

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

This document describes what was included as of February 2011 in Wisconsin statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Wisconsin has five 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 seven 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, LTC hospitals, residential care providers, and intermediate care facilities for the mentally retarded. The State requires all State licensed health care facilities to comply with Wisconsin's Caregiver Law, which requires background and criminal history checks of certain personnel who are responsible for the care, safety, and security of children and adults.
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries. Facilities are also required to follow Federal regulations, which require a search of other States' nurse aide registries.
Fingerprinting	Fingerprint-based background check results may be obtained from other jurisdictions for non-residents and those who have been residents of another State within the past 3 years, or for those who have a record indicating a reasonable basis for further investigation. In general, fingerprint cards may be required and can be submitted to the Federal Bureau of Investigation for verification.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows provisional employment for a period of 60 days.
Definition of direct patient access employee	Wisconsin does not define direct patient access employee. However, caregivers are required to undergo background checks, as are any non-clients residing in the facility. The State defines the term "caregiver" to include employees and contractors who have regular, direct contact with clients. "Direct contact" is defined as face-to-face physical proximity that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

Key Feature	Description
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Statutes and regulations indicate that criminal history background check results expire after 4 years. Background checks are required at the time of hire and every 4 years thereafter.
<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 may bar LTC employment for convictions of some of these federally mandated disqualifying crimes, but do not cover all possible such crimes. 3. Not addressed. 4. Not addressed.
State-identified convictions	See Appendix A – State-identified Disqualifying Convictions. Wisconsin identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.
Opportunity to contest accuracy of background check findings	Not addressed.

Key Feature	Description
Ability to remove hiring prohibition based on rehabilitation factors	Statutes and regulations state that an entity may employ, contract with, or permit to reside at the entity a person who otherwise may not be employed, contracted with, or permitted to reside at the entity, if the person demonstrates to the State, by clear and convincing evidence and in accordance with procedures established by the department by rule, that he or she has been rehabilitated.
Rehabilitation/mitigation process for negative fitness determinations	The State's process takes into account the following: elapsed time since the disqualifying conviction took place, extenuating circumstances, rehabilitation, and relevance of the conviction to the job in question.
Independence of appeal or review process	The State provides independence of the appeal or review process.

State Statutes and Regulations

Citation	Description
Wisconsin Statutes (Wis. Stat.) § 50.065	This is about criminal background check and registry check requirements for licensees of entities licensed or certified by the Department of Health Services, and for their employees and contractors who have, or are expected to have, regular, direct contact with the entity's clients.
Wis. Stat. § 165.825	This has to do with developing and maintaining a computer linkup between the Department of Justice and the Departments of Safety and Professional Services (formally Regulation and Licensing) and Health Services to provide access to the information obtained from criminal history searches.
Wis. Stat. § 973.015	This is about expungement.
Wisconsin Administrative Code (Wis. Admin. Code) §§ DHS 12.01 through 12.12	These are comprehensive regulations regarding caregiver background checks. These regulations cover: the duty to report new disqualifying information to the licensing agency, standards for determining whether a crime or delinquency adjudication is substantially related to the care of a client, and rehabilitation processes.
Wis. Admin. Code § DHS 83.07	This regulation indicates that in deciding whether to issue a license to operate a community-based residential facility, the Department of Health Services must consider the applicant's criminal history and other specified acts.

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Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions for facilities that serve only persons 18 years of age or older include:

- first degree intentional homicide,
- first degree reckless homicide,
- felony murder,
- second degree intentional homicide,
- assisting suicide,
- felony battery,
- sexual exploitation by therapist; duty to report,
- first, second, or third degree sexual assault,
- abuse of vulnerable adults (misdemeanor or felony),
- abuse of residents of a penal facility,
- abuse or neglect of patients and residents,
- first degree sexual assault of a child,
- repeated acts of sexual assault of a child,
- physical abuse of a child (intentional causation of bodily harm),
- a violation of the law of any other State or U.S. jurisdiction that would be a violation of any of the above,
- a finding by a governmental agency of abuse or neglect of a client, or of misappropriation of a client's property, and
- a finding by a governmental agency of child abuse or neglect.

Additional disqualifying convictions that apply to facilities that serve any persons under the age of 18 include:

- first and second degree sexual assault of a child,
- sexual exploitation of a child,
- trafficking of a child,
- causing a child to view or listen to sexual activity,
- incest with a child,
- child enticement,
- soliciting a child for prostitution,
- sexual assault of a child placed in substitute care,
- exposing a child to harmful material,
- possession of child pornography,
- child sex offender working with children,
- neglecting a child,
- abduction of another's child, and

- leaving a child unattended in a child care vehicle.

More information on these disqualifying convictions can be found here:

<http://www.dhs.wisconsin.gov/publications/p0/p00274.pdf>.