

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

This document describes what was included as of February 2011 in Tennessee statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Tennessee has 15 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 eight 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, LTC hospitals, adult day care providers, residential care 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	Tennessee does not define direct patient access employee. Background check requirements vary by facility type. Skilled nursing facilities, nursing facilities, and intermediate care facilities for the mentally retarded require any employee or contractor who provides direct care to, has contact with, or has direct responsibility for a resident to undergo a background check. For home health providers and hospices, all employees and volunteers are required to undergo background checks. In adult day care, all individuals counted in the staff-to-client ratio, including employees, volunteers, counselors, supervisors, and licensing staff, must 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. Tennessee 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>The State provides a way to contest the accuracy of background check findings.</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
Tennessee Code Annotated (Tenn. Code Ann.) §§ 68-11-1001 through 68-11-1008	These are about the registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals (the Abuse Registry). The Abuse Registry includes information provided by the Tennessee Bureau of Investigation concerning convictions or other criminal dispositions of criminal charges involving offenses against a vulnerable person.
Tenn. Code Ann. § 68-11-1006	This indicates that entities licensed by Department of Health, the Department of Mental Health, or the Department of Human Services must determine whether any prospective employee or volunteer who would be engaged in providing services to vulnerable persons is listed on the Abuse Registry; no prospective employee or volunteer who is listed on the Abuse Registry may be hired.
Tenn. Code Ann. § 68-11-256	This indicates that criminal background checks are required for applicants for employment in positions that involve direct patient care in nursing homes.
Tenn. Code Ann. § 68-11-201(28)	This contains the definition of "nursing home."
Tenn. Code Ann. § 71-2-403	This addresses background checks (to include checks of criminal history records and other specified records) for all new employees, volunteers, and department licensing staff who regulate the adult day care licensing program, and all new counselors and supervisors providing services in the adult protective services program.
Tenn. Code Ann. § 33-2-1202	This addresses the criminal background check requirement for employees whose responsibilities include direct contact with or direct responsibility for service recipients in facilities for people with developmental disabilities.
Tenn. Code Ann. § 68-11-233	This indicates that a home health agency or hospice may require applicants for employment or volunteers to undergo criminal background checks or provide criminal history information.
Tenn. Code Ann. § 71-2-111	This indicates that the Tennessee Commission on Aging and Disability must require its contractors, grantees, and subcontractors to verify individual background information for newly hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes.
Tenn. Code Ann. § 68-11-201	This contains definitions of different types of health care providers.
Tenn. Code Ann. § 63-1-116	This is about the authorization for licensure boards for professions in the healing arts to require criminal background checks by regulation.
Rules and Regulations 1200-08-06-.04(11)	This is about criminal background checks for nursing home staff.

Citation	Description
Rules and Regulations 1200-08-25-.06(1)(a)6	This regulation indicates that assisted care living facilities may not employ an individual listed on the Abuse Registry.
Rules and Regulations 1200-08-25-.03(9)(b)	This regulation indicates that an applicant for certification as an assisted care living facility administrator must not have been convicted of a criminal offense involving the abuse or neglect of an elderly or vulnerable individual.
Rules and Regulations 1200-08-11-.04(4)(b)	This regulation indicates that an applicant for certification as an administrator for a home for the aged must not have been convicted of a criminal offense involving the abuse or neglect of an elderly or vulnerable individual.
Rules and Regulations 1200-08-11-.04(5)(b)	This indicates that a home for the aged must document that it checked the Abuse Registry prior to hiring any employee.

Key

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions include, but are not limited to, an offense against a vulnerable person as described in Tennessee Code Annotated sections 68-11-1001 and 68-11-1004 and, for adult day care staff only, the following:

- physical, sexual, or emotional abuse,
- gross neglect,
- financial exploitation of, or misuse of funds or theft from, any person,
- an offense involving violence against any person,
- an offense involving the manufacture, sale, possession, or distribution of any drug, and
- a no-contest plea to such offenses.