

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

This document describes what was included as of January 2011 in Vermont statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Vermont has 10 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.

<b>Key Feature</b>	<b>Description</b>
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 agencies, personal care service providers, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	Vermont does not define direct patient access employee. However, the State does define "caregivers." Caregivers are considered to be any person, agency, facility, or organization that provides health or other care to a vulnerable adult or any other type of care that is required because of another's age or disability. Any employee who provides such care to a patient or recipient of services is required to undergo a background check.
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"> <li>1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))</li> <li>2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))</li> <li>3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))</li> <li>4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))</li> </ol>	<ol style="list-style-type: none"> <li>1. Not addressed.</li> <li>2. 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.</li> <li>3. Not addressed.</li> <li>4. Not addressed.</li> </ol>
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Vermont 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 does not provide a way to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State does not provide the ability to remove a hiring prohibition based on rehabilitation factors.</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
33 Vermont Statutes Annotated (V.S.A.) Chapter 71	This is about the licensure and regulation of LTC facilities.
33 V.S.A. § 6914	This gives the commissioner of the Department of Disabilities, Aging, and Independent Living (DDAIL) or the health commissioner, or their designees, authority to request criminal history information on an individual from the Vermont Crime Information Center (VCIC), and to inform the individual's employer of the date and type of the individual's conviction. It also includes procedures whereby a person or an organization that employs or contracts with one or more individuals to care for vulnerable adults (on either a paid or volunteer basis) may obtain criminal history information from the VCIC.
33 V.S.A. § 6911(b)	This indicates that a person who is found (on the basis of a substantiated report) to have abused, neglected, or exploited a vulnerable adult shall be placed on the Adult Abuse Registry.
13 V.S.A. § 1383	This indicates that a person who is criminally convicted of or given a deferred sentence for any of the crimes specified in 13 V.S.A. Chapter 28 shall be placed on the Adult Abuse Registry.
13 V.S.A. §§ 1385 through 1383	These are about crimes for which a person must be placed on the Adult Abuse Registry (abuse, neglect, and exploitation of vulnerable adults).
33 V.S.A. §§ 6911(c)(3) and (c)(4)	These indicate procedures whereby a person or an organization that employs or contracts with one or more individuals to care for vulnerable adults may obtain information from the Adult Abuse Registry.
13 Code of Vermont Rules 13 110 004	This discusses the procedures whereby the owner or operator of a hospital, nursing home, residential care home, certified home health agency, intermediate care facility for adults with mental retardation, therapeutic community residence, or group home or developmental home under contract with the Vermont Department of Developmental and Mental Health Services can obtain a record of criminal convictions for an employee or a person to whom a conditional offer of employment has been made.
13 Code of Vermont Rules 13 110 009-5.12.b(4)	This indicates that residential care homes must maintain and keep on file the results of criminal record checks and adult abuse registry checks for all staff.
13 Code of Vermont Rules 13 110 006-5.11(b)(3)	This indicates that homes for the terminally ill must maintain and keep on file the results of criminal record checks and adult abuse registry checks for all staff.
13 Code of Vermont Rules 13 110 010-5.1	This indicates that a home health agency shall not employ or have a contract with any direct care personnel without first finding satisfactory results from the Adult Abuse Registry and the Child Protection Registry and without having conducted a Vermont criminal record check in compliance with the DDAIL's background check policy.

Key

§ - Section

§§ - Sections

**Appendix A – State-identified Disqualifying Convictions**

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

- abuse of a vulnerable adult,
- abuse of a vulnerable adult by unlawful restraint and unlawful confinement,
- neglect of a vulnerable adult,
- sexual abuse of a vulnerable adult,
- financial exploitation of a vulnerable adult, and
- exploitation of services of a vulnerable adult.