

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

This document describes what was included as of January 2011 in Florida statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Florida has 12 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.

<b>Key Feature</b>	<b>Description</b>
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, personal care service providers, 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 eight listed facility or provider types are fingerprinted.
Rap back	The State allows fingerprints to be retained for rap back purposes.
Provisional employment	The State does not allow provisional employment.
Definition of direct patient access employee	Florida does not define direct patient access employee. However, in Florida, the following individuals are required to undergo criminal background checks: any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to (1) provide personal care or services directly to clients or (2) have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Statutes and regulations indicate that each person must undergo rescreening every five years.

<b>Key Feature</b>	<b>Description</b>
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> <li>1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))</li> <li>2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))</li> <li>3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))</li> <li>4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))</li> </ol>	<ol style="list-style-type: none"> <li>1. State statutes and regulations bar LTC employment for convictions of Medicaid federally mandated disqualifying crimes.</li> <li>2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> <li>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.</li> <li>4. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> </ol>
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Florida 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>The State provides the individual with a way to contest the findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State provides a way to remove hiring prohibition based on rehabilitation factors.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>The State’s process takes into account the following: elapsed time since the disqualifying conviction took place, extenuating circumstances, and rehabilitation.</p>
<p>Independence of appeal or review process</p>	<p>Florida provides for an independent appeal or review process.</p>

## State Statutes and Regulations

Citation	Description
Florida Statutes Chapter (F.S. C.) 435 §§ 01 - 11	This deals with general rules for employee background screening; Level 2 background screening is described and disqualifying offenses are listed in F.S. C. 435 § 04. Exemptions from disqualification are listed in F.S. C. 435 § 07.
F.S. C. 408 § 809	This deals with Level 2 background screening conducted through the Agency for Health Care Administration (AHCA) for the following persons connected to the licensee or provider: (i) the licensee, if an individual, (ii) the administrator or a similarly titled person who is responsible for the day-to-day operation of the provider, (iii) the financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider, (iv) any person who is a controlling interest if AHCA has reason to believe that such person has been convicted of a disqualifying offense, and (v) any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients.
F.S. C. 400 § 215	This is about the Level 2 background screening requirement for nursing home personnel.
F.S. C. 400 § 512	This is about the Level 2 background screening requirement for home health agency personnel, nurse registry personnel and contractors, and companions and homemakers.
F.S. C. 400 § 964	This is about the Level 2 background screening requirement for ICF-MR personnel.
F.S. C. 400 § 6065	This is about the Level 2 background screening requirement for hospice personnel.
F.S. C. 429 § 174	This is about the Level 2 background screening requirement for assisted living facility personnel.
F.S. C. 429 § 919	This is about the Level 2 background screening requirement for adult day care center personnel.
F.S. C. 120	This deals with hearing procedures for contesting an agency head's denial of an exemption (see F.S. C. 435. § 07(c)(3)).
Florida Administrative Code (F.A.C.) Rule 59A-35.090	This is AHCA regulation on background screening procedures and procedures for seeking exemption from disqualification.

Citation	Description
F.A.C. Rule 59A-35.060(6)(b)	This is AHCA regulation on the licensure application process.
F.A.C. Rule 58A-5.019(1)(a)(3), (1)(c), (3)	This is about staffing standards for assisted living facilities.

Key

§ - Section

§§ - Sections

**Appendix A – State-identified Disqualifying Convictions**

The State-identified disqualifying convictions are:

- Medicaid provider fraud,
- Medicaid fraud,
- domestic violence,
- fraudulent acts through mail, wire, radio, electromagnetic, photo-electronic, or photo-optical systems,
- false and fraudulent insurance claims,
- patient brokering,
- criminal use of personal identification information,
- obtaining a credit card through fraudulent means,
- fraudulent use of credit cards, if the offense was a felony,
- forgery,
- uttering forged instruments,
- forging bank bills, checks, drafts, or promissory notes,
- uttering forged bank bills, checks, drafts, or promissory notes,
- fraud in obtaining medicinal drugs,
- sale, manufacture, delivery, or possession (with the intent to sell, manufacture, or deliver) of any counterfeit controlled substance, if the offense was a felony,
- sexual misconduct with certain developmentally disabled clients,
- sexual misconduct with certain mental health patients,
- adult abuse or neglect, or exploitation of aged persons or disabled adults,
- murder,
- manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child,
- vehicular homicide,
- killing of an unborn quick child by injury to the mother,
- assault, battery, and culpable negligence, if the offense was a felony,

- assault, if the victim of the offense was a minor,
- battery, if the victim of the offense was a minor,
- kidnapping: false imprisonment, luring, or enticing a child,
- taking, enticing, or removing a child beyond the State limits with criminal intent pending custody proceedings,
- carrying a child beyond the State lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person,
- exhibiting firearms or weapons within 1,000 feet of a school,
- possessing an electric weapon or device, destructive device, or other weapon on school property,
- sexual battery,
- prohibited acts of persons in familial or custodial authority,
- unlawful sexual activity with certain minors,
- prostitution,
- lewd and lascivious behavior,
- lewdness and indecent exposure,
- arson,
- burglary,
- voyeurism, if the offense is a felony,
- video voyeurism, if the offense is a felony,
- theft, robbery, and related crimes, if the offense is a felony,
- fraudulent sale of controlled substances, if the offense is a felony,
- abuse, aggravated abuse, or neglect of an elderly person or disabled adult,
- lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult,
- exploitation of an elderly person or disabled adult, if the offense was a felony,
- incest,
- child abuse, aggravated child abuse, or neglect of a child,
- contributing to the delinquency or dependency of a child,
- negligent treatment of children,
- sexual performance by a child,
- resisting arrest with violence,
- depriving a law enforcement, correctional, or correctional probation officer means of protection or communication,
- aiding in an escape,
- aiding in the escape of juvenile inmates in correctional institutions,
- obscene literature,
- encouraging or recruiting another to join a criminal gang,

- felony offenses related to controlled substances, and such offenses if any other person involved in the offense was a minor,
- sexual misconduct with certain forensic clients,
- inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm,
- escape,
- harboring, concealing, or aiding an escaped prisoner,
- introduction of contraband into a correctional facility,
- misconduct in juvenile justice programs,
- introduction of contraband into a detention facility,
- any offense that constitutes domestic violence as defined by Florida statute (any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member), whether such act was committed in Florida or in another jurisdiction.