

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

This document describes what was included as of August 2011 in Pennsylvania statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Pennsylvania has 13 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, hospice care 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, but only for applicants for employment with older adult daily living centers (OADLCs).
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment of 30 days for a State background check and 90 days for a Federal background check.
Definition of direct patient access employee	Pennsylvania does not have a definition of direct patient access employee. However, background checks are required for (a) all facility employees, (b) all facility contract employees who have direct contact with residents (i.e., touching of the residents consistent with the employee's professional duties) or unsupervised access to their living quarters, (c) all persons who, for any type of monetary compensation from a home health agency, provide services to meet a care-dependent individual's need for personal care or health care in the individual's place of residence, (d) students doing internships or clinical rotations, (e) other individuals who have been granted access to the facility to perform a clinical service for a fee, and (f) all individuals employed by an entity that supplies, arranges for, or refers personnel to provide care to care-dependent persons, who are employed to provide care to care-dependent persons in facilities or their places of residence.
Provision of criminal background check results to employee	Not addressed.

Key Feature	Description
Expiration of criminal history background check results	Not addressed.
Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act: <ol style="list-style-type: none"> <li data-bbox="233 457 607 596">1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1)) <li data-bbox="233 638 607 777">2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2)) <li data-bbox="233 819 607 957">3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3)) <li data-bbox="233 999 607 1138">4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4)) 	<ol style="list-style-type: none"> <li data-bbox="665 457 909 483">1. Not addressed. <li data-bbox="665 638 909 663">2. Not addressed. <li data-bbox="665 819 909 844">3. Not addressed. <li data-bbox="665 999 909 1024">4. Not addressed.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Pennsylvania identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.
Opportunity to contest accuracy of background check findings	The State provides a way to contest the accuracy of background check findings.
Ability to remove hiring prohibition based on rehabilitation factors	The State does not provide the ability to remove a hiring prohibition based on rehabilitation factors.
Rehabilitation/mitigation process for negative fitness determinations	Not addressed.
Independence of appeal or review process	The State provides independence of the appeal or review process.

State Statutes and Regulations

Citation	Description
35 Pennsylvania Statutes (P.S.) §§ 10225.501 through 10225.508	Chapter 5 of the Older Adults Protective Services Act (OAPSA) indicates that criminal background checks are required for all prospective employees of covered facilities.
35 P.S. § 10225.103	This contains general definitions under the OAPSA.
18 Pennsylvania Consolidated Statutes (Pa.C.S.) § 9152	This is about individuals' access to criminal history records and procedures for challenging the correctness of such records.
18 Pa.C.S. § 9122	This has to do with expungement.
18 Pa.C.S. § 9124	This indicates that a State board, commission, or department, when determining eligibility for licensing, certification, registration, or permission to engage in a trade, profession, or occupation, may consider the applicant's criminal convictions, but the convictions shall not preclude the issuance of a license, certificate, registration, or permit.
18 Pa.C.S. § 9125	This indicates that, absent a specific law to the contrary, an employer may use an applicant's felony or misdemeanor conviction(s) in deciding whether to hire the applicant "only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied."
6 Pennsylvania Code (Pa. Code) §§ 15.141 through 15.147	These are regulations implementing Chapter 5 of the OAPSA.
28 Pa. Code §§ 611.5 through 611.54	These have to do with criminal background checks for home health workers.
55 Pa. Code § 2800.51	This regulation indicates that assisted living facilities must conduct criminal history checks in accordance with OAPSA.
55 Pa. Code § 2600.51	This regulation indicates that personal care homes must conduct criminal history checks in accordance with OAPSA.
55 Pa. Code §§ 2600.16(a)(17) (personal care homes) and 2800.16(a)(17) (assisted living facilities)	These regulations are about the obligation of personal care homes and assisted living facilities to report to the Department of Public Welfare any "criminal conviction against the [home or facility's] legal entity, administrator or staff" that is subsequent to the reporting on the criminal history checks.
6 Pa. Code §§ 11.18 and 11.31	These regulations are about criminal history record checks for operators and prospective employees of OADLCs; they also cover the issue of additional background checks for employees.
37 Pa. Code §§ 195.1 through 195.6	These regulations deal with the maintenance, accuracy, and security of criminal records, as well as challenges.

Key

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§§ - Sections

Appendix A – State-identified Disqualifying Convictions

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

- criminal homicide,
- murder,
- voluntary manslaughter,
- involuntary manslaughter,
- causing or aiding suicide,
- drug delivery resulting in death,
- criminal homicide of a law enforcement officer,
- aggravated assault,
- kidnapping,
- unlawful restraint,
- rape,
- statutory sexual assault,
- involuntary deviate sexual intercourse,
- sexual assault,
- aggravated indecent assault,
- indecent assault,
- indecent exposure,
- arson and related offenses,
- burglary,
- robbery,
- an offense designated as a felony under Pennsylvania’s Controlled Substance, Drug, Device, and Cosmetic Act,
- a felony offense under 18 Pa.C.S. Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39,
- forgery,
- securing execution of documents by deception,
- incest,
- concealing death of a child,
- endangering welfare of children,
- dealing in infant children,
- intimidation of witness or victim,
- retaliation against witness or victim,
- a felony offense under 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses),
- obscene and other sexual materials and performances,
- corruption of minors,
- sexual abuse of children, and

- a Federal or out-of-State offense similar in nature to those crimes listed above.