

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

This document describes what was included as of January 2011 in Hawaii statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Hawaii has four 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 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, LTC hospitals, adult day care, residential care providers, and intermediate care facilities for the mentally retarded (ICF-MRs).
Registry checks	Not addressed.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	Hawaii does not define direct patient access employee. However, in Hawaii, background checks are required for any individual, including a volunteer, who has access to a patient or resident of a health care facility or any other provider through employment or through an agreement or contract with such a facility or provider. Such individuals include but are not limited to: physicians, nurses, nursing assistants, home health aides, therapists, activities personnel, and support staff (i.e., housekeeping, dietary, etc.) that have direct access to patients or patients' belongings.
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. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes. 2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes. 3. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes. 4. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Hawaii identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.
Opportunity to contest accuracy of background check findings	Not addressed.
Ability to remove hiring prohibition based on rehabilitation factors	Not addressed.
Rehabilitation/mitigation process for negative fitness determinations	Not addressed.
Independence of appeal or review process	Not clear.

State Statutes and Regulations

Citation	Description
Hawaii Revised Statutes (HRS) §§ 321-15.2 and 846-2.7(b)(3)	This deals with background checks by the Department of Health on all applicants for licensure, operators, prospective employees, and volunteers for one or more of the following: a skilled nursing facility, an intermediate care facility, an adult residential care home, an expanded adult residential care home, an assisted living facility, a home health agency, hospice, an adult day health center, a special treatment facility, a therapeutic living program, an ICF-MR, a hospital, a rural health center, and/or a rehabilitation agency, and, in the case of any of the above facilities or providers operating in a private residence, on any adult living in the residence other than the client.
HRS § 846-2.7	This is about the basic authority for State agencies to conduct background checks.
HRS §§ 346-97 and 346-335	This is about background checks for workers and volunteers in adult day care facilities.
HRS § 846.32	This is about the correction of errors in Hawaii Criminal Justice Center data.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions include, but are not limited to:

- murder,
- manslaughter,
- assault,
- sex offenses,
- domestic violence,
- theft or forgery,
- arson,
- kidnapping, and
- possession, use, sale, manufacture, or distribution of dangerous drugs or controlled substances.