

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

This document describes what was included as of July 2012 in Idaho statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Idaho 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	The State covers seven 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, personal care service providers, adult day care, residential care providers, and intermediate care facilities for the intellectually disabled (ICF-ID's).
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries, as well as a search of other States' records – licensure, etc.
Fingerprinting	All applicants for employment with one of the seven listed facility or provider types are fingerprinted.
Rap back	Not addressed.
Provisional employment	Applicants may work at LTC facilities provisionally while their background checks are in progress, provided they meet certain criteria; criteria vary by facility type.
Definition of direct patient access employee	Idaho does not have a definition of direct patient access employee. However, background checks are required for those employees or contractors who have direct access to vulnerable adults.
Provision of criminal background check results to employee	Applicant is able to obtain his or her background check results via self-service interface through website. Applicant is able to request and obtain detailed Federal data upon written request.
Expiration of criminal history background check results	There is no expiration date on results; however, there are time limits based on portability of background check results to use for other LTC facilities or for other allowable purposes.

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.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Idaho identifies various 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 does provide an opportunity to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>Not addressed.</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, rehabilitation, and relevance of the conviction to the job in question.</p>
<p>Independence of appeal or review process</p>	<p>The State provides an independent appeal or review process.</p>

State Statutes and Regulations

Citation	Description
Idaho Code (I.C.) § 56-1004A	This is about authorization by the Department of Health and Welfare to conduct criminal background checks of individuals who provide care or services to vulnerable adults or children.
I.C. § 39-5302(10)	This includes the definition of “vulnerable adult.”
Idaho Administrative Procedure Act (IDAPA) 16.05.06	This is Department of Health and Welfare regulation addressing the criminal background check program.
IDAPA 16.03.07.009	This is about criminal background checks for employees of home health agencies.
IDAPA 16.03.10.009.04	This regulation includes a list of the types of providers that are subject to the employee criminal background check requirements.
IDAPA 16.03.11.009	This has to do with criminal background checks for employees of ICF-IDs.
IDAPA 16.03.22.009	This has to do with criminal background checks for employees of residential care or assisted living facilities.

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Appendix A – State-identified Disqualifying Convictions

Idaho statutes and regulations identify some permanently disqualifying convictions and some convictions that would disqualify an individual for 5 years. State regulations indicate that it is permissible to consider substantially conforming foreign convictions when making a fitness determination. The permanently disqualifying crimes are more severe and include crimes such as rape, murder, and kidnapping. The 5-year crimes are less severe and include crimes such as third degree arson and computer crimes.

The State-identified disqualifying convictions that lead to a permanent bar to employment are:

- abuse, neglect, or exploitation of a vulnerable adult,
- aggravated, first-degree, or second-degree arson,
- crimes against nature,
- forcible sexual penetration by use of a foreign object,
- incest,
- injury to a child, felony or misdemeanor,
- kidnapping,
- lewd conduct with a minor,
- mayhem,
- murder in any degree,

- voluntary, involuntary, or felony vehicular manslaughter,
- assault,
- battery with intent to commit a serious felony,
- poisoning,
- possession of sexually exploitative material,
- rape,
- robbery,
- felony stalking,
- sale or barter of a child,
- sexual abuse or exploitation of a child,
- video voyeurism,
- enticing of children,
- inducing individuals under 18 years of age into prostitution or patronizing a prostitute,
- any felony punishable by death or life imprisonment, and
- attempt, conspiracy, accessory after the fact, or aiding and abetting to commit any of the permanently disqualifying crimes.

The State-identified disqualifying convictions that lead to a five-year employment disqualification are:

- any felony that is not on the list of State-identified disqualifying convictions that lead to a permanent bar to employment,
- misdemeanor forgery of and fraudulent use of a financial transaction card,
- misdemeanor forgery and counterfeiting,
- misdemeanor identity theft,
- misdemeanor insurance fraud,
- misdemeanor public assistance fraud,
- misdemeanor vehicular manslaughter,
- stalking in the second degree, and
- attempt, conspiracy, accessory after the fact, or aiding and abetting to commit any of the five-year disqualifying crimes.

Additional relevant records that result in a denial action include:

- Inclusion as a substantiated perpetrator in the State child protection registry,
- Negative findings in the State Certified Nursing Assistants registry, and
- Inclusion in the State Medicaid Exclusion List.