

## Information in State statutes and regulations relevant to the National Background Check Program: North Carolina

This document describes what was included as of January 2011 in North Carolina statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. North Carolina has 14 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 four 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, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	Applicants for employment with one of the four listed facility or provider types are fingerprinted only if they have lived in North Carolina for less than 5 years.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State offers provisional employment, but do not clarify the provisional employment period.
Definition of direct patient access employee	North Carolina does not define direct patient access employee. However, background checks are conducted on all home health staff and unlicensed home health contractors entering the person's home. Providers may elect to conduct background checks on volunteers if they choose. For nursing home staff, intermediate care facility for the mentally retarded staff, and residential care provider staff, background checks are conducted on anyone who is unlicensed and who has direct patient access to residents. For adult day care, employees providing direct care are required to have background checks.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Not addressed.

<b>Key Feature</b>	<b>Description</b>
<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. Not addressed.</li> <li>2. Not addressed.</li> <li>3. Not addressed.</li> <li>4. Not addressed.</li> </ol>
State-identified convictions	See Appendix A – State-identified Possible Disqualifying Convictions. North Carolina identifies various possible disqualifying convictions. More information 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	Not addressed.
Rehabilitation/mitigation process for negative fitness determinations	Not addressed.
Independence of appeal or review process	Not addressed.

## State Statutes and Regulations

Citation	Description
North Carolina General Statutes (N.C. Gen. Stat.) § 131E-265	This is about the requirement that every applicant for employment with a nursing home, home health agency, or nursing home contract agency (other than those whose jobs require an occupational license) consent to a criminal history check (a State-only check if the applicant has lived in North Carolina for five years or more; otherwise, a fingerprint-based national check is required). Existing employees changing jobs are subject to the same requirements.
N.C. Gen. Stat. § 131D-40	This is about the requirement that every applicant for employment with an "adult care home" (i.e., assisted living facility) or adult care home contract agency (other than those whose jobs require an occupational license) consent to a criminal history check (a State-only check if the applicant has lived in North Carolina for five years or more; otherwise, a fingerprint-based national check is required).
N.C. Gen. Stat. § 131D-40(d)	This deals with the definition of "relevant offense," which applies to the staff of nursing homes, home health agencies, adult care homes, and contract agencies of nursing homes and adult care homes.
N.C. Gen. Stat. § 114-19.10	This is about the North Carolina Department of Justice (NCDOJ) criminal record checks for staff of adult care homes, nursing homes, home care agencies, and providers of mental health services, developmental disabilities services, and substance abuse services.
N.C. Gen. Stat. § 114-19.3	This authorizes the NCDOJ to conduct background checks when asked to by certain other health care providers.
N.C. Gen. Stat. §§ 114-19.11, 114-19.18, 114-19.25, and 114-19.26	These discuss the issue of the NCDOJ providing State and national criminal record checks when requested by the licensing boards for the following occupations: registered nurse; licensed practical nurse; licensed psychologist or psychological associate; nursing home administrator; and professional counselor.
10A North Carolina Administrative Code (NCAC) 06R .0305(a)(3)	This regulation requires a statewide criminal history record search for all newly-hired employees of adult day programs; the search shall cover the previous five years and shall be conducted by an agency approved by the North Carolina Administrative Office of the Courts.
10A NCAC 06R .0508(b)(8)(B)	This regulation is about adult day care programs keeping individual personnel records evidencing State criminal history checks (for employees providing direct care) for six years.
10A NCAC 13F .0407(a)(7)	This regulation indicates that each staff person at an adult care home shall have a criminal background check in accordance with N.C. Gen. Stat. 114-19.10 and N.C. Gen. Stat. 131D-40.
21 NCAC 32B .1303(a)(19)-(20)	These five regulations deal with the applications for various types of physician licenses; the regulations indicate that each application must include two fingerprint cards and signed consent to a search of local, State, and national files.
21 NCAC 32B .2001(b)(11)-(12)	
21 NCAC 32B .1704(b)(6)-(7)	

Citation	Description
21 NCAC 32B .1702(b)(8)-(9)	
21 NCAC 32B .1402(a)(8)-(9)	

Key

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

The State-identified possible disqualifiers include a county, State, or Federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons, including crimes identified in the following categories:

- counterfeiting and issuing monetary substitutes,
- endangering executive and legislative officers,
- homicide,
- rape and other sex offenses,
- assaults,
- kidnapping and abduction,
- malicious injury or damage by use of explosive or incendiary device or material,
- burglary and other housebreakings,
- arson and other burnings,
- larceny,
- robbery,
- embezzlement,
- false pretenses and cheats,
- obtaining property or services by false or fraudulent use of credit device or other means,
- financial transaction card crime act,
- frauds,
- forgery,
- offenses against public morality and decency,
- adult establishments,
- prostitution,
- perjury,
- bribery,
- misconduct in public office,
- offenses against the public peace,
- riots and civil disorders,

- protection of minors,
- protection of the family,
- public intoxication,
- computer-related crime,
- possession or sale of drugs in violation of the North Carolina Controlled Substances Act, and
- alcohol-related offenses, such as sale to underage persons or driving while impaired.