concert with another person,
- forced marriage,
- enticement of a chaste unmarried female under 18 into prostitution,
- tricking a person into prostitution, living with another person, or various sexual acts against his or her will by fraudulent inducement or representation,
- payment or receipt of remuneration for placing a person in custody for immoral purposes,
- forcing one's wife into prostitution,
- paying a prostitute,
- knowingly deriving financial support from prostitution;
- pandering,
- promoting or assisting in child sexual abuse,
- removing a child under 18 from parent or guardian for purposes of prostitution,
- payment or receipt of remuneration for the placement for adoption or for the consent to an adoption of a child (other than by a licensed adoption agency or adoption services provider),
- knowingly obtaining lawful financial benefits intended to pay maternity-connected medical or hospital and necessary living expenses of the mother preceding and during confinement as an act of charity (but not contingent upon placement of the child for adoption, consent to the adoption, or cooperation in the completion of the adoption) from two or more prospective adoptive families without disclosing that there are two or more such families, or if the aggregate amount collected exceeds the reasonable maternity-connected medical or hospital and necessary living expenses of the mother preceding and during the pregnancy,
- willfully causing physical injury to a spouse, child, former spouse, mother or father of one's child, co-habitant, or former co-habitant by physical force;

- incest,
- sodomy against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury,
- oral copulation upon a person known to be unconscious of the nature of the act due to unconsciousness, sleep, or fraud,
- oral copulation against the victim's will when voluntarily acting in concert with another person,
- oral copulation upon a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent,
- repeated child sexual abuse by a person living in the same home or with recurring access to the child,
- sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,
- fleeing to California with the intent of avoiding prosecution for certain offenses,
- elder abuse or neglect as described in Penal Code § 368,
- arson,
- burglary,
- forgery,
- theft,
- unlawful diversion of funds paid for services, labor, materials, or equipment,
- grand theft,
- making or altering an access card with intent to defraud,
- publishing the number or code of an existing, canceled, revoked, expired, or nonexistent access card, personal identification number, computer password, access code, debit card number, bank account number, or the numbering or coding which is employed in the issuance of access cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful charge, or with intent to defraud or aid another in defrauding,
- petty theft,
- receiving stolen property,
- embezzlement, and
- extortion.