

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

This document describes what was included as of January 2011 in Louisiana statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Louisiana has 11 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 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.
Registry checks	Not addressed.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment while the background check is conducted.
Definition of direct patient access employee	Louisiana does not have a definition of direct patient access employee; however, the following individuals are required to have criminal background checks: any person who is not a licensed health care provider and who provides, for compensation, nursing care or other health-related services to (1) residents in a nursing facility, intermediate care facility for people with developmental disabilities, or adult residential care facility, or (2) people under the care of an adult residential care provider or home- and community-based service provider. Also, a background check is required for any person who provides such services to individuals in their own homes as an employee or contract provider of a home health agency, hospice, or a home- or community-based service provider, or is employed as a driver by or who contracts as a driver with a nonemergency, non-ambulance transportation facility or entity.
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. 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. 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.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Louisiana 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 not provide a way 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>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

State Statutes and Regulations

Citation	Description
Louisiana Revised Statutes Annotated (R.S.) §§ 40:1300.51 through 1300.56	These have to do with mandatory pre-employment (or pre-contracting) background checks for unlicensed individuals who will provide nursing care, health-related services, or supportive assistance to any individual in a variety of health care and residential settings.
R.S. §§ 40:2179 through 2179.2	These have to do with the Direct Service Worker Registry.
R.S. § 40:2120.57	This indicates that medical staffing agencies supplying certified nurse aides for profit must, before employing or contracting with a nurse aide, conduct or have conducted a criminal background check on the individual.
R.S. § 40:2116.32.C(5)	This indicates that the applicant for the initial license for a home health agency must "disclose all felony convictions by submitting proof of criminal background investigations for the owner, administrative persons, and, if the agency is a corporation, all directors."
Louisiana Administrative Code (La. Admin. Code) Title 48 § 9721.A	This is about requiring nursing homes to have criminal background checks conducted on all unlicensed personnel.
La. Admin. Code Title 48 § 6869.B.2	This addresses the requirement that adult residential care providers maintain documentation of criminal history checks in personnel files.
La. Admin. Code Title 48 § 7761.A.4	This addresses the requirement that personal care service providers each have a written policy on criminal history background checks for all unlicensed personnel, to include a policy of checking the National Sex Offender Public Registry (also known as the National Sex Offender Public Website).
La. Admin. Code Title 48 § 7709.D.6	This indicates that criminal background checks are required for all personal care services provider owners, unless the owner is licensed by a State licensing board.
La. Admin. Code Title 48 § 8131.A.4	This addresses the requirement that respite care services providers each have a written policy on criminal history background checks for all unlicensed personnel, to include a policy of checking the National Sex Offender Public Registry (also known as the National Sex Offender Public Website).
La. Admin. Code Title 48 § 8101.D.6	This is about the criminal background check requirement for all respite care services provider owners, except for owners who are licensed by a State licensing board.
La. Admin. Code Title 48 § 8203.E.2.g	This indicates that the application for the initial licensure for a hospice entity must include proof that criminal background checks were conducted on the administrator and all owners.

Key

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Appendix A – State-identified Disqualifying Convictions

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

- solicitation for murder,
- first or second degree murder,
- manslaughter,
- first or second degree feticide,
- criminal assistance to suicide,
- aggravated battery,
- second degree battery,
- aggravated second degree battery,
- simple battery of the infirm,
- aggravated assault,
- assault by drive-by shooting,
- aggravated assault with a firearm,
- mingling harmful substances,
- aggravated rape,
- forcible rape,
- simple rape,
- sexual battery,
- forcible sexual battery,
- oral sexual battery,
- intentional exposure to AIDS virus,
- aggravated kidnapping,
- second degree kidnapping,
- human trafficking,
- arson and use of explosives,
- burglary,
- simple burglary of a pharmacy,
- armed robbery,
- first degree robbery,
- second degree robbery,
- extortion,
- theft of the assets of an aged person or disabled person,
- crime against nature,
- aggravated crime against nature,

- cruelty to the infirmed,
- exploitation of the infirmed,
- sexual battery of the infirmed,
- distribution or possession with the intent to distribute of controlled dangerous substances as listed in Schedules I through V of the Uniform Controlled Dangerous Substances Act, and
- an attempt or conspiracy to commit any of these offenses.