

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

This document describes what was included as of January 2011 in Delaware statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Delaware has 10 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	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries.
Fingerprinting	All applicants for employment with one of the six listed facility or provider types are fingerprinted.
Rap back	Not addressed.
Provisional employment	The State allows provisional employment for a period of two months.
Definition of direct patient access employee	For home health agencies specifically, a direct patient access employee is any individual seeking employment in a private residence for the purpose of providing for the health, safety, and well-being of an individual in that residence who is unable as a result of physical or mental capacity to provide these things for himself or herself in an adequate manner. This definition specifically excludes any person directly related to the person needing care.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	The statutes and regulations indicate that criminal background check results expire after a period of 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. 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. 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. Delaware identifies various disqualifying convictions for employees of nursing facilities, assisted living facilities, ICF-MRs, neighborhood group homes, family care homes, and rest residential facilities. 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 does not provide a way to contest the findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State does not provide the individual a way 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
16 Delaware Code (Del.C.) § 1141	This is about criminal background checks for employees and temporary employees of nursing facilities, assisted living facilities, ICF-MRs, neighborhood group homes, family care homes, and rest residential facilities.
16 Del.C. § 1145	This is about criminal background checks for employees and temporary employees of home health agencies and for "private healthcare givers in the resident's own home."
11 Del.C. § 8564	This deals with the mandatory pre-employment check of the Adult Abuse Registry by hospitals, nursing facilities (as described in 16 Del.C. § 1141), and home health agencies.
16 Del.C. § 5139	This deals with criminal background checks for employees of the Delaware Psychiatric Center.
11 Del.C. Chapter. 4300	This deals with expungement of criminal records (not generally available for disqualifying crimes).
16 Delaware's Administrative Code (Del.Admin.C.) §§ 3105.1.0 – 3105.14.8	These regulations are about criminal background checks for employees and temporary employees of nursing facilities, assisted living facilities, ICF-MRs, neighborhood group homes, family care homes, and rest residential facilities. Included is a list of disqualifying crimes.
16 Del.Admin.C. §§ 3100	These are regulations on criminal background checks for employees and temporary employees of home health agencies.
16 Del.Admin.C. §§ 3000 – 3101	These are regulations regarding the Adult Abuse Registry.
16 Del.Admin.C. § 3201.5.5	This regulation discusses the obligation of nursing facilities and skilled nursing facilities to keep results of criminal background checks and Adult Abuse Registry checks in personnel files.
16 Del.Admin.C. §§ 4402.13.1 and 13.2	These regulations are about adult day care providers' obligation to check the Adult Abuse Registry; adult day care providers may not employ any person who has been convicted of a crime where the victim was a person, regardless of whether the crime was a felony or a misdemeanor.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

Delaware statutes and regulations identify more than 100 disqualifying convictions. The State-identified disqualifying convictions for nursing facilities, assisted living facilities, ICF-MRs, neighborhood group homes, family care homes, and rest residential facilities include but are not limited to:

- certain Class A misdemeanors,

- second degree reckless endangering,
- third degree assault,
- abuse of a sports official,
- terroristic threatening of a person under 62 years old,
- certain acts of terroristic threatening by a person under 18 years old,
- unlawfully administering drugs,
- self-abortion,
- first degree indecent exposure,
- incest,
- third degree unlawful sexual contact,
- second degree unlawful imprisonment,
- interference with custody,
- coercion, if convicted within the last 5 years,
- any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug, if convicted within the last 5 years,
- any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug, if convicted within the last 10 years, and
- any violent felony, as specified in 11 Del.C. §4201(c), if convicted within the last 5 years.