

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

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

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, hospices, adult day care providers, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the six listed facility or provider types are fingerprinted.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment for a maximum of 30 days.
Definition of direct patient access employee	Ohio does not have a definition for direct patient access employee. However, in Ohio, criminal record checks are required for any employee, contractor, or individual who works through an employment agency who provides direct care to an older adult. Direct care is defined as: coordinating or supervising personal care, providing nursing or health-related services, having routine contact, or conducting activities that require the employee to be alone with older adults. For hospice programs, any service provided in an older adult's home is considered direct care.
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	State statutes and regulations indicate that criminal history 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. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes. 2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying 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.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Ohio identifies various disqualifying convictions. More information on the disqualifying convictions 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	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.
Independence of appeal or review process	Not clear.

State Statutes and Regulations

Citation	Description
Ohio Revised Code (R.C.) § 3701.881	This is about the mandatory criminal record check for an individual under final consideration for employment with a home health agency in a position that would involve providing direct care to an older adult (i.e., a person 60 years of age or older).
R.C. § 3721.121	This is about the mandatory criminal record check for an individual under final consideration for employment with a nursing home or an adult day care program in a position that would involve providing direct care to an older adult.
R.C. § 3712.09	This is about the mandatory criminal record check for an individual under final consideration for employment with a hospice provider in a position that would involve providing direct care to an older adult.
R.C. § 109.572	This is about Bureau of Criminal Identification and Investigation criminal record check procedures; it includes a list of disqualifying crimes for various types of employment.
Ohio Administrative Code 3701-13-01 through 3701-13-09	These are Department of Health regulations relating to criminal record checks and the hiring of direct care employees. Ohio Administrative Code 3701-13-06 is specifically about standards governing whether a provider may employ an applicant despite a conviction for a disqualifying crime.

Key

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions include, but are not limited to, a conviction or guilty plea with regard to a charge of:

- aggravated murder,
- murder,
- voluntary manslaughter,
- involuntary manslaughter,
- felonious assault,
- aggravated assault,
- assault,
- failing to provide for a functionally impaired person,
- aggravated menacing,
- patient abuse or neglect,
- kidnapping,
- abduction,
- extortion,

- coercion,
- rape,
- sexual battery,
- gross sexual imposition,
- sexual imposition,
- importuning,
- voyeurism,
- public indecency,
- felonious sexual penetration,
- prostitution – after positive HIV test,
- disseminating matter harmful to juveniles,
- pandering obscenity,
- pandering obscenity involving a minor,
- pandering sexually oriented matter involving a minor,
- illegal use of minor in nudity-oriented material or performance,
- aggravated robbery,
- robbery,
- aggravated burglary,
- burglary,
- breaking and entering,
- theft,
- unauthorized use of a vehicle,
- unauthorized use of computer, cable, or telecommunication property,
- passing bad checks,
- misuse of credit cards,
- forgery – forging identification cards or selling or distributing forged identification cards,
- Medicaid fraud,
- securing writings by deception,
- insurance fraud,
- receiving stolen property,
- domestic violence,
- illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution,
- carrying concealed weapons,
- having weapons while under disability,
- improperly discharging firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school building or at a school function,
- corrupting another with drugs,

- drug trafficking,
- aggravated drug trafficking,
- possession of controlled substances,
- permitting drug abuse,
- deception to obtain a dangerous drug,
- illegal processing of drug documents,
- placing harmful or hazardous objects in food or confection, and
- violation of an existing or former law in Ohio or any other State, or the United States, that is substantially equivalent to any of these offenses.