

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

This document describes what was included as of January 2011 in Minnesota statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Minnesota has eight 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, hospice care providers, LTC hospitals, personal care service providers, and residential care providers.
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries.
Fingerprinting	Statutes indicate that fingerprinting can be conducted when the State has reasonable cause to believe that further pertinent information may exist on the subject of a background check.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment, but do not clarify the provisional employment period.
Definition of direct patient access employee	Minnesota does not have a definition of direct patient access employee. However, in Minnesota, each nursing home employee is required to have a background check. At all other LTC facilities, only employees with direct contact with those served by the facility or program need background checks. Having direct contact is defined as providing face-to-face care, training, supervision, counseling, consultation, or medication assistance. Access to persons served by a program is defined as physical access to persons receiving services, or the person's personal property, without continuous, direct supervision. For all facilities, volunteers are not required to have a background check as long as they remain under continuous, direct supervision.
Provision of criminal background check results to employee	The State provides the results of the background check at no cost to the employee.
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 find criminal abuse and criminal neglect of a vulnerable adult, mistreatment of residents or patients, assault against a vulnerable adult, disorderly conduct against a vulnerable adult, and failing to report maltreatment of a vulnerable adult to be disqualifying. 3. State statutes find financial exploitation of a vulnerable adult to be disqualifying. 4. State statutes provide that felony drug and controlled substance convictions are disqualifying.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Minnesota 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 provides a way to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State provides for an administrative reconsideration process, through which the subject of a background check must demonstrate that he or she does not pose a risk of harm to persons receiving services. One of the factors considered is documentation of rehabilitation pertinent to the disqualifying event.</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 independence of the appeal or review process.</p>

State Statutes and Regulations

Citation	Description
Minnesota Statutes (Minn. Stat.) § 144.057	Minnesota statute refers to “background studies” instead of “background checks,” and a “background study” means the review of records conducted by the commissioner to determine whether a subject is disqualified from direct contact with persons served by a program and whether a subject is disqualified from having access to persons served by a program. This statute has to do with background studies on individuals who have direct contact with or provide direct contact services to patients or residents of hospitals, nursing homes, boarding care homes, home health agencies, and other facilities.
Minn. Stat. §§ 245C.01 – 245C.34	This indicates that the background studies should be conducted in compliance with the provisions of Chapter 245C of the Department of Human Services Background Studies Act. Note: Minn. Stat. § 245C.15 specifically indicates the crimes that are disqualifying under Minnesota law.
Minn. Stat. § 144A.46	This indicates that no person may be involved in the management, operation, or control of a home care provider if the person has been disqualified under the provisions of the Department of Human Services Background Studies Act.
Minn. Stat. § 144A.754	This indicates that the employees, contractors, and volunteers of hospice providers are subject to the background study requirement.
Minn. Stat. § 245C.31	This indicates that the health-related licensing board determines the sanctions to be implemented when a licensed individual is found responsible for the substantiated maltreatment of a child or vulnerable adult.
Minn. Stat. §§ 609A.1 through 609A.3	These are about expungement.
Minnesota Administrative Rules (Minn. R.) 4668.0012	This has to do with the background studies required for all persons involved in the management, operation, or control of home care providers as part of the licensure process for home care providers.
Minn. R. 4664.0010 and Minn. R. 4664.0020	These are about requirements for hospice providers.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

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

Causing permanent disqualification:

- violation of Registration of Predatory Offenders law,
- murder in the first, second, or third degree,
- manslaughter in the first or second degree,
- felony assault in the first or second degree,
- felony domestic assault, spousal abuse, child abuse or neglect, or a crime against children,
- domestic assault by strangulation,
- great bodily harm caused by distribution of drugs,
- aggravated robbery,
- kidnapping,
- murder of an unborn child in the first, second, or third degree,
- solicitation, inducement, and promotion of prostitution,
- criminal sexual conduct in the first, second, third, fourth, or fifth degree,
- criminal sexual predatory conduct,
- solicitation of children to engage in sexual conduct,
- incest,
- felony malicious punishment of a child,
- felony neglect or endangerment of a child,
- arson in the first degree,
- drive-by shooting,
- felony-level stalking,
- shooting at or in a public transit vehicle or facility,
- indecent exposure involving a minor,
- prohibited use of minors in sexual performance,
- possession of pictorial representations of minors,
- aiding and abetting, attempt, or conspiracy to commit any of these offenses, and
- an offense in any other State or country, where the elements of the offense are substantially similar to any of these offenses.

Causing 15-year disqualification:

Felony-level violation of any of the following offenses if less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense:

- wrongfully obtaining assistance,
- false representation,
- concealment of facts,
- federal Food Stamp Program fraud,
- criminal vehicular homicide and injury,
- assault in the third or fourth degree,
- repeat offense of assault in the fifth degree,
- crimes committed for the benefit of a gang,

- criminal abuse of a vulnerable adult,
- financial exploitation of a vulnerable adult,
- use of drugs to injure or facilitate crime,
- simple robbery,
- false imprisonment,
- manslaughter of an unborn child in the first degree,
- manslaughter of an unborn child in the second degree,
- assault of an unborn child in the first or second degree,
- injury or death of an unborn child in the commission of a crime,
- coercion,
- attempt to coerce,
- medical assistance fraud,
- aiding an offender,
- aggravated first-degree, or first-degree tampering with a witness,
- theft,
- possession of shoplifting gear,
- bringing stolen goods into Minnesota,
- identity theft,
- receiving stolen property,
- issuance of dishonored checks,
- arson in the second or third degree,
- burglary,
- possession of burglary tools,
- insurance fraud,
- aggravated forgery,
- forgery,
- check forgery,
- offering a forged check,
- obtaining signature by false pretense,
- crime involving dangerous weapons,
- crime involving machine guns and short-barreled shotguns,
- adulteration,
- riot,
- terroristic threats,
- fraud in obtaining credit,
- financial transaction card fraud,
- indecent exposure, not involving a minor,

- repeat offenses of prohibited distribution and exhibition of obscene materials and performances,
- certain crimes related to drugs or controlled substances, and
- conviction involving alcohol or drug use.

If an individual commits one of the offenses on the list of 15-year disqualifying crimes, but the sentencing or level of offense is that for a gross misdemeanor or misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to the gross misdemeanors or misdemeanors. The look-back period is the length of time that the State can “look back” for a particular disqualifying crime or incident.

Causing 10-year disqualification:

Gross misdemeanor-level violation of any of the following offenses, if less than 10 years have passed since the discharge of the sentence imposed, if any, for the offense:

- wrongfully obtaining assistance,
- false representation,
- concealment of facts,
- federal Food Stamp Program fraud,
- criminal vehicular homicide and injury,
- assault in the first, second, third, fourth, or fifth degree,
- assault in the fifth degree by a caregiver against a vulnerable adult,
- domestic assault,
- mistreatment of persons confined,
- mistreatment of residents or patients,
- criminal abuse of a vulnerable adult,
- criminal neglect of a vulnerable adult,
- financial exploitation of a vulnerable adult,
- failure to report maltreatment of a vulnerable adult,
- abduction,
- attempt to coerce,
- other prohibited acts,
- engaging in prostitution as a minor,
- keeping a disorderly house,
- malicious punishment of a child,
- neglect or endangerment of a child,
- medical assistance fraud,
- theft,
- bringing stolen goods into Minnesota,
- identity theft,
- receiving stolen property,
- issuing dishonored checks,

- burglary,
- possession of burglary tools,
- insurance fraud,
- check forgery,
- offering a forged check,
- crime related to dangerous weapons,
- riot,
- disorderly conduct against a vulnerable adult,
- repeat offenses related to interference with privacy,
- stalking,
- fraud in obtaining credit,
- financial transaction card fraud,
- indecent exposure, not involving a minor,
- obscene materials and performances,
- distribution of indecent literature,
- disseminating or displaying harmful materials to minors when doing so is prohibited, and
- violation of an order for protection.

If an individual commits one of the offenses on the list of 10-year disqualifying crimes, but the sentencing or level of offense is that for a misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to misdemeanors.

Note: 10-year disqualification also applies if:

- less than 10 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the above offenses, or
- less than 10 years has passed since the discharge of the sentence imposed for an offense in any other State or country, the elements of which are substantially similar to the elements of the offenses listed immediately above.

Causing 7-year disqualification:

Misdemeanor-level violation of any of the following offenses, if less than 7 years have passed since the discharge of the sentence imposed, if any, for the offense:

- wrongfully obtaining assistance,
- false representation,
- concealment of facts,
- federal Food Stamp Program fraud,
- criminal vehicular homicide and injury,
- assault in the first, second, third, fourth, or fifth degree,
- domestic assault,
- financial exploitation of a vulnerable adult,
- failure to report maltreatment of a vulnerable adult,

- assault of an unborn child in the third degree,
- coercion,
- violation of an order for protection,
- medical assistance fraud,
- theft,
- bringing stolen goods into Minnesota,
- identity theft,
- receiving stolen property,
- issuing dishonored checks,
- insurance fraud,
- crimes involving dangerous weapons,
- crimes involving spring guns,
- interference with privacy,
- making obscene or harassing telephone calls,
- sending an obscene or harassing letter, telegram, or package,
- harassment,
- fraud in obtaining credit,
- financial transaction card fraud,
- indecent exposure, not involving a minor, and
- disseminating or displaying harmful materials to minors when doing so is prohibited.

Note: 7-year disqualification also applies if:

- less than 7 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the above offenses, or
- less than 10 years has passed since the discharge of the sentence imposed for an offense in any other State or country, the elements of which are substantially similar to the elements of these offenses.