

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

This document describes what was included as of June 2011 in West Virginia statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. West Virginia has nine 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 if in residential care community, residential care providers, and intermediate care facilities for the mentally retarded.
Registry checks	West Virginia maintains a Central Abuse Registry of information about individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect, or misappropriation of the property of an incapacitated adult. Skilled nursing facilities, nursing facilities, adult day care facilities (if operated by a residential care community), residential care facilities, and intermediate care facilities for the mentally retarded are required to conduct registry checks for all employees. Home health agencies, hospice, and personal care service providers are authorized to check the registry at the discretion of the provider, but it is not required. Other LTC facilities are authorized to obtain information from the registry about any individual being considered for employment or volunteer service, or any individual who will provide services to a protected person for compensation under a contractual relationship.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	West Virginia does not have a definition of direct patient access employee.
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. Not addressed. 2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes. 3. Not addressed 4. Not addressed.
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. West 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>Not addressed.</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>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

State Statutes and Regulations

Citation	Description
West Virginia Code (W.Va. Code) § 15-2C	This is about the Central Abuse Registry, which is operated by the State Police. Pre-employment background checks are not required by this statute, but are optional.
W.Va. Code § 9-6-1(4)	This contains the definition of "incapacitated adult."
W.Va. Code § 16-5O-6(b)(3)	This is about unlicensed staff (who administer medication in a personal care home, residential board and care home, behavioral health group home, or private residence in which health care services are provided under the supervision of a registered nurse) undergoing a criminal background check to establish that the individual has not been convicted of a crime against persons or a drug-related crime.
W.Va. Code §§ 30-25-8(a)(6) and (7)	These say that a national criminal background check and a check of the Healthcare Integrity and Protection Data Bank are required for licensure as a nursing home administrator.
West Virginia Code of State Rules (CSR) § 64-13-11.3	This is about requiring nursing homes to conduct criminal conviction investigations on all job applicants.
CSR § 64-75-5.8.a.2	This is about the Central Abuse Registry checks of all employees of residential care communities.
CSR §§ 64-14-4.4.a.2.B and 64-14-5.3.b	These are about assisted living facility licensee and administrator criminal background checks and abuse registry checks.
CSR §§ 64-2-4.4.a.3 and 64-2-6.3.b	These are about medical adult day care center licensee and director criminal background checks and abuse registry checks.
CSR § 64-60-4.4	This is about the requirement for the person responsible for administering an "unlicensed home administered by a service provider," household members (exclusive of residents), and all care givers to have a personal history free of: evidence of abuse, neglect, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; and conviction of crimes relevant for the provision of care to a dependent population as evidenced by a background check of the Central Abuse Registry.

Key

§ - Section

§§ - Sections

Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions are:

- murder in the first or second degree,
- voluntary manslaughter,
- attempt to kill or injure by poison,
- assault during commission of or attempt to commit a felony,
- malicious or unlawful assault,
- extortion by threats,
- abduction of a person or kidnapping or concealing a child,
- enticing away or otherwise kidnapping any person,
- sexual offense (misdemeanor or felony),
- filming of sexually explicit conduct of minors,
- child abuse (misdemeanor or felony),
- malicious or unlawful assault, assault, battery, or assault during commission of or attempt to commit a felony, where the victim is 65 or older,
- any property offense with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility, or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services, when the individual committing the offense was providing services for compensation in the residential care facility or within the home,
- criminal acts of domestic violence, and
- abuse or neglect of an incapacitated adult.