

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

This document describes what was included as of January 2011 in New York statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. New York has five 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.

<b>Key Feature</b>	<b>Description</b>
Specific facility and provider types	The State covers five 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, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the five listed facility or provider types are fingerprinted.
Rap back	Regulations indicate that the State will notify providers when employees face criminal charges or convictions subsequent to hiring.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment during the background check process.
Definition of direct patient access employee	New York does not define direct patient access employee. However, the State defines "employee in direct care and supervision" as (1) any unlicensed person employed by or used by a nursing home who has physical access to a resident's living quarters, or any unlicensed person providing face-to-face care following the resident's care plan; or (2) any unlicensed person employed by or used by a certified home health agency, providing face-to-face care following the professional or paraprofessional plan of care developed for the individual.
Provision of criminal background check results to employee	State regulations indicate that the State provides a written summary of criminal history information to both the provider and the prospective employee.
Expiration of criminal history background check results	State statutes and regulations indicate that fingerprint-based criminal history background check results do not expire.

Key Feature	Description
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> <li>1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))</li> <li>2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))</li> <li>3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))</li> <li>4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))</li> </ol>	<ol style="list-style-type: none"> <li>1. 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.</li> <li>2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> <li>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.</li> <li>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.</li> </ol>
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. New York identifies various disqualifying convictions, any of which can be overcome. 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 the ability to remove a hiring prohibition based on rehabilitation factors. State statutes outline a number of factors that must be considered in determining whether a prospective employee who has a disqualifying conviction should be prohibited from employment. These include public policy considerations, the bearing of the conviction on the employee’s ability to perform the job, the time elapsed since the criminal offense, the age of the person at the time of the criminal offense, and the seriousness of the crime.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>State regulations indicate that a prospective employee who has been denied employment has the opportunity to explain in writing why he or she should be allowed to take the position and the State will consider that information in making a final determination.</p>

<b>Key Feature</b>	<b>Description</b>
Independence of appeal or review process	There is no independent appeal or review process.

### **State Statutes and Regulations**

<b>Citation</b>	<b>Description</b>
New York Public Health Law §§ 2899 through 2899-A	These indicate that specified providers must request the Department of Health to check its permanent record and, if necessary, request criminal history information from Division of Criminal Justice Services with regard to prospective employees who will provide direct care or supervision to patients or residents.
New York Executive Law § 845-b	This has to do with procedures for requesting and processing of criminal history information requests.
New York Correction Law §§ 750 through 755	These are about unfair discrimination against persons previously convicted of one or more criminal offenses prohibited unless (i) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or (ii) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.
New York Correction Law §§ 701 through 706	These are about a Certificate of Relief from Disabilities that removes bar to employment imposed by N.Y. PBH §§ 2899 – 2899-A and makes conviction deemed not to be a "conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment.
New York Codes, Rules and Regulations, Title 10 §§ 402.1 through 402.10	These regulations deal with the Department of Health standards and procedures for criminal history checks.

#### Key

§ - Section

§§ - Sections

### **Appendix A – State-identified Disqualifying Convictions**

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

- any class A felony at any time,
- any class B or C felony within the past 10 years,
- any class D or E felony defined in New York State Penal Law article 120 (assault and related offenses), 130 (sex offenses), 155 (larceny), 160 (robbery), 178 (criminal diversion of prescription medicines or prescriptions), or 220 (controlled substances offenses, not including marijuana, but including concentrated cannabis) within the past 10 years,

- endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person, in the first or second degree, and
- any comparable offense in any other jurisdiction.