

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

This document describes what was included as of February 2011 in South Carolina statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. South Carolina has eight 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, adult day care providers, residential care providers, and intermediate care facilities for the persons with intellectual disability.
Registry checks	Not addressed.
Fingerprinting	Each applicant for employment with one of the seven listed facility or provider types is fingerprinted or has a State criminal record check. A fingerprint-based check is required if the employee cannot prove that he or she has been a resident of the State for 12 months or longer. If the applicant can prove 12 month residency, a State background check is required (this can be a name-based check in lieu of using fingerprints).
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	South Carolina does not define direct patient access employee. However, any employee who is providing direct care is required to undergo a background check. The State defines "direct caregiver" and "caregiver" to include registered nurses, licensed practical nurses, certified nursing assistants, and licensed professionals who provide direct care services to patients, if they are employed by the facility or under contract. Non-licensed persons providing physical assistance or care, working within any building that houses patients, or whose duties include the possibility of patient or client contact (if they are employed by the facility or under contract) are also considered to be "direct caregivers" or "caregivers" and are required to undergo background checks.
Provision of criminal background check results to employee	Not addressed.

Key Feature	Description
Expiration of criminal history background check results	Not addressed for non-licensed individuals. Applicants for a license must have background checks annually.
Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act: <ol style="list-style-type: none"> <li data-bbox="240 457 586 596">1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1)) <li data-bbox="240 638 586 777">2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2)) <li data-bbox="240 819 586 957">3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3)) <li data-bbox="240 999 586 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="672 457 906 485">1. Not addressed. <li data-bbox="672 638 906 665">2. Not addressed. <li data-bbox="672 819 906 846">3. Not addressed. <li data-bbox="672 999 906 1026">4. Not addressed.
State-identified convictions	South Carolina statutes and regulations identify more than 540 felony disqualifying convictions for licensees or owners of residential care facilities or nursing homes. These include murder, kidnapping, assault, arson, and robbery. Also, any person who has committed abuse, neglect, mistreatment, or exploitation of a child or vulnerable adult would be disqualified from LTC employment.
Opportunity to contest accuracy of background check findings	The State does not provide 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	Not clear.

State Statutes and Regulations

Citation	Description
Code of Laws of South Carolina Annotated §§ 44-7-2910 through 44-7-2950	These indicate that a direct care entity must conduct a criminal record check prior to employing or contracting with a direct caregiver.
Code of Laws of South Carolina Annotated §§ 44-7-264 and 270	This indicates that a person or persons required to sign the application for a license to operate a nursing home or community residential care facility must undergo a State and national fingerprint-based criminal record check on an annual basis. Such a license will be denied or revoked for conviction of certain crimes.
Code of Laws of South Carolina Annotated §§ 40-35-40(A)(2) and (B)(5)(D)	These have to do with criminal record checks being required for licensure of nursing home administrators and community residential care facility administrators; licensure will be denied if the individual has been convicted of "any criminal act that is relevant to the practice of nursing home administration, including financial misconduct or physical violence."
South Carolina Code of Regulations 61-17-601B and 602	This regulation indicates that prior to employing or contracting with any individual, a nursing home must conduct a criminal record check on the individual. Also, staff members of the facility shall not have a prior conviction or pled no contest (nolo-contendere) for child or adult abuse, neglect, mistreatment, or any other felony.
South Carolina Code of Regulations 61-84 §44-7-264	This is about the criminal background check for an applicant for a license to operate a community residential care facility.
South Carolina Code of Regulations 61-77-1001A	This regulation states that direct care staff and volunteers at home health agencies shall not have prior conviction(s) of child or patient or elder abuse, neglect, or mistreatment.
South Carolina Code of Regulations 61-78-§501B	This states that at hospice facilities, direct care staff members and direct care volunteers cannot have a prior conviction or have pled no contest (nolo- contendere) for child or adult abuse, neglect, or mistreatment, and that the hospice will coordinate with applicable registries.
South Carolina Code of Regulations 61-84-§501.B	This regulation indicates that staff members, direct care volunteers, and private sitters of community residential care facilities shall not have a prior conviction or pled no contest (nolo-contendere) to abuse, neglect, or exploitation of a child or a vulnerable adult.

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