

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

This document describes what was included as of August 2012 in Utah statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Utah 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 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: nursing facilities, home health agencies, hospice care providers, personal care services providers, LTC hospitals, and residential care providers.
Registry checks	Statutes and regulations indicate that the State conducts searches of State-based abuse and neglect and nurse aide registries, State licensing and certification records, and the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals and Entities.
Fingerprinting	All applicants for employment with one of the six listed facility or provider types are fingerprinted.
Rap back	The Department of Public Safety will retain personal information, including fingerprints, and notify the Department of Public Health upon receiving notification that such an individual has been the subject of a warrant for arrest, an arrest, a conviction, or a pending diversion agreement.
Provisional employment	The State allows for provisional employment.
Definition of direct patient access employee	Utah defines direct patient access as the following: "for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual: (a) cause physical or mental harm; (b) commit theft; or (c) view medical or financial records." Individuals who may have direct patient access include: nursing assistants, personal care aides, individuals licensed to practice nursing, providers of medical, therapeutic, or social services, executives, administrative staff, dietary and food staff, housekeeping and maintenance staff, and any other individuals who have direct patient access. It does not include students directly supervised by a member of the staff.
Provision of criminal background check results to employee	Not addressed.

Key Feature	Description
Expiration of criminal history background check results	Statutes and regulations indicate that criminal history background check results expire two years after the individual is no longer engaged as a covered individual or the covered provider's next license renewal date. Clearances granted directly to an individual are valid for two years.
<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.
State-identified convictions	See Appendix A. Any felony or any misdemeanor, except those specified in Utah Administrative Code Rule R432-35-5(2), is considered to be a disqualifying conviction in Utah. See Appendix A for the text of Utah Administrative Code Rule R432-35-5(1-3).
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	There is no rehabilitation/mitigation process for negative fitness determinations.

Key Feature	Description
Independence of appeal or review process	The State provides independence of the appeal or review process.

State Statutes and Regulations

Citation	Description
Utah Code § 26-21-201	This includes certain relevant definitions (e.g., definitions for the terms “direct patient access,” “covered provider,” “covered contractor,” “covered employer,” and “covered individual”).
Utah Code § 26-21-202	This specifies that a clearance is required for employment. It also specifies when provisional employment can be considered.
Utah Code § 26-21-203	This states that the Department of Health can grant, deny, or revoke clearance or limit direct patient access.
Utah Code § 26-21-204	This outlines the types of information that the Department of Health can evaluate to determine whether an individual should be granted clearance.
Utah Code § 26-21-205	This outlines the State’s rap back capability.
Utah Code § 26-21-206	This outlines the period for which a clearance is valid.
Utah Code § 26-21-207	This specifies what types of individuals require a clearance in residential settings.
Utah Code § 26-21-208	This is about how individuals may apply for a clearance and for how long the clearance is valid.
Utah Code § 26-21-209	This describes the State direct access database.
Utah Code § 26-21-210	This deals with civil liability penalties.
Utah Code § 26-21-211	This outlines the timing of implementing the State’s new clearance requirements.
Utah Code §§ 77-40-103 and 104	These deal with expungement.
Utah Administrative Code Rule R432-35	This is about Department of Health background screening procedures; it includes information on disqualifying crimes, the treatment of information in abuse databases, and the executive director's authority to waive a bar on employment for the conviction of certain misdemeanors.
Utah Administrative Code Rule R497-100	This deals with rules for administrative hearings conducted by the Department of Human Services.
Utah Administrative Code Rule R432-30	This deals with rules for administrative hearings conducted by the Department of Health.

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Appendix A – Utah Administrative Code Rule R432-35-5(1-3)

The text of Utah Administrative Code Rule R432-35-5(1-3) is as follows:

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted of a felony or a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department [of Health] may revoke an existing license or refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility.