

Information in State statutes and regulations relevant to the National Background Check Program: District of Columbia

This document describes what was included as of June 2011 in the District of Columbia's (D.C.) statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. The District of Columbia has seven 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	D.C. 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, hospice care providers, residential care providers, and intermediate care facilities for the mentally retarded (ICF-MRs).
Registry checks	Statutes and regulations indicate that D.C. conducts a D.C.-based search of abuse and neglect registries.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	D.C. does not define direct patient access employee. However, it does require facilities to conduct background checks on any unlicensed employee or contractor who functions in a complementary or assistance role to a licensed health care professional in providing direct patient care or carrying out common nursing tasks.
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. D.C. 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. D.C. identifies a number of 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>D.C. does not provide the individual a way to contest the findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>D.C. 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
District of Columbia Code (D.C. Code) §§ 44-551 – 44-554 (2001)	This is about mandatory pre-employment national criminal background checks for employees and contract workers in nursing facilities, home health agencies, hospices, and ICF-MRs.
D.C. Code § 44-107.01(d)(11) (2001)	This is deals with assisted living facilities maintaining personnel records for each employee that include documentation of criminal background checks.
D.C. Code § 44-102.01	This contains relevant definitions.
D.C. Superior Court Rules of Criminal Procedure, Rule 32(f)(2)	This deals with expungement upon discharge from probation.
22B D.C. Municipal Regulations (DCMR) §§ 4700 – 4799	These are regulations for background checks under the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998.
22B DCMR § 3202.3	This is regulation indicating that a nursing facility may not employ a person whose name appears on the nurse aide abuse registry or who has been convicted of a crime involving one of the following with regard to a resident or an individual within that person's care: physical or sexual abuse or mistreatment; financial exploitation or misappropriation of property; or neglect.
22B DCMR § 3907.2	This is about home health agencies and personnel records.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are:

- murder, attempted murder, or manslaughter,
- arson,
- assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm,
- burglary,
- robbery,
- kidnapping,
- theft, fraud, forgery, extortion, or blackmail,
- illegal use or possession of a firearm,

- rape, sexual assault, sexual battery, or sexual abuse,
- child abuse or cruelty to children, and
- unlawful distribution or possession with intent to distribute a controlled substance.