

Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers: State Summaries

ALABAMA

Alabama statute ([Code Title 38 Chapter 13](#)) and regulations (Administrative Code: [660-5-46](#)) require background checks for all employees, applicants and volunteers who will be caring for an individual in his or her home. Although checks are required for volunteers, they do not include the parent, family member, legal custodian or legal guardian of the elderly or disabled person in care. Therefore, a family member who cares for an individual without compensation is exempt from the background check requirement.

Both state and federal checks are conducted. The employer is responsible for initiating the check, and either the employer, employee or state agency must pay the appropriate fees. Applicants can be conditionally employed once they sign a criminal history statement and no criminal convictions are indicated. Conditional employment lasts until criminal background check results are received.

Conviction of any of the following crimes automatically disqualifies the applicant: murder, manslaughter or homicide, sex crimes, physical or mental injury of a child, elderly individual or individual with disabilities, crime against a child, sale or distribution of a controlled substance, and robbery. An applicant can receive a waiver if convictions did not include a sex crime or a crime against a child, elderly person or person with disabilities. If the applicant presents evidence that he or she is successfully rehabilitated, a waiver can be granted if a felony sentence or probation ended at least 10 years prior or if a misdemeanor sentence or probation ended at least five years prior.

ALASKA

Alaska statute (AK Admin Code Sec. [47.05.300](#) and [47.05.07](#)) requires checks for any person or entity eligible to receive payments, in whole or in part, from the department to provide for the health, safety and welfare of those who are served by the programs administered by the department. These people include public home care providers and providers of home and community-based waiver services. Unsupervised volunteers are included under the requirements, but the statute excludes relatives, visitors, anyone with a previous background check, vendors or delivery people remaining in the entity or residence for less than 45 days, in total, in a 12-month period. The requirements also do not apply to an occasional guest of the administrator or operator of an entity or a provider.

Both state and federal criminal background checks are required. The fee for the background check is charged to either the employee or employer. The fee is waived for a volunteer unless the volunteer resides in the client's home. An individual may be hired and employed for 10 days before a check must be requested. An individual may submit a request for reconsideration if he or she believes the information is erroneous or has additional information for the department to consider.

So-called "barrier crimes" are automatically disqualifying and include several under the following categories: homicides, other violent offenses, and offenses against dependent or

vulnerable individuals. Ten-year barrier crimes—meaning there is a 10-year ban on employment in the 10 years following the conviction—include several other violent offenses, fraud-related offenses, drug-related offenses or DUI. Five-year barrier crimes include some fraud-related and other violent offenses. Three-year barrier crimes include some fraud-related offenses. One-year barrier crimes includes other, lesser offenses.

ARIZONA

Arizona statute ([Sec. 36-411](#)) applies to employees and potential employees of residential care institutions, home health agencies, or those contracted to provide direct care, home health services or supportive services. Volunteers are included under the requirements unless they are under the supervision of a screened employee. The employee must apply for a fingerprint clearance card within 20 days of employment, which clears the individual of several disqualifying offenses (through both state and national searches). To continue employment, the employee must have a valid fingerprint clearance card, and fingerprints must be resubmitted every six years. The employee or the state agency is responsible for the cost of the background check. An individual can be employed for no more than 20 days until a fingerprint card is requested.

A "good cause exception" can be granted after the Board of Fingerprinting considers several criteria, such as length of time since offense was committed, nature of the offense, etc., to determine that the person is successfully rehabilitated and is not a repeat offender. If an exception is granted, the person will receive a fingerprint card and will be free to work as a home care worker.

Disqualifying offenses include those that require a person to register as a sex offender in the state and other offenses, including homicides, other violent offenses, fraud-related offenses, drug-related offenses, and offenses against a dependent or vulnerable individual. Anyone convicted of a DUI within five years of applying for employment might not be permitted to drive or transport clients as part of their employment, but are not banned from employment.

ARKANSAS

Arkansas statutes ([Public Health and Welfare Code](#) Title 20, Chapter 33, Subchapter 2, [Rule 007.05.97](#)) require background checks for all employees or applicants to a home health or hospice agency. These people must undergo a background check if they have not been continuously employed in the state for the past 12 months or have not had a check within the last 12 months. The rule also applies to Elder Choice providers—the state's provider of home and community-based care under the HCBS Medicaid waiver.

State checks are required, but federal checks also are required for employees or applicants who have not lived in Arkansas for at least five years or have not provided in-home care for at least 60 continuous days prior to application. Checks are conducted within 20 days at the state level and 10 days at the national level. Conditional employment is available for up to 45 days. "Reapplication reviews" or waivers are available only if the applicant's federal criminal record shows none of the disqualifying offenses; an employee or employer may submit written request to the state and provide proof that any felony shown in a background check is incorrect.

Crimes that are automatic disqualifications include homicides, other violent offenses, sex-related crimes, offenses against a dependent or vulnerable individual, and drug-related offenses.

CALIFORNIA

California statute ([Welfare and Institutions Code](#), Sec. 15660 and 12301.6) applies to unlicensed providers of nonmedical domestic or personal care in an aged or disabled adult's home. Background checks will be conducted only at the request of the employer. An employer may include an In-Home Supportive Services (IHSS) recipient, personal care service recipient under Medi-Cal, any public authority or nonprofit consortium, or any other person who is receiving in-home nonmedical domestic or personal care.

Background checks are discretionary for all nonprofit consortia or public authorities contracting with or created for the In-Home Supportive Services program (individuals must be placed on registry to participate in IHSS). They also are discretionary for other employers that are hiring individual personal care providers.

Under statute ([Welfare and Institutions Code](#), Sec.12305.81), no individual can receive Medi-Cal or IHSS reimbursements who has been convicted of any of the following offenses in the past 10 years: fraud against a government program, child or elder abuse. However, providers who want to participate in Medi-Cal or IHSS are not required to undergo a background check. They are required only to submit a statement declaring whether they have been convicted of any of these disqualifying crimes. If a nonprofit consortium, public authority or recipient of services under IHSS or Medi-Cal decides to conduct a background check on a prospective employee, it cannot hire the individual if the check finds the person has been convicted of any of the crimes (mentioned above) in the past 10 years. They can hire the person if he or she has been convicted of any crimes besides those disqualifying offenses. All other employers of personal care providers (not receiving IHSS or Medi-Cal funds) can hire people regardless of their offenses.

For background checks on prospective employees of state-funded programs (IHSS, Medi-Cal), the cost must be shared by the county (35 percent) and the state (65 percent). The county can ask for reimbursement for its share of the cost once a county's nonprofit consortium or public authority has conducted background checks for at least 50 percent of all providers on their registries.

An appeal process is available. Anyone who believes the background check is inaccurate or incomplete can submit a formal challenge to the Department of Justice.

COLORADO

Colorado statute (Title 25, [Article 27.5-107](#)) provides that any home care agency or home care placement agency must require a prospective employee to undergo a state criminal history check (effective June 2009). Either the person seeking employment or the employer must pay for the check, and it must be conducted before employment (but not more than 90 days before). Agencies are defined as organizations that offer "skilled home health services or personal care services to a home care consumer." No disqualifying offenses are specified.

CONNECTICUT

Connecticut statute (Chapter 400o, [Section 20-678](#), [Section 19a-490](#)) applies to all employees of homemaker-companion agencies, home health care agencies or homemaker-home health aide agencies. Potential employees must undergo a comprehensive background check and submit a sworn statement attesting to any crimes of "violence or dishonesty" or any disciplinary action affecting professional licensure, in any state or the District of Columbia. The applicable agencies include those providing professional nursing and related personal care services: physical therapy; speech therapy; occupational therapy or medical social services; and assistance with personal hygiene, dressing, feeding and incidental household tasks essential to achieving adequate household and family management. The cost of the check (both state and national) must be paid to the Department of Public Safety by the requesting agency (although the agency also can ask the person requesting the check to pay the cost). The statute sets the cost of a state check at \$25 (in Police Code, Chapter 529, [Section 29-11](#)). No disqualifying offenses are specified.

DELAWARE

Delaware statute ([Title 16, Chapter 11, Subch. V, Sec. 1145](#)) requires background checks be conducted on all those seeking employment with a home health agency or a similar business to provide home health services. The requirements also apply to those seeking employment in a private residence to provide for the health, safety and well-being of someone in that residence who is unable as a result of physical or mental capacity to adequately provide these things for himself or herself. A home health agency, a similar business or a temp agency also is required to obtain background checks on potential employees or contractors to provide these services. Direct relatives of the person needing care are exempted from the background check requirements. Private parties who want to hire a self-employed provider have the option of requesting a background check.

The background check must include both state and federal checks; the state pays for one check every five years (per individual). The employer must pay for any additional checks. Conditional employment can begin once the employee has submitted a request for a background check and can continue until check results are received.

Offenses that automatically disqualify a person from employment include all forms of homicide, any sexual offense, any violent felony, any felony involving a controlled substance, any other felony conviction with the past five years, any misdemeanor involving a controlled substance or any Class A misdemeanor.

DISTRICT OF COLUMBIA

District of Columbia statute (Section 44-552) requires background checks (state and federal) for unlicensed home care workers. According to Section 44-551, the check applies to nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides or other health aides, and to housekeeping, maintenance and administrative staff who may come into direct contact with patients. The requirement does not apply to supervised volunteers (but law does not preclude checks on volunteers). Conditional employment is not permitted. The employer must pay for the check but can ask the person subject to the check for reimbursement.

Disqualifying offenses include any of the following, if they occurred within the past seven years in the District of Columbia or any other state or territory: murder, attempted murder

or manslaughter, arson, assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm, burglary, robbery, kidnapping, theft, fraud, forgery, extortion or blackmail, illegal use or possession of a firearm, rape, sexual assault, sexual battery or sexual abuse, child abuse or cruelty to children, or unlawful distribution or possession with intent to distribute a controlled substance.

FLORIDA

Florida requires various levels of criminal background checks for two types of direct care workers: home health agency personnel (Title XXIX, [Chapter 400.512](#)) and direct service providers for the developmentally disabled (Title XXIX, [Chapter 393.0655](#)).

Home health personnel, nurse registry personnel, companions and homemakers must be screened under Level 1 standards, which include state and local criminal background checks. Direct service providers with access to the living areas, funds or personal property of people with developmental disabilities are required to undergo a more rigorous Level 2 employment screening process (includes federal, state criminal and juvenile, and local checks with a greater number of disqualifying offenses). All Medicaid waiver direct service provider applicants for the developmentally disabled population also must comply with Level 2 screening requirements.

Screening requirements for direct services providers for the developmentally disabled apply to volunteers unless they assist an individual for less than 40 hours per month and are under constant supervision by a screened provider. Relatives of the client are exempt from requirements for DD providers, unless they are over age 12 and reside with the individual. A provider selected and paid by the family or the developmentally disabled client need not have a background check.

The cost of the background check may be paid by the employer or the employee, at the discretion of the employer. Direct care providers for DD are permitted conditional employment for up to 90 days while a background check is pending and they are under constant supervision of a screened employee.

Disqualifying offenses under Level 1 include several offenses: sexual misconduct, abuse, neglect or exploitation of a vulnerable adult, murder, manslaughter, homicides, assault, battery, kidnapping, false imprisonment, indecent behavior or exposure, arson, theft, robbery or related crimes (if a felony), lewd conduct in presence of elderly, several sex-related crimes, and drug-related felonies in the presence of a minor. Disqualifying offenses for Level 2 include all the Level 1 offenses and several more non-felony offenses.

DD providers can be granted a hearing to appeal their disqualification. Home health aides can be granted exemptions from disqualification by the licensing agency if the offenses were felonies committed more than three years prior, any misdemeanor or felonies committed that are now misdemeanors, findings of delinquency, or commissions of acts of domestic violence. Anyone employed to treat adolescents age 13 and older who are disqualified from employment solely for certain controlled substance offenses also can be exempted. For all appeals for exemptions, applicants must present evidence of rehabilitation and clear and convincing evidence of why he or she should not be disqualified.

GEORGIA

Georgia statute ([31-7-301](#)) requires licensing of private home care providers, defined as any person or entity who provides home care services in a person's residence. A license is issued contingent on observance of Department of Health [rules](#), which include a requirement for a criminal background check. Rules require compliance by provider administrators and their employees. It is not specified whether state or federal checks are conducted. Home health agencies and public, nonprofit or proprietary organizations that provide home health services are exempt from licensing requirements for private home care providers. No statutes or regulations mandate criminal background checks for home health agencies.

Licenses are not issued to (or revoked for) providers with a record indicating convictions for a range of crimes, including murder, aggravated assault or battery, cruelty to children or those age 65 or older, rape, sodomy, child molestation, enticing a child for indecent purposes, sexual assault or battery, armed robbery, or abuse, neglect or exploitation of a disabled or elderly person.

In some cases, employment can be prohibited for persons discharged without adjudication of guilt for disqualifying offenses. (Georgia's First Offender Act provides for sentences of probation for first-time offenders; after satisfying probation requirements, the person is discharged without adjudication of guilt, which clears his or her criminal record and restores full civil rights and liberties, except for employment that involves direct contact with children, elderly, mentally ill or mentally retarded populations.)

HAWAII

Hawaii statutes [346-97](#) and [346-335](#) apply to service providers who have direct contact with those receiving services under home and community-based programs, including the adult and community care services branch, the senior companion program, and home and community-based services 1915c waiver. The statute includes volunteers and other adults "regularly present" for such services. The checks are required for these individuals and are preformed according to statute 846-2.7. Both state and federal checks are required.

Statute [846-2.7](#) gives the Department of Health the authority to conduct criminal history checks on all prospective employees, providers and volunteers at any home health agency, adult residential care home or other facility/agency operating in a private residence. The checks include both federal and state criminal history records. If the individual has direct contact with a client, an additional "adult abuse perpetrator check" is performed. The department will follow up with annual or biennial state checks on employees.

Conditional employment is available to the extent that the state requires new employees to be fingerprinted and subject to a search within five days of beginning employment.

The department can refuse to use anyone as a service provider if his or her criminal history could pose a risk to the health, welfare and safety of service recipients. No automatically disqualifying crimes are mentioned.

IDAHO

The Idaho Department of Health and Welfare's "[Rules Governing Mandatory Criminal History Checks](#)," (16.05.06) apply to "...individuals who provide care or services that are financially supported, licensed or certified by the Department of Health and Welfare." Those required to undergo background checks include department employees (including providers and contractors and their employees), volunteers, student interns, and any other people who have direct contact with children or vulnerable adults, including, but not limited to, providers of personal care, excluding employees of nursing homes and licensed residential and assisted living facilities; adult family home care providers and all adults in the home or living on the property; providers of adult day care and all adults in the home, if provided in a private residence; and personnel of agencies with Medicaid provider agreements or department contracts who have direct contact with children or vulnerable adults.

The criminal history check includes both federal and state checks. The law does not specify who pays for the check, nor does it address conditional employment. An "exemption review" may be conducted by the department for those who have not committed any of the disqualifying offenses. An appeal can be made if the individual is still denied employment.

Offenses resulting in an unconditional denial of employment include abuse, neglect or exploitation of a vulnerable adult, arson, crimes against nature, incest, injury to a child, kidnapping, lewd conduct with a minor, mayhem, murder, poisoning, possession of sexually exploitative material, rape, robbery, stalking, sale or barter of child, child sexual abuse or exploitation, and any felony punishable by death or life imprisonment. Some crimes bar a convicted individual from employment for at least seven years, including burglary, theft, forgery, insurance or public assistance fraud, and a felony involving a controlled substance.

ILLINOIS

Illinois statute ([225 ILCS 46](#)) applies to all individuals employed or retained by a health care employer. This includes home health aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel or a similar occupation where an individual provides direct care or has access to long-term care residents or the living quarters or financial, medical or personal records of long-term care residents. "Health care employer" includes a home health agency, home services agency, a home nursing agency, a supportive living program, programs funded by the Department on Aging through the Community Care Program, and programs certified to participate in the Supportive Living Program. A state criminal background check is required for those who wish to be included on the state Health Care Worker Registry and for employers that want to employ an individual without a prior check. Federal checks are not required by statute, but the law provides that employers shall not knowingly hire individuals convicted of disqualifying crimes in other states. The individual subject to the check may be required to pay the fees associated with the check, although if a Medicaid-participating employer pays the fees, it can be reimbursed by the Medicaid agency.

According to statute, employers cannot hire those convicted of the following offenses: solicitation of murder, homicides, kidnapping, sex offenses, bodily harm/assault, theft and related offenses (including retail theft), forgery, robbery, burglary, arson, deadly weapons offenses, armed violence, and several drug-related offenses (possession, delivery or manufacturing). The director of Public Health has discretion to waive this requirement. Conditional employment can be held, pending results of a check, for up to three months.

Individuals can apply for and receive waivers of prohibition of employment due to disqualifying offenses; these are reviewed by the Department of Public Health. Employers can use their discretion in hiring individuals who have obtained waivers. Conditional employment pending approval of a waiver is not permitted.

INDIANA

Indiana statute ([IC 16-27](#)) applies to potential employees of home health agencies and personal services agencies that provide home health, personal care or other services in the residence of a patient or client. An agency must initiate a state and federal background check for an employee no more than three days after they begin providing services in a patient's home and cannot employ them for longer than 21 days without receiving check results. An applicant may be exempt from a background check if the home health agency obtains the applicant from an employment referral service and the individual has been screened within the last year. The agency or individual subject to the check is responsible for any fees.

Agencies cannot employ anyone convicted of rape, criminal deviate conduct, exploitation of an endangered adult, failure to report battery, neglect or exploitation of an endangered adult, theft (within 10 years) or similarly classified felonies in other states.

IOWA

Iowa statute ([135C.33](#)) requires that prospective employees undergo a state and federal background check for both criminal convictions and incidences of abuse. This check applies to all prospective employees who provide direct services to consumers and who are employed by an agency regulated or funded by the state that provides any of the following services: homemaker; home health aide; home-care aide; adult day services; other in-home services; hospice care; or home and community-based services provided under a waiver program. Also subject to the check are employees who provide direct services to consumers in elder group homes (certified under Iowa Code 231B) or assisted living facilities (certified under Iowa Code 231C). There are no exceptions to this process (volunteers also must submit to a check).

If the check reveals criminal convictions or abuse of dependent adults, the employer may request that the Department of Human Services perform an evaluation to assess whether prohibition of employment is warranted. (This evaluation will consider the nature or seriousness of the crime or abuse; its relationship to the position sought; time elapsed since the offense; the circumstances of offense; the degree of rehabilitation in the prospective employee; the likelihood of recurrence of the offense; and the number of offenses.) The department has final authority on prohibition of employment.

KANSAS

Kansas [statute](#) (65-5112, 65-5117) applies to all employees and potential employees of home health agencies, meaning a public or private agency or organization that provides home health services (home health aide, attendant care services, etc.) at the residence of the patient. The statute excludes volunteers; those who personally provide one or more home health services if they are not under the direct control of and employed by a home health agency; any person or organization that conducts a home health agency for the adherents of any recognized church or religious denomination or sect; and those who perform attendant care services (services that enable an individual in need of in-home care to live in the individual's

home and community and carry out the functions of daily living, self-care and mobility; includes homemaker and companion services) directed by or on behalf of an individual who needs in-home care. Under the Home and Community-Based Services for the Frail Elderly (HCBS/FE) Consumer Directed Services Program, the customer is responsible for selecting the attendant and for training, monitoring and dismissal of the attendant. (In this case, the check is at the discretion of the hiring individual.) In cases where a check is required, a state check is performed; a federal check is completed only if the secretary of Health and Environment determines that such a check can be performed within a two-week period. An individual can be hired conditionally while a background check is completed.

Employment is prohibited for individuals convicted of the following: murder, voluntary manslaughter, assisted suicide, mistreatment of a dependent adult, rape, indecent or aggravated indecent liberties with a child, indecent solicitation or sexual exploitation of a child, sexual or aggravated sexual battery, or attempt to commit, conspiracy to commit, or solicitation of any of these crimes. Employment can be permitted for those convicted of other crimes, included other felonies, if five or more years has elapsed since completion of a sentence.

KENTUCKY

Kentucky Revised Statutes [216.785](#), [216.787](#), [216.789](#) and [216.793](#) broadly cover agencies that provide services to senior citizens, requiring a state background check for any employees. This includes facilities that provide direct services and specifically applies to agencies that receive public funds through the Department of Community-Based Services or the Department for Aging and Independent Living of the Cabinet for Health and Family Services. Checks are filed with the Justice and Public Safety Cabinet, which maintains state conviction records. The fee assessed can be paid by the applicant or by the overseeing state agency.

Statute bars agencies from employing an individual with a felony conviction related to theft, abuse or sale of illegal drugs, abuse, neglect or exploitation of an adult, or commission of a sex crime. Agencies can employ those convicted of a misdemeanor.

Kentucky Revised Statutes [216.935](#), [.936](#), [.937](#), and [.939](#) apply to home health aides, including nurse aides. These statutes require employee checks through a state abuse registry that was established by [906 Kentucky Administrative Regulations 1:100](#). The registry contains records of all nurse aides and home health aides found guilty of neglect, abuse or misappropriation of property. No other offenses are specified as grounds for listing with the registry. The registry is maintained by the state's Cabinet for Health and Family Services. Employment of listed individuals is prohibited; however, an applicant can petition the state to have his or her name removed from the registry, provided it can be proved that the listed offense was a single occurrence and does not reflect a pattern of abuse.

LOUISIANA

No statutes or regulations were found.

MAINE

Maine statute (Title 22, [Section 2142](#), Section [2149-A](#), [Section 1717](#), [Section 2147](#), [Section 1812](#)) addresses separately non-nursing (personal care) staff and nursing staff employed by

home health agencies. Home health agencies are defined as organizations "...engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services or personal care services...in a client's place of residence." Home health agencies, personal care agencies and personal care placement agencies must obtain criminal history (both state and federal) information for any non-licensed personal care assistive personnel (those who perform tasks to maintain bodily function, such as mobility, dressing, eating, toileting, bathing and other personal hygiene assistance). Exceptions from criminal background checks are made for volunteers, family members and friends, sole practitioners, physicians and others.

Nursing staff (including those employed by home health agencies) must be registered with the state in a certified nursing assistant registry. Employment of non-registered individuals is prohibited. Individuals can only be registered if they have completed appropriate training, are licensed by the state, and meet state eligibility requirements. Registry listings must include conviction information; the registry maintains and updates criminal history information.

The certified nursing assistant registry must include notations of any criminal convictions, except for Class D and Class E convictions over 10 years old that are unrelated to patient care or the health care setting, as well as any specific documented findings of abuse, neglect or misappropriation of property of a resident, client or patient (as determined by the state agency responsible for overseeing Medicaid and Medicare provider approval).

Home health providers cannot hire nursing or non-nursing personnel with a record of a substantiated complaint or court conviction of abuse, neglect or misappropriation of property in a Maine health care setting. Prospective employees are also barred from employment by a criminal conviction within 10 years of a crime that carries a sentence of more than three years, or less than three years and related to sexual misconduct, or abuse or negligence in a non-health care setting (these are both according to the sentencing laws of the state in which the conviction occurred).

MARYLAND

Maryland [statutes](#) (Section 19-4B-03, Section 19-4B-01) apply to all nursing referral service agencies. Such agencies are defined in statute as any businesses that screen and refer health care workers for in-home provision of "nursing services, home health aid services, or other home health care services" (at the request of a client). The agency must either request a criminal history from the State Repository or request a criminal background check from an independent agency. Requests to the State Repository access only Maryland information; if a nursing referral service files a request with a private agency for a background check, the agency is required to perform that check in any state in which an applicant has lived within the past seven years. The statute requires the nursing referral agency to submit the fee for the check, but does not explicitly state that the agency cannot recoup costs from a prospective provider.

The statute does not describe consequences of criminal history (disqualifying offenses or prohibition of employment), but does require referral agencies to make allowances for clients to refuse a referred provider.

MASSACHUSETTS

Massachusetts statute (Chapter 6, [Section 172C](#) of General Laws) requires that home health agencies or any agency that provides homemaker, home health aide, personal care services or companion services to the elderly or disabled in a home or a community-based setting must obtain criminal history information from the state criminal history systems board before employing or referring for employment any individual. Volunteers are not exempt. The state board compiles only criminal history records from the state.

Disqualifying offenses and prohibition of employment are at the discretion of the requesting agency (the Department of Public Health [DPH] for any state-funded health agencies) or private employer. DPH regulations categorize offenses as "Lifetime Presumptive Disqualifications" or "Discretionary Offenses" in extensive [lists](#). Lifetime disqualifying offenses include murder and manslaughter, assault and battery of various descriptions, particularly specified among vulnerable populations, robbery, carjacking, kidnapping, arson, extortion, distribution of controlled substances to a minor, incest, rape, and witness intimidation. The department can extend additional review for each case, for presumptive disqualifications or discretionary offenses, to establish whether the candidate poses unusual risk to patient safety. Employment can be granted in some cases if the review is favorable. The department also can grant an agency an exemption from the check requirement, based on evaluation of the service population, the agency's ability to complete the checks, and the risks and benefits posed by such an exemption.

MICHIGAN

According to the [Minimum Operating Standards](#) for the MI Choice Waiver (HCBS waiver), each waiver agent and direct provider of home-based services must conduct a criminal background review through the Michigan State Police for each paid and/or volunteer staff person who will enter participant homes. These include home-based services: homemaker, personal care waiver, respite care provided in the home, chore services, personal emergency response systems, private duty nursing, counseling, home delivered meals, training and nursing facility transition services. An individual chosen by a client to perform certain duties under the HCBS waiver also must have a criminal background check.

[Act 28 of 2006](#) requires that state and federal background checks be conducted on potential employees of health agencies. These requirements apply to anyone to be employed, independently contracted or granted privileges by a home health agency to have regular, direct access to patients or residents. The statutes define home health agency as "...a person certified by Medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility one or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services." An independent contractor with a home health agency who has direct access to a patient but does not provide ongoing services (i.e., maintenance or construction contractor) is exempt from the check requirement.

Disqualifying offenses include Medicare or Medicaid fraud, or any of the following felonies if less than 15 years has elapsed since terms of probation or sentence were completed: bodily harm, cruelty or torture, abuse of a vulnerable adult, sex-crimes, abuse or neglect, use of dangerous weapon, adulteration of a prescription drug, and conspiracy to commit a felony

(within previous 10 years). The following misdemeanors are disqualifying if less than 10 years has elapsed since terms of probation or sentence were completed: offense involving cruelty if committed by 16-year-old or younger, home invasion, embezzlement, negligent homicide, larceny, retail fraud, assault, theft or controlled substance possession. The following misdemeanors are disqualifying if less than three years has elapsed: assault without a dangerous weapon and retail fraud. The following misdemeanors are disqualifying if less than one year has elapsed: larceny or retail fraud if under age 16, if found not guilty by reason of insanity, and neglect abuse or misappropriation of property by a state or federal agency.

Under this statute, an individual can certify in writing that he or she has not committed any disqualifying offenses and remain on conditional employment while background check results are pending. The cost of the check is reimbursed by the state. An appeal process is available to applicants who feel their criminal history record is inaccurate.

MINNESOTA

Minnesota statute ([Statute Chapter 245C](#)) requires background studies, which include a criminal background check, for applicants to personal care provider organizations, including those applying to provide home care services (nursing, home health, personal care services), home health agency services (skilled nursing services), and services under the consumer-directed home care waiver. The agency of employment must submit a request for background study before individuals begin a position that allows direct contact with patients/clients. The agency is responsible for any fees assessed. Volunteers are not exempted unless they are under constant, direct supervision. A state check is performed; a federal check is performed only if the commissioner of Human Services has reasonable cause to believe the individual has committed a crime in another state.

Certain offenses disqualify an individual from direct contact with a patient, including violent, serious crimes such as homicide and criminal sexual conduct (permanent disqualification), other felony-level crimes, such as fraud against a federal assistance program, burglary and drug-related offenses (15-year disqualification), gross misdemeanor-level violation, such as abuse of a vulnerable adult, assault or insurance fraud (10-year disqualification), and misdemeanor-level crimes, such as federal assistance fraud, identity theft, assault or violation of the Domestic Abuse Act (seven-year disqualification). Individuals can be granted access to (but not direct contact with) patients if they request reconsideration of their disqualification or if the commissioner sets aside their disqualification.

MISSISSIPPI

Mississippi [statute](#) 43-11-13 sets the standards governing all facilities and agencies that provide care to the aged and infirmed, including home health care agencies. All new employees who provide direct patient care or services are subject to state and federal background checks. A firm can conditionally hire an applicant, but that employee is forbidden from providing any patient care services until the background check is fully completed. The state board of health performs the background check and has the option of charging the employing organization a fee of up to \$50. No mention is made of volunteers.

Disqualifying offenses include felony possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, other sex offense, child abuse, arson, grand larceny, burglary, aggravated assault, and abuse or battery of a vulnerable adult.

An employee with a disqualifying offense can apply for a waiver if he or she can show mitigating circumstances. To do so, the employee must appeal to the employer's hiring officer, who then has the discretion to reconsider. Mitigating factors include the age at which the crime was committed; the length of time since conviction and criminal history since; work history; current employment and character references; and any other evidence that may prove the employee is not a threat to a patient.

MISSOURI

Missouri statute (Section [660-317](#)) requires home health care agency employees and anyone who provides in-home services under contract with the state to undergo a state background check before having any contact with a patient. (The statute states that further action, e.g., a federal check, may be necessary to satisfy due diligence.) The statute requires this of, among others, agencies that contract with the Department of Social Services (DSS) or Department of Mental Health.

The DSS will maintain an employee disqualification list of licensed medical facility employees who have "knowingly or recklessly abused or neglected a patient" (Section [197.500](#)).

MONTANA

In 2007, the Montana Legislature passed [Senate Joint Resolution 7](#), requiring the state Department of Public Health and Human Services (DPHHS) and the Department of Justice to form a workgroup to study the issue of requiring criminal background checks for direct care workers (including those who serve as a personal attendant) and to prepare recommendations on the topic for the 2009 Legislature. (Read the press release [here](#).)

Personal care assistance companies are not licensed by the state and are not required to submit to background checks. The DPHHS offers the following [guide](#) for consumers who seek in-home help and offers information about their waiver program [here](#).

NEBRASKA

No statutes were found. Nebraska rules ([NAC 15-006](#)) require that personal assistance providers undergo a criminal background check. Employing agencies must request the background check and search state registries (HHS Adult Protective Services Central Registry, HHS Child Central Register of Abuse and Neglect, the Nebraska Sex Offender Website, and the Nurse Aide Registry) before hiring an applicant.

Local providers must deny or terminate employment if such checks reveal pending charges or convictions in any of a number of areas. Crimes that permanently prohibit employment include murder; rape or sexual assault; child pornography; child sexual abuse; or domestic violence. Other crimes or findings prohibit employment for a prescribed period after a conviction. Ten- to 15-year prohibitions include felony fraud; termination of provider status from an HHS program; assault with or without a weapon; or robbery or burglary. Five- to eight-year prohibitions include driving under the influence; misdemeanor fraud; possession

and/or intent to deliver a controlled substance; or prostitution or solicitation of prostitution. Convictions for shoplifting after age 19 bar employment for three years. All other crimes can be considered at the discretion of the employment approval officer.

NEVADA

No statutes or regulations were found.

NEW HAMPSHIRE

New Hampshire statute (2003 Chapter 185; [Sec. 161-I6a](#)) applies to applicants selected for employment with a licensed home health care provider, including those who provide only homemaker services, when the scope of employment includes providing services in a client's home or otherwise involve direct contact with a client. The statute also applies to applicants for employment with an "other qualified agency" if the scope of employment includes providing services in a client's home or otherwise involves direct contact with a client. Other qualified agencies are entities authorized to offer personal care services and/or intermediary services by the Department of Health and Human Services to "eligible consumers" (children with special health care needs eligible for in-home supports or a person eligible for the home and community-based care waiver for the elderly and chronically ill). The statute also covers temporary and per diem workers. A state police background check is performed following a conditional offer of employment, but an employee may not begin work before a final offer of employment is extended after the check is performed. The required fees are borne by the employing agency, which may require reimbursement from applicants.

The employer/home health care provider reviews the results of a criminal conviction check for a potential employee before a final offer of employment, and employment is at that employer's discretion; no automatically disqualifying convictions are listed.

NEW JERSEY

New Jersey [statutes](#) (45:11-24.3 through 45.11-24.5) require state and federal checks for certification (and recertification) of home health aides. Subject to the check are those hired by home health agencies licensed by the Department of Health and Senior Services, nonprofit homemaker-home health aide agencies, and health care service firms regulated by the director of the Division of Consumer Affairs in the Department of Law and Public Safety. Applicants can be provisionally employed for up to 60 days while the state check is being conducted and for another 60 days during the federal check. Federal checks are repeated every two years.

Disqualifying offenses include homicide, assault, kidnapping, sexual assault, robbery, any crimes endangering family, children or incompetents, theft, or drug-related crimes. Any record of such crimes precludes state certification. Applicants have a right to appeal to the appropriate certifying body for a waiver of the disqualification if the individual can demonstrate successful rehabilitation. Factors the state considers in this evaluation include education, employment, seriousness of the crime, time elapsed, counseling, and various social and economic factors that may have played into the crime.

NEW MEXICO

The amended New Mexico Caregivers Criminal History Screening Act ([Code](#) Sections 29-17-1 through 29-17-5) specifies that all employees and applicants to be employed or contracted as caregivers must undergo state and federal background checks. Caregivers are providers whose employment includes direct care or routine and unsupervised physical and financial access to a care recipient. Providers of homemaker or companion services under the state's consumer direction waiver, or Mi Via, also must follow criminal background check requirements.

The applicant applies for a criminal history check when applying for the job by providing fingerprints to the employer. The employer then forwards these to the state Department of Health, which maintains records of all applicant and employee checks; the Department of Public Safety conducts the checks. Conditional supervised employment can begin once the applicant's fingerprints and forms for the criminal background check have been submitted and can last until results are transmitted to the employer. Either the employer or the applicant is responsible for the cost of the check.

An applicant who is found to have a disqualifying conviction can challenge the accuracy of the records or petition to be reconsidered if it can be proved that the individual poses no risk to the care recipient.

Automatically disqualifying offenses include homicide, trafficking controlled substances, kidnapping, aggravated assault or battery, sex crimes, adult abuse, neglect or financial exploitation, child abuse or neglect, robbery, fraud, and burglary.

NEW YORK

New York [statutes](#) (Sections 845B of the Executive Code and 2899 of the Public Health Law) require statewide background checks for prospective employees at any residential facilities licensed under New York's Public Health Law, any certified home health agencies, licensed care services agency, or long-term home health care program. An employer must request a criminal history report from the state Department of Corrections. If no record exists, the department is authorized to request such a history from the division of Criminal Justice, that, in turn, is authorized to obtain information from the FBI. Temporary employment while this check is pending is permitted, provided the employee works with consumers only under direct and "appropriate" supervision. The provider is responsible for the cost of the check and cannot request payment from the employee to cover this cost.

The statute delineates the following disqualifying offenses: any felony sex offense, any conviction for endangering the welfare of an incompetent or physically disabled person, any class A felony, or conviction of a violent felony or any other felony in classes B, C, D or E within 10 years. Unless the state Department of Health determines that an individual with any of these offenses on his or her record poses no threat to health or safety of consumers, the department can deny employment or direct the employer to do so. With any other crimes, determination is at the discretion of the Department of Health. Individuals can submit a statement explaining why employment should be considered, despite a disqualifying criminal record.

NORTH CAROLINA

North Carolina statute [114-19.10](#) allows the Department of Justice to provide information from background checks to nursing homes and home care agencies. General statute [131E-265](#) gives further details on checks. All applicants who are offered employment are subject to background checks if the job involves entering a patient's home. An agency can employ a person conditionally, provided the agency receives consent for a background check and submits the paperwork to the Department of Justice within five days. Applicants who have lived in North Carolina for less than five years are subject to federal checks in addition to the state check.

Conviction of a relevant offense does not automatically disqualify an individual from employment. Relevant offenses include counterfeiting monetary substitutes, endangering executive and legislative officers, homicide, rape and other sex crimes, assaults, kidnapping, arson, burglary, robbery, fraud, public indecency, prostitution, perjury, bribery, offenses against the public peace, riots and civil disorders, offenses against minors, public intoxication, computer-related crime, possession or sale of drugs, alcohol-related offenses, and driving while impaired. Employers are given discretion and allowed to consider a variety of factors as to whether an individual should be disqualified based on a conviction. Factors an employer can consider are seriousness of the crime, time elapsed, the offender's age at the time of the offense, circumstances, nexus of criminal conduct and job duties, further criminal record, and references.

NORTH DAKOTA

No statutes or regulations were found.

OHIO

Ohio statute ([3701.881](#)) applies to any individual under consideration for a full- or part-time or temporary employment by a home health agency (may be a person or government entity) to provide direct in-home care for an older adult. Volunteers are exempt from this requirement. Another statute ([173.394](#)) applies similar rules to personal care aides and other home care workers working under the programs of the Ohio Department of Aging. The agency is responsible for initiating the check and bears the cost of the check, although it can request reimbursement from the applicant. State checks are mandatory; federal checks are mandatory for those who lived outside Ohio within the past five years, and otherwise are at the discretion of the agency. Conditional employment is permitted provided the check is initiated within five business days of employment. Conditional employment can last no more than 30 days or beyond results of a check that indicates conviction of disqualifying offenses.

The statutes identify a total of 55 disqualifying offenses, principally violent, sexual- or abuse-related felonies. These include murder and manslaughter, assault, failing to provide for a functionally impaired person, patient abuse or neglect, kidnapping or abduction, rape or sexual battery, burglary, theft, Medicaid or insurance fraud, and trafficking of drugs or possession of controlled substances. For those who provide services to disabled consumers, however, an employer can offer employment if all of a series of conditions are met that relate to the type of crime, the time elapsed since the crime was committed, and repetition of offenses.

Independent providers of home and community-based waiver services in a Medicaid-administered waiver who care for consumers with disabilities also are required under [5111.034](#) to provide fingerprints at the time of application for a Medicaid provider agreement so a criminal background check can be completed.

OKLAHOMA

Oklahoma statute ([Chapter 71 of 2008](#)) requires background checks through the Oklahoma State Bureau of Investigation for all those who work voluntarily or for compensation with entities contracting with or licensed by the Department of Human Services. These entities include those that provide residential services (including foster care, habilitation training, or homemaker services) to people with MR/DD, and those who contract with the OK Health Care Authority to provide services to individuals through the state's HCBS Medicaid waiver, including anyone employed by the consumer through self-directed care programs. Before an offer of employment is made, employers must complete a criminal background check with the state Bureau of Investigation; the employer is responsible for the applicable fees. The employer also must inquire with the Department of Human Services to determine if the applicant is listed on state registries. Conditional employment can occur while the background check is pending. It cannot exceed the time required for the check and registry review, and cannot exceed 30 days.

If the criminal history check reveals conviction of any felony or misdemeanor assault and battery, or if the applicant is listed on a state registry (indicating a record of mistreatment of clients or patients), employment is prohibited. This prohibition can be waived upon request by the department; no waivers will be granted for felony convictions within five years or for any of the following felony convictions: murder, homicide, attempted murder, aggravated assault and battery, rape, incest, sodomy, or abuse, neglect or financial exploitation of any person entrusted to the applicant's care.

OREGON

Oregon rules (Administrative Code [Chapter 407-007-200](#)) require in-home care agencies to perform state and federal background checks for applicants, employees and volunteers. Federal checks are conducted if a person has lived outside Oregon for at least 60 days within the last three years or if a state check reveals a criminal history in another state. Conditional employment is available if an applicant is supervised during the conditional period and passes test to assess the applicant's fitness for the job.

The statute lists a large number of potentially disqualifying offenses. Some are potentially disqualifying regardless of the date of conviction, including homicide, assault, kidnapping, rape, sodomy, sexual abuse, bigamy, incest, abandonment of a child, endangering the welfare of a minor, child neglect, child sex abuse, theft, burglary, arson, robbery, riot, unlawful weapon possession, prostitution, animal abuse, drug-related crimes, or any other felony that is serious and might pose a threat to the safety of vulnerable people. Some crimes are only potentially disqualifying if the date of conviction is less than 10 years prior to application, including several fraud-related crimes, obstruction of justice-related crimes, coercion, theft, bribery, counterfeiting, unlawful possession of firearms, animal neglect, federal or state assistance program fraud, several drug-related crimes, or any other misdemeanor that might pose a threat to the safety of vulnerable people. Some crimes also are potentially disqualifying within five years of conviction, including driving under the influence, resisting

arrest, driving with a suspended or revoked license, or a combination of any three crimes not listed, committed on three different dates within the previous five years.

None of the offenses listed are automatically disqualifying, and the employer is allowed to consider other factors such as employment and education history, rehabilitation efforts, age at the time of the crime, time lapsed since commission of the crime, personal recommendations, and other mitigating factors.

PENNSYLVANIA

Pennsylvania statute ([2006 Act 69](#)) applies to all those employed by a home care agency or referred by a home care registry (entities that supply or refer independent contractors to provide assistance with activities of daily living or instrumental activities of daily living in the home). Owners or administrators of the agency or registry are responsible for obtaining employee background checks (and reporting annually) as a condition of licensure. State check is required; federal check is completed only if the applicant has not been a resident of the state for the past two years (or currently is not a resident). Fees are paid by the applicant for employment, but agencies can assume the fees. Checks must be conducted according to the Older Adults Protective Services Act (amended in 1987 - Title 35, Chap. 50, Sec. 10225.501). Checks are not required for unpaid volunteers. Conditional employment is permitted while the check is pending, provided the check has already been filed, the applicant signs a sworn statement asserting he or she is not disqualified for employment, and the employer has no information that would otherwise disqualify the applicant from employment. Conditional employment cannot exceed 30 days (or 90 days in cases where a federal check is performed).

Employment is prohibited for individuals convicted of the following: felonies described in the Controlled Substance, Drug, Device and Cosmetic Act, criminal homicide, aggravated assault, kidnapping, unlawful restraint, rape, statutory sexual assault, sexual assault, indecent or aggravated indecent assault, arson, burglary, robbery, felony theft or two or more misdemeanor thefts, forgery, incest, concealing death of a child, endangering the welfare of children, dealing in infant children, witness intimidation or retaliation, felony prostitution, sexual abuse of children, corruption of minors, or federal or out-of-state offenses of a similar nature.

RHODE ISLAND

Statute (Sec. [23-17-34](#)) applies to those seeking employment with a home care provider that is licensed, registered or certified with the Department of Health if the employee will have routine contact with a patient or resident without other employees present. Homemaker services are included under the state's definition of home care providers, but homemakers meet more strict supervision guidelines than other home care provider personnel. All qualifying employees must have a state criminal background check as a condition of employer's [licensure](#). A state check is required before or within one week of employment. The employee is responsible for initiating the check, through the employer; local or state law enforcement agencies must complete the check at no cost to the applicant or employer.

Disqualifying offenses are murder, voluntary or involuntary manslaughter, sexual assault, assault on those age 60 or older, assault with intent to commit a felony, felony assault, abuse, neglect or mistreatment of patients, burglary, arson, robbery, felony drug offenses, and

larceny or felony banking violations. If a check reveals disqualifying offenses on an applicant's record, the applicant can request that a copy of the check results be sent to the employer, who can make a judgment on employment.

SOUTH CAROLINA

South Carolina statute ([Article 23](#)) applies to direct caregivers before they are employed or contracted by a direct care entity or employees furnished by an employment agency to a direct care entity. "Caregiver" may include anyone employed with a direct care entity whose duties involve contact with client or patient, including unlicensed individuals who provide physical assistance or care to a patient or client. The check must occur before a person is employed or contracted by a direct care entity. Direct care entities include home health agencies or residential programs operated or contracted by Department of Mental Health or the Department of Disabilities and Special Needs. The statute excludes volunteers, visitors and family members unless the person habitually provides direct care services. At least a state check is performed; federal checks are required for those who have not been state residents for the last year. Criminal background checks also are required for all potential employees who provide direct care to Community Long-Term Care Services (HCBS waiver) participants (i.e., companion services, personal care services). Employment can only begin after the state check has been completed; no conditional employment is permitted.

Employment of people with criminal convictions is at the employer's discretion, with some exceptions. Community residential care facilities and home health agencies cannot employ individuals with a conviction of child or adult abuse, neglect or mistreatment. Potential employees with felony convictions within the last 10 years cannot provide services for community long-term care participants; those with non-violent felonies dating back 10 or more years can provide services under the following circumstances: the participant or responsible party must be notified of the aide's criminal background, and documentation must be provided of the participant's acknowledgement of the aide's criminal background. Misdemeanor convictions are at the provider's discretion.

SOUTH DAKOTA

No statute exists regarding home health or home care workers specifically. However, statute (Section [36-9-97](#)) does require that all nursing staff licensed by the state—including registered nurses, licensed practical nurses, and certified nursing specialists—undergo state and federal background checks prior to approval for licensure. The applicant is required to pay any fees assessed.

State rules ([67:54:06:08](#)) require provider agencies to develop a process by which they screen applicants for criminal records and requires that personal attendants in consumer-directed care (nurse aides and home health aides) not have criminal convictions within the past three years that would directly affect the attendant's "fitness" for employment.

TENNESSEE

State Commission on Aging and Disability rules ([Chapter 0030-1-6](#)) require all contractors, grantees and subcontractors to verify background information on employees and volunteers who provide direct care for disabled or elderly individuals in their home. These rules do not mandate any criminal background check, although they do require employers to maintain in

personnel files the results of any county, state or federal checks performed on that employee. Home care organizations that provide home health services or hospice services must obtain a statement from applicants declaring prior conviction in any jurisdiction of any felony, including crimes of a sexual nature, crimes against a person, crimes involving substance abuse, or crimes involving financial exploitation. Agencies can require any person who applies for employment with the organization as a paid employee or as a volunteer to agree to the release of criminal records or supply fingerprints for a criminal history records check to be conducted by the Tennessee Bureau of Investigation and the FBI. If checks are performed, the cost is borne by the requesting employer.

No individual listed on an abuse or sex offender registry or known to be convicted of a felony can be employed by programs administered by the Commission.

TEXAS

Statute (Health and Safety Code, Ch. 250; [Handbook](#)) requires individuals offered employment or contracted to provide services by home and community support services agencies to submit to state criminal background checks. A home and community support services agency provides home health, hospice or personal assistance services for pay or other consideration in a client's residence, an independent living environment or another appropriate location. Employers bear the cost of the check and can complete it through a private agency or through the state. Conditional employment pending the results of the check is permitted only in emergency situations that require immediate employment.

The following offenses automatically disqualify an individual from employment: criminal or negligent homicide kidnapping or unlawful restraint, indecency with a child, sexual assault, aggravated assault, injury to a child, disabled or elderly individual, abandonment or endangerment of a child, aiding suicide, agreement to abduct from custody, sale or purchase of a child, arson, robbery or aggravated robbery. In cases of criminal convictions apart from those on the above list, the employer has discretion in offering employment.

UTAH

Utah statutes (Utah [Code](#) Sections 62A-2-120 ,62A-3-104.3, 62A-3-106.5, 62A-3-311.1 and 62A-5-101; 21-21-9.5, 26-8a-310, Utah Administrative Code Rule [R501-14](#) and [R497-100](#)) apply to all those who have direct access to children or vulnerable adults. "Direct access" is defined as contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch. Personal care attendants (those who provide non-medical care and support) who render services to an aged person or high-risk adult are specifically barred from receiving public funds unless they have been approved under the criminal background requirements. A worker who is a direct ancestor or descendant or aunt, uncle or sibling of the person receiving services is exempt from a criminal background check but still is subject to checks through abuse registries and juvenile court records.

If an applicant has lived in the state for five years, the background check is done solely through the state Department of Public Safety. If the applicant has not lived in the state for five years, the applicant must have an FBI national criminal background check. (Applicants who have lived in other countries also must submit criminal records documents from those jurisdictions.) Background checks subsequently must be conducted annually.

A first-time applicant for a criminal history check can have no direct access to a vulnerable adult until the screen is approved. The potential employee is responsible for the cost of the check.

Some offenses are automatically disqualifying, including all felonies and some misdemeanors (occurring in the last 10 years) such as sex crimes, assault and battery.

If a check reveals no convictions or convictions for misdemeanors or non-disqualifying offenses and the last conviction was more than five years prior to the date of the background check, employment is approved. Employment is prohibited for any person whose name appears in any statewide databases of abuse or neglect.

The statute allows a waiver or appeal process. If a person is not approved for employment because he or she committed a non-barred crime or in certain other circumstances, the state can conduct a comprehensive review of the incident that caused the person to be barred and approve that person unless the approval is likely to create a risk of harm. State regulations provide for adjudicative proceedings to challenge findings made through the background check.

VERMONT

According to the state [Background Check Policy](#) (Department of Disabilities, Aging and Independent Living, Agency of Human Services), background checks are required for all workers who are paid with funds administered by the Department of Disabilities, Aging and Independent Living (DAIL) who provide care to a person receiving services or who manage funds or services for a person. Background checks must include information from child and adult abuse registries, state criminal databases, and the Exclusions Database of the federal Department of Health and Human Services. Background checks are recommended for respite workers hired by families through certain specified funding sources.

Those who self-manage services are considered to be people receiving services. Thus, anyone caring for them—including volunteers—must have a background check. The list of services covered is expansive and appears to include every type of in-home or out-of-home community-based service. A worker cannot be paid for longer than 60 days unless a background check is completed. Costs of the check are borne by agencies, providers or an intermediary service organization, not by applicants for employment.

An individual cannot be employed using DAIL funds if he or she has a record of abuse or neglect, has been excluded from Medicare or Medicaid programs, or has a criminal conviction involving bodily injury, abuse of a vulnerable person, a felony drug offense, or a property/money crime involving violation of a position of trust. Offenses include, but are not limited to, assault, homicide, arson, and abuse, neglect or exploitation. A person with a non-restricted conviction or a motor vehicle violation can be employed at the discretion of the employer. Waivers of the policy can be granted under exceptional circumstances, considering such factors as age at the time of the crime, amount of time that has passed and several other circumstances.

VIRGINIA

Virginia statute (Virginia Code, Sections [32.1-126.01](#), [32.1-162.7](#), [32.1-162.8](#), and [32.1-162.9](#)) requires a person seeking employment with either a licensed home care organization or an unlicensed, Medicaid-funded home health entity to provide a sworn statement disclosing any criminal convictions or pending criminal charges; he or she will be prosecuted for making a false statement. The home care organization then must obtain a criminal background check from the Virginia state police within 30 days of the person's employment; the employee is responsible for the cost of the check. Background check provisions do not apply to volunteers under supervision or those hired directly by a patient.

The law specifies a wide variety of crimes that preclude employment, including murder and manslaughter, malicious wounding by a mob, kidnapping and abduction, assaults and bodily wounding, robbery, carjacking, threats of death or bodily injury, felony stalking, sexual assaults, arson, drive-by shooting, crimes against nature involving children, incest, indecent liberties with children, abuse or neglect of children or incapacitated adults, or an equivalent offense in another state. A home care organization can hire an applicant convicted of one misdemeanor that did not involve abuse or neglect if five years have elapsed since the conviction. If an applicant is denied employment because of convictions on his or her criminal record, the home care organization must provide a copy of the information to the applicant. No appeal procedures are specified.

WASHINGTON

Washington statute ([43.20A](#), [43.43](#), [70.127](#) and [70.128](#)) requires that any person applying for a job providing in-home care must be fingerprinted and undergo a state background check. If the individual has lived in Washington for less than three years or is applying for a Medicaid-funded position, he or she also is subject to a federal search. For some programs, the associated fees are borne by the Department of Social and Health Services; for others, the employer is responsible. Conditional employment pending results of a state or federal check is permitted. Volunteers also are subject to check requirements.

Disqualifying offenses include crimes against children or other persons, crimes relating to drugs, and crimes relating to financial exploitation. Some others include murder, manslaughter, vehicular homicide, kidnapping, assault, rape, robbery, arson, burglary, extortion, indecent liberties, incest, child abuse or neglect, child molestation, custodial misconduct (including sexual misconduct), child abandonment, and others. Employers are given discretion in employing an applicant who has a conviction for a low-level crime, such as third- or fourth-degree assault, theft and prostitution, if a prescribed amount of time has passed since time of conviction. The Department of Social and Health Services will deny payment to providers who employ someone with a disqualifying offense.

In 2008, a Washington ballot initiative ([I-1029](#)) passed that will require all long-term care workers (hired after Jan. 1, 2010) for the elderly or people with disabilities to undergo state and federal background checks. Long-term care workers include home care workers, direct care employees of home care agencies, and any direct care workers who provide home and community-based services to the elderly or disabled. "Long-term care worker" does not include individuals who are not paid by the state or a private agency or facility to provide personal care services. Volunteers are, therefore, excluded from the requirements.

WEST VIRGINIA

No statutes related to workers in an individual's home were found. State rules ([64-50](#)) address legally unlicensed health care homes, which include any place in which care is provided to one to three residents who are not related to the service provider. Section 64-50-4.4 requires background checks through the West Virginia state police central abuse registry, and requires employees of such homes to have no history of abuse, neglect, fraud, substantial or repeated violations of applicable laws and rules in the operations of health or social services organizations, or offenses against dependent or vulnerable individuals in the provision of care or operation of such organizations.

WISCONSIN

Virtually all facilities and programs in Wisconsin regulated by the Department of Health and Family Services must conduct criminal background checks in accordance with the Wisconsin Caregiver Law. Specific background check requirements for services funded through Medicaid waivers are set forth in the state's [Medicaid Waivers Manual](#). These requirements build on the Caregiver Law and apply to anyone who provides services in a person's home through Medicaid waivers.

Statute (Section [50.065](#)) requires all caregivers—anyone, paid or unpaid, who has regular, direct contact with a patient—to submit to a state background check, which searches records in the state's criminal records, registries, information on child abuse or neglect, and licensing regulation offices. If the individual subject to the check has lived in another state within the past three years, the state must complete a check either in the state in which the individual resided or a federal check through the FBI. Unpaid caregivers can be exempted from background checks if the client requests an exemption and the agency can assure safety in some other way. Those employed by a waiver participant through a consumer-directed care model are not exempt. Background checks must be conducted before employment and repeated every four years. Contract agencies that provide services are responsible for the costs of the background checks.

A licensed entity cannot employ or contract with a caregiver if the employer knows ("or should have known") that the caregiver has been convicted of a serious crime, has abused or neglected a client or a child, has misappropriated client property, or is not credentialed appropriately for the position for which he or she is applying. "Serious crimes," identified in statute, include murder and homicide, assisting suicide, sexual assault or physical abuse of a child, battery or aggravated battery, sexual exploitation or assault, abuse of at-risk individuals, abuse of residents of penal facilities, abuse or neglect of patients or residents, or similar offenses in any other jurisdiction.

Waiver funds cannot be used to pay for services provided by a person whose background check identifies a serious crime, an offense substantially related to the care to be provided, or whose license or certification has been revoked or suspended. Prohibition of employment can be waived if the caregiver can demonstrate sufficient rehabilitation. Those denied employment due to background check results must be granted an opportunity for a review and reconsideration.

WYOMING

Wyoming statute [7-19-201](#) requires applicants who will have direct contact with elderly patients to submit fingerprints for a criminal background check. However, no actual check

is required. The Division of Criminal Investigation within the Office of the Attorney General is designated as the central repository for criminal history record information and can make information available upon request to appropriate agencies that decide to conduct a background check.

PUERTO RICO

Puerto Rico statute ([8 L.P.R.A. Sec. 481](#)) applies to providers of care services to children and the elderly (individuals over age 60). "Care services" include direct or economic contact, when the consumer is institutionalized or ambulatory, when services are provided during the day or during house visits. Services can be provided by care centers, housekeepers, in private residences, and in other settings. The requirements apply to paid workers and volunteers, and include only a state check. No conditional employment or waiver allowances are specified.

An entity that provides care services cannot contract, employ or use (paid or volunteer) a provider of services to children or the elderly without certification that they are not on any sex crime or child abuse registry and have not been convicted of felonies such as murder, homicide, sodomy, rape, incest, kidnapping, abuse against minors or disabled people, theft, aggravated assault, and arson.

U.S. VIRGIN ISLANDS

No statutes or regulations were found.

GUAM

No statutes or regulations were found.

SAMOA

No statutes or regulations were found.

WAKE ISLANDS

No statutes or regulations were found.