

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

This document describes what was included as of February 2011 in Virginia statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Virginia has 21 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 |
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| 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. |
| Registry checks | Not addressed. |
| Fingerprinting | Fingerprinting is required for employees providing direct care in intermediate care facilities. |
| Rap back | Not addressed. |
| Provisional employment | Not addressed. |
| Definition of direct patient access employee | Virginia does not define direct patient access employee. However, the State does define "employee" to include any compensated personnel working at a facility regardless of role, service, age, function, or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility. Employees who are compensated are required to have background checks. Volunteers and students are not required to have background checks. |
| Provision of criminal background check results to employee | Intermediate care facility employees can make a request to the Central Criminal Records Exchange. |
| Expiration of criminal history background check results | Criminal history background check results do not expire. |

| Key Feature | Description |
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| <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. Those with convictions for abuse or neglect cannot be hired. 3. Not addressed. 4. Not addressed. |
| <p>State-identified convictions</p> | <p>See Appendix A – State-identified Disqualifying Convictions. Virginia 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>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>The State provides independence of the appeal or review process.</p> |

State Statutes and Regulations

| Citation | Description |
|---|--|
| Code of Virginia Annotated § 32.1-126.01 | This has to do with criminal background checks for employees of nursing homes (skilled nursing facilities, nursing facilities, and intermediate care facilities). |
| Code of Virginia Annotated § 32.1-162.9:1 | This has to do with criminal background checks for employees of home care organizations and hospices. |
| Code of Virginia Annotated § 32.1-126.02 | This is about criminal record checks for non-licensed personnel who work in hospital pharmacies and whose duties will provide access to controlled substances. |
| Code of Virginia Annotated § 32.1-24 et seq. | This has to do with sanctions and penalties for convictions. |
| Code of Virginia Annotated §§ 63.2-1719 and 63.2-1720 | These have to do with criminal background checks for employees of assisted living facilities and adult day care centers. |
| Code of Virginia Annotated § 63.2-1722 | This about the denial or revocation of a license to operate an assisted living facility or adult day care center for failure to obtain a background check or for knowingly employing a person with a conviction for a barrier offense. |
| Code of Virginia Annotated § 9.1-132 | This has to do with the individual's right of access to and review and correction of information in Virginia's Central Criminal Records Exchange. |
| Code of Virginia Annotated § 19.2-392.2.F | This is about expungement. |
| Code of Virginia Annotated § 19.2-389 | This has to do with the dissemination of criminal history information. |
| Code of Virginia Annotated § 37.2-416 | This addresses background check requirements for direct care employees at intermediate care facilities. |
| 22 Virginia Administrative Code (VAC) 40-90-10 through 40-90-70 | These are regulations on background checks for staff of assisted living facilities and adult day care centers. |
| 12 VAC 5-371-140.E.3.b | This regulation indicates that nursing homes must keep documentation of criminal record checks in personnel files. |
| 12 VAC 5-381-110 | This is about criminal record check requirements for licensed home care organizations. |
| 12 VAC 5-381-180.E.6 | This has to do with personnel file requirements for home care organizations. |
| 12 VAC 5-391-110 | This has to do with criminal record check requirements for hospices. |

| Citation | Description |
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| 12 VAC 5-391-190.E.2, 12 VAC 5-391-210.F, and 12 VAC 5-391-210.O.10 | These are other hospice regulations regarding criminal background checks. |
| 12 VAC 5-410-390.C | This is about hospital pharmacy criminal record checks. |
| 22 VAC 40-60-235.B.7 | This indicates that an adult day care center must keep on file each employee's original criminal record report and sworn disclosure statement. |
| 22 VAC 40-60-200 | These are general qualifications for all adult day care center staff. |
| 22 VAC 40-72-170.A.5 | These are general qualifications for all assisted living facility employees. |
| 22 VAC 40-72-290.C.9 | This indicates that an assisted living facility must keep on file each employee's original criminal record report and sworn disclosure statement. |

Key

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Appendix A – State-identified Disqualifying Convictions

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

- murder or manslaughter,
- malicious wounding by mob,
- abduction for immoral purposes,
- assaults and bodily wounding,
- robbery,
- carjacking,
- threats of death or bodily injury,
- felony stalking,
- sexual assault,
- arson,
- drive-by-shooting,
- use of a machine gun in a crime of violence,
- aggressive use of a machine gun,
- use of a sawed-off shotgun in a crime of violence,
- pandering,
- crimes against nature involving children,
- incest,
- taking indecent liberties with children,
- abuse and neglect of children,

- failure to secure medical attention for an injured child,
- obscenity offenses,
- possession of child pornography,
- electronic facilitation of pornography,
- abuse and neglect of incapacitated adults,
- employing or permitting a minor to assist in an act constituting an offense,
- delivery of drugs to prisoners,
- escape from jail,
- felonies by prisoners, and
- an equivalent offense in another State.