

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

This document describes what was included as of February 2011 in Puerto Rico statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Puerto Rico has one relevant statute, which was used in gathering information for this document, and which is listed below in the State Statutes and Regulations section.

Key Feature	Description
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 care agencies, personal care service providers, and intermediate care facilities for the mentally retarded.
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	Not addressed.
Definition of direct patient access employee	Puerto Rico does not define direct patient access employee. However, any person who has direct contact with a resident or recipient of services is required to undergo a background check. This includes employees, contractors, and volunteers, regardless of supervision level.
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. Puerto Rico 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>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

State Statutes and Regulations

Citation	Description
8 Laws of Puerto Rico Annotated §§ 481 – 487	This indicates that no person may function as a care services provider for children or the elderly or be able to provide such services in Puerto Rico unless he or she has previously applied for and received a certification from the Puerto Rico Police indicating that said person is not registered in various Commonwealth registries and has not been convicted of a disqualifying crime.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

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

- any violent sex crime,
- any child abuse,
- murder, in any of its degrees or modalities,
- homicide, in any of its degrees or modalities,
- incitement to suicide,
- aggravated assault, in any of its degrees or modalities,
- mutilation,
- throwing acid [on] to a person,
- rape, in any of its modalities,
- negligent injury,
- sexual aggression,
- seduction,
- sodomy,
- bestiality,
- indecent exposure,
- obscene propositions,
- procurement, roguery, or carnal commerce,
- production of child pornography,
- possession and distribution of child pornography,
- use of a minor for purposes of child pornography,
- incest,
- restriction of liberty, in any of its degrees or modalities,
- kidnapping, in any of its modalities,
- abandonment of minors,
- child abduction,

- illegal deprivation of custody,
- adoption in exchange for payment,
- perversion of minors,
- public mendicancy by a minor,
- theft, in any of its modalities,
- illegal identity theft,
- extortion,
- abuse against minors or disabled persons,
- imposture,
- arson, in any of its degrees or modalities,
- devastation,
- conversion, fraud, or misappropriation of public funds, to include those cases in which the person has plead guilty in a Commonwealth or Federal forum, or in any other jurisdiction of the United States of America, and
- violation of the Controlled Substances Act, as amended.