

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

This document describes what was included as of February 2011 in Washington statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Washington has 30 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 all nine long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act): skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, LTC hospitals, personal care service providers, 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	Statutes and regulations require fingerprint-based background checks for anyone affiliated with adult family homes, assisted living facilities, or boarding homes who will provide direct care and who are hired after January 7, 2012. Statutes and regulations require fingerprint-based background checks for any LTC worker who is hired to provide direct care to individuals in a licensed LTC setting or to provide direct care to individuals receiving State-funded personal care services in their homes.
Rap back	The State has a rap back process in place.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment for a period of 120 days while a fingerprint check is in process, as long as the individual was not disqualified by a State background check.
Definition of direct patient access employee	Washington does not define direct patient access employee. However, the State does define "applicant" as anyone who may potentially come into contact with patients, residents, or clients; these individuals require background checks. The State also uses the terms "long-term care worker" and "caregiver" and applies the background check requirement to those workers who may have unsupervised access to developmentally disabled persons or vulnerable adults, as well as to volunteers who have regularly scheduled, unsupervised access to developmentally disabled persons or vulnerable adults.

Key Feature	Description
Provision of criminal background check results to employee	Statutes and regulations indicate that after receiving the results of the background check, the skilled nursing facility/nursing facility, adult family home, and boarding home/assisted living facility must inform the person of the results of the background check and must inform the person that he or she may request a copy of the results of the background check.
Expiration of criminal history background check results	Statutes and regulations indicate that criminal history background check results expire. The expiration period varies among facilities. Criminal history background check results are valid for two years for employees of boarding homes/assisted living facilities, adult family homes, and nursing homes. They are valid for three years in the Certified Community Residential Services and Supports program for clients with disabilities.

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. Statutes and regulations prohibit nursing homes, adult family homes, and boarding homes/assisted living facilities from using an employee, volunteer, or student if he or she has been found to have abused or neglected a minor or vulnerable adult by a court of law, a disciplining authority, or the State Department of Health. Statutes and regulations also prohibit in-home providers from providing services to Medicaid recipients if the providers have been found to have abused or neglected a minor or vulnerable adult by a court of law, a disciplining authority, or the State Department of Health. 3. Not addressed. 4. Statutes and regulations indicate that nursing homes, adult family homes, and boarding homes/assisted living facilities must prohibit an employee, volunteer, or student from working at a facility if he or she has been convicted of a crime to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Statutes and regulations also prohibit in-home providers from providing services to Medicaid recipients if the providers have been convicted of a crime to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Washington identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.</p>

Key Feature	Description
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	Individuals can ask a court to expunge certain crimes or to issue a certificate of rehabilitation.
Rehabilitation/mitigation process for negative fitness determinations	Individuals who have a single finding of neglect in a nursing facility may petition for removal of the finding after one year. Otherwise, there is no process available.
Independence of appeal or review process	The State provides independence of the appeal or review process.

State Statutes and Regulations

Citation	Description
House Bill 1419, Chapter 253	This permits the Department of Early Learning and the Department of Social and Health Services (DSHS) to share with each other Federal fingerprint-based background check results "as permitted under the law."
Revised Code of Washington (RCW) §§ 43.43.700 through 43.43.845	These have to do with the Washington State Patrol's Identification and Criminal History Section.
RCW §§ 43.43.830 through 43.43.845	These deal with background checks for applicants for employment or to volunteer who will have access to vulnerable adults (and other protected people).
RCW § 43.43.832	This discusses background checks, disclosure of information, and sharing of criminal background information by certain health care facilities.
RCW § 43.43.834	This is a list of requirements for an employer requesting a criminal background check; it also discusses disclosures by the applicant.
RCW § 43.43.837	This has to do with requests for fingerprint-based background checks by the secretary of the DSHS.
RCW § 43.43.842	This is a list of licensing requirements for agencies, facilities, and individuals providing services to vulnerable adults, including the requirement of not having committed any disqualifying crimes.
RCW § 43.43.730	This includes procedures for the inspection and correction of criminal history information.
RCW § 43.43.815	This includes procedures for the release of conviction records for employment purposes.
RCW § 43.43.825	This indicates that the Department of Health (DOH) is to be notified of any new conviction or guilty plea of a felony; if the individual holds a credential as a health care professional, it is DOH's responsibility to provide this information to the authority that issued the credential.

Citation	Description
RCW § 74.39A.056	This indicates that any LTC worker serving the elderly or persons with disabilities hired after January 1, 2012, shall be screened through State and Federal background checks to ensure that he or she does not have a criminal history that would disqualify him or her from working with vulnerable persons. This applies to non-licensed home health care personnel and all direct care workers employed by State-licensed boarding homes, assisted living facilities, adult family homes, respite care providers, and community residential service providers. It also applies to any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.
RCW § 18.88B.020	This is about certification of LTC workers (called "home care aides" once they are certified by DOH).
RCW § 74.39A.009(16)	This includes a definition of LTC worker.
Washington Administrative Code (WAC) Chapter 246-980 and WAC 246-980-120	These are about the certification of home care aides; they also list factors that DOH will consider in determining whether to deny an applicant's certification (or grant certification with conditions) when the applicant has criminal history.
WAC 246-322-030	This is about psychiatric hospitals requiring a disclosure statement for each prospective employee, volunteer, contractor, student, and any other individual associated with the hospital having direct contact with vulnerable adults. The license applicant having direct contact with vulnerable adults shall obtain a Washington State Patrol criminal background disclosure statement and submit it to the department with the initial application for licensure.
WAC 246-335-065(12) and WAC 246-335-070(5)	These are about providers of home health, home care, hospice, or hospice care center services establishing and implementing policies and procedures regarding State Patrol criminal background inquiries and disclosure statements for the provider's administrator, director of clinical services, or supervisor of direct care services, and any others having direct contact with children under 16 years of age, people with developmental disabilities, or vulnerable adults. It also addresses the maintenance of records of background checks.
WAC 246-320-126	This is about hospitals obtaining a completed disclosure form from and requiring a Washington State Patrol background inquiry for each prospective employee, volunteer, contractor, and student (as well as any other person) before allowing unsupervised access to vulnerable adults.

Citation	Description
WAC 246-324-030	This is about chemical dependency hospitals requiring a disclosure statement for each prospective employee, volunteer, contractor, student, and any other individual associated with the hospital having direct contact with vulnerable adults. The license applicant having direct contact with vulnerable adults shall obtain a Washington State Patrol criminal background disclosure statement and submit it to the department with the initial application for licensure.
WAC 246-337-010 and WAC 246-337-055	These are about residential treatment facilities' background checks of the facility administrator (disclosure statements and criminal history background checks obtained within three months of the application date for the administrator) and require background checks of all staff, independent contractors, consultants, students, volunteers, and trainees with unsupervised access to residents.
WAC 388-97-1800	This is about the requirement for nursing facilities and skilled nursing facilities to have a valid criminal history background check done for any individual employed directly or by contract (and any individual accepted as a volunteer or student) who may have unsupervised access to any resident, and repeat the check every two years.
WAC 388-78A-2461 through WAC 388-78A-2471	These deal with background checks for staff of boarding homes/assisted living facilities.
WAC 388-71-0752(7)	This indicates that background checks are required for all adult day center applicants hired, existing employees, and volunteers. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined.
WAC 388-71-0760(4)	This indicates that adult day centers' employee records must contain criminal history disclosure statements and records of background checks.
WAC 388-76-10160 through WAC 388-76-10180	These deal with background checks for staff of adult family homes.
WAC Chapter 446-20	These are Washington State Patrol regulations on criminal history record information.
WAC Chapter 257-10	This is about the referral registry for individual providers who are or seek to be under contract with the DSHS to provide personal care or respite care services to adults or children with functional or developmental disabilities and are reimbursed for those services through Medicaid or State-only funding.
WAC Chapter 388-06	This deals with background checks for persons who care for or have unsupervised access to individuals with developmental disabilities and for State employees who have unsupervised access to vulnerable adults.

Citation	Description
WAC 246-980-120	This notes that DOH may deny certification as a home care aide, or may grant certification with conditions, if the applicant has any criminal history.
WAC 182-502-0010 (2)(i), WAC 182-502-0012 (1)(b)(i), WAC 182-502-0030 (1)(b)	These rules address the Medicare exclusions.
WAC 388-97-0780 (3)(c)	This says a petition can be filed after one year to remove a single finding of neglect in a nursing facility.

Key

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions that apply generally to all Department of Social and Health Services programs and bar or prohibit unsupervised access to vulnerable adults, juveniles, and children either permanently or for five years, depending on the type of crime committed, are listed below. If “(5 or more years)” appears after a crime, the person is automatically denied unsupervised access unless 5 or more years have passed since the date of conviction. After 5 years, an overall assessment of the person’s character, competence, and suitability to have unsupervised access will determine denial. Following is the list of crimes:

- abandonment of a child,
- abandonment of a dependent person (not a child) (5 or more years),
- abuse or neglect of a child,
- arson,
- assault 1,
- assault 2,
- assault 3 domestic violence,
- assault 3 not domestic violence (5 or more years),
- assault 4/simple assault (5 or more years),
- assault of a child,
- bail jumping,
- burglary (5 or more years),
- carnal knowledge,
- child buying or selling,
- child molestation,
- coercion (5 or more years),
- commercial sexual abuse of a minor/ patronizing a juvenile prostitute,
- communication with a minor for immoral purposes,
- controlled substance homicide,
- criminal mistreatment,
- custodial assault (5 or more years),

- custodial interference,
- custodial sexual misconduct (5 or more years),
- dealing in depictions of minor engaged in sexual explicit conduct,
- domestic violence (felonies only),
- drive-by shooting,
- endangerment with a controlled substance,
- extortion 1,
- extortion 2 (5 or more years),
- forgery (5 or more years),
- harassment (5 or more years),
- harassment–domestic violence,
- homicide by abuse,
- homicide by watercraft,
- identity theft (5 or more years),
- incendiary devices (possess, manufacture, dispose),
- incest,
- indecent exposure/public indecency (felony),
- indecent liberties,
- kidnapping,
- leading organized crime (5 or more years),
- luring,
- malicious explosion 1,
- malicious explosion 2,
- malicious explosion 3 (5 or more years),
- malicious harassment,
- malicious mischief (5 or more years),
- malicious mischief–domestic violence,
- malicious placement of an explosive 1,
- malicious placement of an explosive 2 (5 or more years),
- malicious placement of an explosive 3 (5 or more years),
- malicious placement of imitation device 1 (5 or more years),
- manslaughter,
- murder/aggravated murder,
- patronizing a prostitute (5 or more years),
- possess depictions minor engaged in sexual conduct,
- possess explosive device (5 or more years),
- promoting pornography (5 or more years),
- promoting prostitution 1 (5 or more years),
- promoting prostitution 2 (5 or more years),
- promoting suicide attempt (5 or more years),
- prostitution (5 or more years),
- rape,
- rape of child,
- reckless endangerment (5 or more years),

- registered sex offender,
- residential burglary (5 or more years),
- robbery,
- selling or distributing erotic material to a minor,
- sending or bringing into the State depictions of a minor,
- sexual exploitation of minors,
- sexual misconduct with a minor,
- sexual motivation,
- sexually violating human remains,
- stalking (5 or more years),
- theft (5 or more years),
- unlawful imprisonment (5 or more years),
- unlawful use of building for drug purposes (5 or more years),
- use of machine gun in a felony,
- vehicular assault,
- vehicular homicide (negligent homicide),
- violation of child abuse restraining order,
- violation of civil anti-harassment protection order,
- violation of protection/contact/restraining order,
- violation of the Imitation Controlled Substance Act (manufacture/deliver/intent) (5 or more years),
- violation of the Uniform Controlled Substance Act (manufacture/deliver/intent) (5 or more years),
- violation of the Uniform Legend Drug Act (manufacture/deliver/intent) (5 or more years),
- violation of the Uniform Precursor Drug Act (manufacture/deliver/intent) (5 or more years),
- voyeurism, and
- attempt, conspiracy, or solicitation of a crime listed above.

In addition, “negative actions” are considered under individual program law and rule and may lead to denial of unsupervised access to vulnerable adults, juveniles, or children. A negative action is an administrative or civil action taken against an individual and may include:

- a finding that an individual abused, neglected, exploited, or abandoned a vulnerable adult, juvenile, or child issued by an agency, an administrative law judge, or a court of law (a finding by an agency is not a negative action if the individual was not given the opportunity to request an administrative hearing to contest the finding),
- termination, revocation, suspension, or denial of a license, certification, and/or State or Federal contract,
- relinquishment of a license, certification, or contract in lieu of an agency negative action,
- revocation, suspension, denial, or restriction placed on a professional license, and
- Department of Health disciplining authority finding.

The State-identified disqualifying convictions that apply to employees for individual providers and home care agencies, and Residential Care Services programs such as nursing homes, assisted living facilities, and adult family homes, and that bar or prohibit unsupervised access to

vulnerable adults, juveniles, and children for 3 years or 5 years or permanently, depending on the type of crime committed, are listed below. If “(5 or more years)” or “(3 or more years)” appears after a crime, the person cannot be in a position to be left alone with a vulnerable adult unless 5 or more years or unless 3 or more years have passed since the date of the conviction. After 5 or 3 years have passed, an overall assessment of the person’s character, competence, and suitability to have unsupervised access will determine denial. Following is the list of crimes:

- abandonment of a child,
- abandonment of a dependent person,
- abuse or neglect of a child,
- arson 1,
- assault 1,
- assault 2,
- assault 3,
- assault 4/simple assault (3 or more years),
- assault of a child,
- burglary 1,
- child buying or selling,
- child molestation,
- commercial sexual abuse of a minor/patronizing a juvenile prostitute,
- communication with a minor for immoral purposes,
- criminal mistreatment,
- custodial assault,
- custodial interference,
- custodial sexual misconduct,
- dealing in depictions of minor engaged in sexual explicit conduct,
- endangerment with a controlled substance,
- extortion,
- forgery (5 or more years),
- incest,
- indecent exposure/public indecency (felony),
- indecent liberties,
- kidnapping,
- malicious harassment,
- manslaughter,
- murder/aggravated murder,
- promoting pornography,
- promoting prostitution 1,
- prostitution (3 or more years),
- rape,
- rape of child,
- registered sex offender,
- robbery,
- selling or distributing erotic material to a minor,

- sending or bringing into the State depictions of a minor,
- sexual exploitation of minors,
- sexual misconduct with a minor,
- theft 1,
- theft 2 (5 or more years),
- theft 3 (3 or more years),
- unlawful imprisonment,
- vehicular homicide (negligent homicide),
- violation of child abuse restraining order,
- violation of the Imitation Controlled Substance Act (manufacture/deliver/intent),
- violation of the Uniform Controlled Substance Act (manufacture/deliver/intent),
- violation of the Uniform Legend Drug Act (manufacture/deliver/intent),
- violation of the Uniform Precursor Drug Act (manufacture/deliver/intent), and
- voyeurism.

In addition, “negative actions” are considered under individual program law and rule and may lead to denial of unsupervised access to vulnerable adults. A negative action is an administrative or civil action taken against an individual and may include:

- a finding that an individual abused, neglected, exploited, or abandoned a vulnerable adult, juvenile, or child issued by an agency, an administrative law judge, or a court of law (a finding by an agency is not a negative action if the individual was not given the opportunity to request an administrative hearing to contest the finding),
- termination, revocation, suspension, or denial of a license, certification, and/or State or Federal contract.
- relinquishment of a license, certification, or contract in lieu of an agency negative action,
- revocation, suspension, denial, or restriction placed on a professional license,
- Department of Health disciplining authority finding, and
- a protection order issued.