

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

This document describes what was included as of June 2012 in Kentucky statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Kentucky has eleven 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 currently requires, as a condition of initial employment, that employees in five of the long term care settings named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) submit to an in-state, name-based criminal record check conducted by the Kentucky State Police or Administrative Office of the Courts, namely: personal care services providers, skilled nursing facilities, nursing facilities, certain residential care providers, and intermediate care facilities for the mentally retarded (ICF-MR).
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of the nurse aide abuse registry (NAR) for prospective employees in home health agencies, family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities, nursing homes, and ICF-MRs.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	Kentucky does not have a definition of direct patient access employee. However, in Kentucky, an employee who has personal or group interaction with a nursing facility resident or senior citizen is required to have a background check.
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. 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. Not addressed. 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.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Kentucky 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	The State does not provide the ability to remove a hiring prohibition based on rehabilitation, except for individuals placed on the NAR for a substantiated finding of neglect, in which case such individuals may petition the State to be removed from the NAR after a period of one year.
Rehabilitation/mitigation process for negative fitness determinations	Not addressed.
Independence of appeal or review process	Not clear.

State Statutes and Regulations

Citation	Description
Kentucky Revised Statutes (KRS) 216.712(2)	This deals with the criminal background checks required for prospective employees of personal service agencies that provide direct services to clients.
KRS 216.785	This law defines the term “crime,” thereby identifying what currently constitutes a disqualifying offense that prohibits employment in a long term care facility (except for in ICF-MRs; see KRS 216.533 below).
KRS 216.789	This deals with the prohibition against employing certain felons in LTC facilities, nursing pools providing staff to nursing facilities, or assisted living communities.
KRS 216.532	This indicates that LTC facilities may not be operated by or employ any person who is listed on the Kentucky Nurse Aide Registry.
KRS 216.710	This includes definitions relevant to KRS 216.532.
KRS 216.533	This deals with the criminal background checks required for employees of LTC facilities operated by the Kentucky Department for Mental Health and Mental Retardation Services. Also, it includes a list of disqualifying crimes.
902 Kentucky Administrative Regulations (K.A.R.) 20:036-3(8)(a)	This regulation indicates that operators and employees of personal care homes shall comply with the requirements of KRS § 216.532.
906 K.A.R. 1:180(6)(2) through (4)	This regulation indicates that an applicant for employment at a personal services agency must, prior to acting as the agency's manager or providing direct services to a client, submit to and have completed (1) a criminal record check and (2) a check of the nurse aide and home health aide abuse registries.
906 K.A.R. 1:100	This deals with the nurse aide abuse registry, the home health aide abuse registry, and relevant hearing procedures.
907 K.A.R. 1:160-6(11)(h) and (i)	This deals with the home and community-based services waiver. It states that a consumer-directed option provider (selected by the consumer) must submit to a criminal background check and a Kentucky Nurse Aide Registry check.
910 KAR 1:240-7(2)(b)	This regulation requires that an on-site review of an assisted living facility include a review of employment records, including evidence of a criminal record check.

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are:

- any felony offense (in any jurisdiction) related to theft,
- abuse or sale of illegal drugs,
- abuse, neglect, or exploitation of an adult or child, and

- a sex crime.

Additionally, state law further provides that a misdemeanor for a crime related to abuse, neglect, or exploitation of an adult is considered a disqualifying offense.