

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

This document describes what was included as of January 2011 in New Mexico statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. New Mexico has nine 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 all 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, hospices, LTC hospitals, personal care service providers, adult day care providers, residential care providers, and intermediate care facilities for the mentally retarded.
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the nine listed facility or provider types are fingerprinted.
Rap back	The State has a rap back process in place.
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	New Mexico does not define direct patient access employee. However, the State does define a "caregiver" as a person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider. This definition includes employees, contractors, and volunteers. Everyone who is considered to be a caregiver is required to have a background check. Providers have the authority to determine which employees provide direct care or have routine and unsupervised physical or financial access to a care recipient.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Statutes and regulations indicate that criminal background check results expire, but do not clarify the expiration period.

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 bar LTC employment for convictions of these federally mandated disqualifying 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.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. New Mexico 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>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>Not clear.</p>

State Statutes and Regulations

Citation	Description
New Mexico Statutes (N.M. Stat.) §§ 29-17-2 through 29-17-5	These deal with the Caregivers Criminal History Screening Act.
N.M. Stat. §§ 61-11-14 (A), (B), and (F)(7)	This deals with the Board of Pharmacy's issuance of licenses to hospitals, "custodial care facilities" (i.e., nursing homes, retirement care homes, mental care facilities, and other facilities that provide extended health care), and home care providers that distribute drugs or engage in the provision of drug therapy, and the requirement for the applicants for such licenses to submit criminal background check results.
N.M. Stat. § 61-11-2	This includes definitions related to the item above.
N.M. Stat. §§ 28-2-1 through 28-2-6	This is about the Criminal Offender Employment Act.
N.M. Stat. § 61-3-13	This is about State and national criminal background checks as a prerequisite for licensure as a registered nurse.
N.M. Stat. § 61-3-18	This is about State and national criminal background checks as a prerequisite for licensure as a licensed practical nurse.
N.M. Stat. §§ 61-6-11 (physicians), 61-9-11.2 (psychologists), and 61-11-6.1 (pharmacists)	This indicates that licensing boards may require fingerprinting and a background check for licensure as a physician, psychologist, or pharmacist.
N.M. Stat. § 31-26-16	This is about expungement of criminal records.
New Mexico Administrative Code §§ 7.1.9.1 – 7.1.9.11	This deals with the implementation of the Caregivers Criminal History Screening Act.

Key

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are felony convictions for:

- homicide,
- trafficking controlled substances,
- kidnapping, false imprisonment, aggravated assault, or aggravated battery,
- rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related sexual offenses,
- crimes involving adult abuse, neglect, or financial exploitation,
- crimes involving child abuse or neglect,

- robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud, or receiving stolen property, or
- an attempt, solicitation, or conspiracy involving any of these felonies.