

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

This document describes what was included as of January 2011 in Texas statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Texas 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 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, personal care service providers, adult day care providers, residential care providers, and intermediate care facilities for the mentally retarded (ICF-MRs).
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, but do not clarify the provisional employment period.
Definition of direct patient access employee	Texas does not define direct patient access employee. However, Texas defines "direct contact with a consumer" as any contact with a resident or client in a covered facility. All prospective employees—whether they have direct contact or not—are required to undergo background checks. There is an exception for employees of home and community support services agencies. For these agencies, only "direct contact" employees are required to have background checks. Students and volunteers are not 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. State statutes and regulations may bar LTC employment for convictions of some of these federally mandated disqualifying crimes, but do not cover all possible such crimes. 2. Not addressed. 3. State statutes and regulations may bar LTC employment for convictions of some of these federally mandated disqualifying crimes, but do not cover all possible such crimes. 4. Not addressed.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Texas 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>The State’s process takes into account the following: elapsed time since the disqualifying conviction took place, 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
Texas Health and Safety Code (HSC) Chapter 250	This notes the types of facilities that may not employ an applicant (other than a licensed professional) if the facility determines, as the result of a criminal history check, that the applicant has been convicted of a conviction that bars employment (a list of convictions is included).
HSC Chapter 253	This is about the Employee Misconduct Registry – operated by the Department of Aging and Disability Services (DADS) – that covers individuals (except for licensed personnel and nurse aides) who work at facilities licensed by the DADS. Facilities licensed by the DADS, home health agencies, hospices, and ICF-MRs must check the Employee Misconduct Registry and the Texas Nurse Aide Registry prior to hiring, and may not employ a person who is listed in either registry.
HSC Chapter 142	This has to with licensure of hospice, home health, and personal assistance service agencies. The applicant for a license for a hospice, home health, or personal assistance service agency must provide identifying information on the agency’s owner, administrator, and chief financial officer so as to enable the DADS to conduct criminal background checks on those persons.
HSC Chapter 242	This is about licensure of nursing homes and custodial care homes. Each institution licensed by the DADS is required to maintain a written statement describing the institution's policy for conducting criminal history record checks on employees and applicants for employment.
HSC Chapter 252	This deals with an ICF-MR not being granted a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer to the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with HSC Chapter 250.
40 Texas Administrative Code (TAC) §§ 19.1921(k) through (o)	These regulations are about nursing home background check program requirements.
40 TAC § 90.321	This regulation is about ICF-MR background check program requirements.
40 TAC § 92.123	This regulation is about assisted living facility background check program requirements.
40 TAC Chapter 93	This is a set of regulations on the Employee Misconduct Registry.
40 TAC § 94.10	This regulation has to do with the Texas Nurse Aide Registry.
40 TAC § 98.61(b)	This regulation has to do with adult day care background check program requirements.
40 TAC §§ 97.245(b)(5) and 97.247	These are regulations relevant to background checks for employees of hospice, home health, and personal assistance service agencies.

Citation	Description
40 TAC §§ 99.1 and 99.2	These are about criminal convictions barring facility licensure.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions causing a permanent ban on employment include, but are not limited to:

- criminal homicide,
- kidnapping and unlawful restraint,
- continuous sexual abuse of a young child or children,
- sexual assault,
- aggravated assault,
- injury to a child, elderly individual, or disabled individual,
- abandoning or endangering a child,
- aiding suicide,
- agreement to abduct from custody,
- sale or purchase of a child,
- arson,
- robbery,
- aggravated robbery,
- burglary,
- indecent exposure,
- improper relationship between educator and student,
- improper photography or visual recording,
- deadly conduct,
- aggravated sexual assault,
- terroristic threat,
- online solicitation of a minor,
- money laundering,
- Medicaid fraud,
- cruelty to animals, and
- a conviction under the laws of another State, Federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of one of these offenses.

The State-identified disqualifying convictions causing a five-year ban on employment (generally unless punishable as a class B misdemeanor or less) include, but are not limited to:

- assault,
- felony theft,
- misapplication of fiduciary property or property of a financial institution,
- securing execution of a document by deception,
- false identification as a police officer, and
- disorderly conduct.