

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

This document describes what was included as of June 2011 in Oregon statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Oregon has 21 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, personal care service providers, adult day care 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	Not addressed.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment during the background check process unless the applicant's disclosure form indicates disqualifying information.
Definition of direct patient access employee	Oregon does not have a definition of direct patient access employee. However, Oregon requires a background check for any employee, contractor, temporary worker, or volunteer who provides care to clients or has access to client information or client funds at any provider regulated by the Department of Human Services (DHS). This requirement extends to all employees of a residential facility, adult foster home, in-home care agency, or home health agency. In addition, background checks are required for all direct care staff, to include staff at any residential care facility, assisted living facility, or nursing facility. Hospice contract workers and volunteers who have direct patient contact or access to patient records are also required to have background checks.
Provision of criminal background check results to employee	Not addressed.
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. Not addressed. 3. Not addressed. 4. Not addressed.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Oregon 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>Not addressed.</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>The State provides independence of the appeal or review process.</p>

State Statutes and Regulations

Citation	Description
Oregon Revised Statutes (ORS) § 181.537	This statute authorizes and sets rules for the criminal background checks conducted by DHS and the Oregon Health Authority (OHA).
ORS § 181.534	This includes procedures for criminal record checks requested by State agencies.
ORS § 443.004	This indicates that DHS or OHA must complete a criminal record check on every employee of a residential facility, adult foster home, in-home care agency, or home health agency, and on any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of home health services, in-home care, or support services, or a resident of an adult foster home or a residential facility.
ORS § 137.225	This is about orders to set aside convictions or records of arrest.
Oregon Administrative Rules (OAR) 407-007-0200 through 407-007-0370	These are DHS regulations requiring background checks for every "employee, contractor, temporary worker, or volunteer who provides care, or has access to clients, client information, or client funds, within any entity or agency licensed, certified, registered, or otherwise regulated by" DHS.
OAR 411-054-0025(1)(C)	This regulation indicates that residential care and assisted living facilities are responsible for obtaining criminal record checks on all individuals for whom such checks are required.
OAR 411-054-0013(1)(f) and (2)(b); also 411-054-0016(1)	These indicate that criminal record checks are required for owners of 10 percent interest or more in a residential care facility or assisted living facility at the time of initial license application or change of ownership, management, or operator, as well as at the time of license renewal if requested by DHS' Seniors and People with Disabilities Division.
OAR 411-054-0025(2)	This regulation indicates that no person may be a licensee or employed in any capacity in a residential care or assisted living facility who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275, except that employees hired prior to July 28, 2009, are exempt from this prohibition as long as they remain in the same position working for the same employer after that date.
OAR 411-054-0025(3)	This regulation indicates that residential care and assisted living facilities must check all potential employees against Oregon State Board of Nursing information, and inquire as to whether a potential applicant is licensed or certified and whether there has been any disciplinary action by the Board against the person. The facilities must also check whether there are any substantiated abuse findings against a nursing assistant.
OAR 411-054-0065(3)(d)	This regulation indicates that no person may be an administrator of a residential care or assisted living facility who has been convicted of any of the disqualifying crimes described in OAR 407-007-0275.

Citation	Description
OAR 411-031-0040(8)(a) and 411-031-0020(34)	These are regulations on criminal background checks for home care workers enrolled in the Client-Employed Provider Program.
OAR 333-035-0060	This regulation indicates that hospice programs must obtain a criminal background check on each non-licensed potential direct access worker prior to employment, entering into a contract, or permitting a volunteer to have direct patient contact, and every three years thereafter.
OAR 411-034-0050(2) and (8)	These are about criminal background check requirements for personal care workers.
OAR 411-066-0020(6)(a)	This regulation is about all adult day services program employees and volunteers complying with the criminal history check rules in OAR 407-007-0200 through 407-007-0380.
OAR 411-085-0200(2)(e)	This regulation indicates that the nursing facility licensee must ensure that a criminal history check is completed on every employee, and may not employ any individual who is determined to be ineligible to provide services as described in OAR Chapter 407, Division 007.
OAR 411-085-0200(3)	This regulation indicates that a nursing facility must not employ or retain in employment: (1) any person found responsible for abusing, neglecting, or mistreating a person receiving LTC services in a final administrative action that is not under appeal or in a court of law; (2) any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; (3) or any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.
OAR 411-085-0010(1)	This regulation has to do with criminal record checks being required for owners of 10 percent interest or more in a nursing facility at the time of initial license application and at the time of any change of ownership.
OAR 411-085-0010(4)(m)	This regulation indicates that applicants for nursing facility license renewal must provide DHS with criminal record check authorization forms for the applicant(s) and for "each person with incident of ownership in the applicant" when required by DHS.
OAR 333-536-0050(9)	This regulation indicates that home health agencies must obtain criminal background checks on individuals they employ or contract with as in-home caregivers.
OAR 333-540-0005 through 333-540-0090	These are regulations on caregiver registries.
OAR 407-007-0000 through 407-007-0100	This is about criminal record checks for DHS employees, volunteers, and contractors.

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions for employees subject to ORS 443.004, and as specified in the relevant program administrative rules, include, but are not limited to:

- aggravated murder,
- murder,
- manslaughter I or II,
- criminally negligent homicide,
- aggravated vehicular homicide,
- assault I, II, or III,
- strangulation,
- criminal mistreatment I or II,
- kidnapping I or II,
- subjecting another person to involuntary servitude I or II,
- trafficking in persons,
- coercion,
- rape I, II, or III,
- sodomy I, II, or III,
- unlawful sexual penetration I or II,
- sexual abuse I, II, or III,
- online sexual corruption of a child I or II, if the offender reasonably believed the child to be more than five years younger than the offender,
- contributing to the sexual delinquency of a minor,
- sexual misconduct, if the offender is at least 18 years of age,
- public indecency,
- private indecency,
- incest with a child victim,
- abandonment of a child,
- buying or selling a person under 18 years of age,
- using a child in display of sexually explicit conduct,
- paying for viewing a child's sexually explicit conduct,
- encouraging child sexual abuse I, II, or III,
- possession of materials depicting sexually explicit conduct of a child I or II,
- invasion of personal privacy,
- theft I,
- aggravated theft I,
- organized retail theft,
- theft of services, if charged as a felony,

- burglary I or II,
- arson I,
- computer crime, if charged with a felony,
- robbery I or II,
- criminal possession of a forged instrument I,
- criminal possession of a forgery device,
- identity theft,
- aggravated identity theft,
- promoting prostitution,
- compelling prostitution,
- furnishing sexually explicit material to a child,
- luring a minor,
- sex crimes, including transporting child pornography into the State,
- a crime involving the delivery or manufacture of a controlled substance, if the conviction was within the past 10 years,
- attempt, conspiracy, or solicitation to commit any of the preceding crimes, and
- a crime in another jurisdiction that is substantially equivalent to any of these crimes.