

State Summaries of Consumer Protection Policies for Caregivers

compiled by New Mexico Direct Caregivers Coalition
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ALABAMA

Alabama statute ([Code Title 38 Chapter 13](#)) and regulations (Administrative Code: [660-546](#)) 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

Background Checks

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.

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.

Consumer Protection Act

Assembly Bill 1217, Chapter 790 enacts the Home Care Services Consumer Protection Act, which would provide, on and after January 1, 2015, for the licensure and regulation of home care organizations. The bill excludes specified entities from the definition of a home care organization and would not include certain types of individuals as home care aides for the purposes of these provisions.

This bill requires the department to establish and continuously update a home care aide registry, which would include specified information relating to home care aide applicants and registered home care aides. This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require a home care aide applicant to submit to the Department of Justice a signed declaration under penalty of perjury regarding any prior criminal convictions. The bill would require home care aides to demonstrate they are free of active tuberculosis.

The bill would require the department to impose various fees to be deposited in the Home Care Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide. The bill would require any fines and penalties collected under these provisions to be deposited into the Home Care Penalties Subaccount within the Home Care Fund to be created by this bill.

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.

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.

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.

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](#).

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 MEXICO

The amended New Mexico Caregivers Criminal History Screening Act ([Code](#) Sections 2917-1 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.

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.

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.

OREGON

HB 3618, the legislation designed to include individuals hired by people with developmental disabilities and mental illness or their families into the Home Care Commission, was passed during the last week of the February Legislative Session. The bill will provide worker's compensation, training, and a registry for personal support workers beginning in January 2011. Additionally, the bill would allow for organizing of workers and possible unionization after 2011. The fiscal impact for 2009-2011 is \$1 million; for 2011-2013 the fiscal for the workers compensation, training, and registry is projected to be \$2.5 million GF. This does not include the cost of possible collective bargaining if the workforce chooses to unionize.

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.

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 (residential care facilities and home health agencies); 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.

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.

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.

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.

VIRGINIA

A home care organization or hospice may hire an applicant convicted of one misdemeanor not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction. Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth.

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.

In 2008, a Washington ballot initiative ([I-1029](#)) passed that requires 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.

WISCONSIN

Chapter DHS 13 of the Reporting and Investigation of Caregiver Misconduct intends to protect clients served in specified department-regulated programs by establishing a process for reporting allegations of abuse or neglect of a client or misappropriation of client's property to the department, establishing a process for the investigation of those allegations and establishing the due process rights of persons who are subjects of the investigations.

"Caregiver" includes persons working for another for compensation on a full-time, part-time, temporary or per diem basis. Caregiver includes nearly every type of agency in the state serving those who are elderly and those with disabilities under purview of the WI Department of Health Services.

"Caregiver" does not include persons performing solely clerical, administrative, maintenance or other support functions for the entity and is not expected to have regular, direct contact with clients or the personal property of clients or persons providing infrequent or occasional

services, such as delivering items to the facility, equipment maintenance, groundskeeping, construction or other similar services that are not directly related to the care of a client.

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.

Sources:

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