

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

This document describes what was included as of January 2011 in Colorado statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Colorado has nine 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 all nine of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act): skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, LTC hospitals, personal care service providers, adult day care agencies, residential care providers, and intermediate care facilities for the mentally retarded.
Registry checks	Not addressed.
Fingerprinting	Some applicants for employment with one of the nine listed facility or provider types are fingerprinted.
Rap back	If a fingerprint is obtained for health facility licensure purposes then rap back is activated. Rap back for applicants for employment is not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	In Colorado, the Department of Public Health and Environment does not have a definition for direct patient access employee. However, the Department of Human Services (DHS) defines direct contact as providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to vulnerable persons, regardless of the level of supervision of the employee. Direct contact may be included in positions in which persons have access to or unsupervised time with clients or patients.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Not addressed.

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. Colorado identifies disqualifying convictions for applicants seeking to become DHS employees or contractors. 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 challenge the content of a criminal justice record.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State does not provide the ability to remove a hiring prohibition based on rehabilitation factors.</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
Colorado Revised Statutes (Colo. Rev. Stat). § 25-1-124.5	This indicates that a nursing care facility (or the person seeking employment at a nursing care facility) must obtain a State criminal background check of a new employee within 90 days prior to the beginning of employment, and may obtain Federal criminal background checks.
Colo. Rev. Stat. § 25-27.5-107	This is about home care agencies obtaining criminal background checks of employees within 90 days prior to the beginning of employment.
Colo. Rev. Stat. §§ 25-1.5-301 – 1.5-302	This indicates that assisted living residences, adult day care facilities, and alternative care facilities that have unlicensed personnel administering medication must complete a drug-related criminal background check on each employee prior to employment.
Colo. Rev. Stat. § 27-90-111	This has to do with criminal background checks for State employees who have direct contact with vulnerable persons in facilities or programs operated by the Department of Human Services.
Colo. Rev. Stat. § 24-72-307	This is about the procedures used to correct inaccuracies in criminal records.
6 Code of Colorado Regulations (C.C.R.) 1011-1-24-4.2	This regulation deals with facility policies and procedures regarding employee criminal background checks.
6 C.C.R. 1011-1-07-1.104(3)(b)(i)(C), 1011-07-1.104(3)(c), and 1101-07-1.104(3)(d)	This regulation is about assisted living residences and their owners, employees, and volunteers.
6 C.C.R. 1011-1-26-5.2(D), 5.3(D)	This regulation is about home care agencies and their owners and licensees regarding facility licensure requirements.
6 C.C.R. 1011-1-26-6.3	This regulation is about home care agencies and their employees.

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions for State employees and contractors are:

- a crime of violence,
- any felony offense involving unlawful sexual behavior,
- any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence,
- any felony offense of child abuse, and

- any felony offense in any other State, the elements of which are substantially similar to the elements of any of the offenses described above.

Furthermore, a person is disqualified from being an employee or contractor if less than 10 years have passed since the person was discharged from a sentence imposed for conviction of any of the following:

- third degree assault,
- any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence,
- violation of a protection order,
- any misdemeanor offense of child abuse,
- any misdemeanor offense of sexual assault on a client by a psychotherapist, or
- any misdemeanor offense in any other State, the elements of which are substantially similar to the elements of any of the offenses described above.