

**Memorandum**

Date . SEP 14 1998

From June Gibbs Brown  
Inspector General *June G Brown*

Subject Safeguarding Long Term Care Residents (A-12-97-00003)

To Nancy-Ann Min DeParle  
Administrator  
Health Care Financing Administration

Jeanette C. Takamura  
Assistant Secretary for Aging

Attached are two copies of our final report, "Safeguarding Long Term Care Residents", which provides you an insight into measures taken by States to safeguard residents from abuse in long term care facilities, principally nursing homes. Our observations should be helpful in targeting attention to improved systematic protections. We focused on State requirements and implementation of background checks, reporting abusers centrally in State registers, investigations of alleged abuses and experiences of nursing home officials. Our report is a consolidation of information gathered by audits of two States and surveys of State and nursing home officials. The officials we contacted were sensitive to precautions necessary to promote patient safety and were candid in their remarks.

Building on the results of our audit in Maryland and considering the interest expressed by the United States Senate Special Committee on Aging, we expanded coverage to other States. Accordingly, we audited the State of Illinois, visited 52 nursing homes in 6 States and performed certain supplemental survey work in all the States. Our observations were generally limited to nurse aides working in nursing homes. However, through interviews and surveys we obtained information relative to other health care professionals. In all likelihood, measures needing improvement applicable to nurse aides could be considered for application to other health practitioners in long term care facilities.

There was great diversity in the way States systematically identify, report, and investigate suspected abuse. We also found that background checks were usually limited to State records and too frequently individuals with criminal histories were not recorded in State central registries for use in screening prospective employees. We believe that greater assurance can be given to the protection of frail and dependent elderly if national background checks were implemented and if pertinent data from States are provided to the Administration on Aging to help them direct attention and assistance in preventing elderly

abuse. In considering a Federal requirement for criminal background checks, there are important factors to take into account, such as: use of State and/or the Federal Bureau of Investigation criminal information systems or State registries; use of fingerprinting to ensure accuracy of identity; types of facilities and staff to be covered; whether periodic checks of employed staff are necessary given the indicated high turnover rates; who pays for the checks; and whether specific crimes should exclude a person from employment after considering such factors as rehabilitation and the nature and frequency of crimes.

We recommended that the Health Care Financing Administration (HCFA) and the Administration on Aging (AoA) work with the States to improve the safety of long term care residents and to strengthen safeguards against the employment of abusive workers by elder care facilities. The HCFA should consider establishing Federal requirements and criteria for performing criminal background checks. Also, HCFA should consider assisting in the development of a national abuse registry and expanding the current State registries to include all workers who have abused or neglected residents or misappropriated their property in facilities that receive Federal reimbursement. The Office of Inspector General (OIG) suggested that legislation be enacted to allow the national abuse registry to be included in an expanded version of the current Healthcare Integrity Protection Data Bank, which the OIG has developed as required by the Health Insurance Portability and Accountability Act of 1996.

In response to our draft report, HCFA and AOA generally agreed with our findings and recommendations and discussed their intended action.

We would appreciate your comments and the status of any action taken or contemplated on our recommendations within the next 60 days. If you have any questions, please contact me or have your staff contact John A. Ferris, Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (202) 619-1175.

To facilitate identification, please refer to Common Identification Number A-12-97-00003 in all correspondence relating to this report.

Attachment

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**SAFEGUARDING LONG-TERM CARE  
RESIDENTS**



**JUNE GIBBS BROWN  
Inspector General**

**SEPTEMBER 1998  
A-12-97-00003**

## **EXECUTIVE SUMMARY**

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We found that the States we surveyed used a patchwork of measures to identify persons posing a possible threat of elder abuse to residents in nursing homes and other long term care facilities. Attempts to minimize and prevent patient risk are diverse throughout the States. Without a detailed study of their approaches, we cannot state with certainty what features, if any, appear to be more effective in protecting frail and dependent elderly from abuse and could be considered for adoption by the States. However, we can show anecdotally which features seem to work effectively for certain States.

- From a review of records and through discussions with nursing home officials, the use of background checks for applicants, as well as on board staff, is helpful in rejecting and deterring applicants and terminating employed staff with histories of abuse and crime. Many States do require background checks and, in general, they believe it is the most reliable source for information to consider during the employment process. Although statistics are not maintained, a number of nursing home officials believe that background checks have reduced the instances of abuse. This comes at an administrative cost which appears acceptable to nursing homes.
- Screening registries of Certified Nurse Aides (CNA) can also be an effective tool in identifying known abusers, provided that information is updated timely with instances of substantiated (validated allegations) abusive behavior from court and investigative findings. We found that in one of the two States reviewed, the nurse aide registry did not always record findings of abuse and convictions of aides who committed elder abuse. State registry officials indicated that facilities are required to report alleged abuse and neglect in order to initiate an investigation to determine if the allegations are substantiated and then record findings in the nurse aide registry. All registry officials surveyed also indicated that there is no systematic reporting to the nurse aide registry convictions or crimes committed outside facilities. Such information could be obtained during background checks and reported to the registry.
- Use of the Office of Inspector General Exclusion listing, which identifies individuals and businesses excluded from participation in certain Department of Health and Human Services' health care programs, can make employment screens more effective. However, none of the nursing homes surveyed in six States was aware of this database or its availability on the internet. Therefore, opportunities for identifying potential risk were not fully realized.

- At the 8 Maryland nursing homes visited, 51 employees, or 5 percent of the 1,000 employees according to the Federal Bureau of Investigation records, had been convicted for a variety of crimes--many involved serious offenses. The employees included CNAs, as well as staff holding jobs not subject to background checks.

Also, based on our background check of 35 individuals who were convicted of elder abuse in Maryland, 7 had prior convictions for other types of crimes, including those against people.

- In Illinois, which requires State criminal background checks, there were a similar number of convictions. Illinois is the only State in our survey which requires criminal background checks on current as well as prospective employees and records the results on the CNA Registry. The State conducted approximately 21,000 criminal checks and found 5 percent had disqualifying crimes. As a result of these checks, employers for 759 CNAs were instructed to terminate their employment and another 216 CNAs were granted waivers to continue working.

In some measure, within our limited review, nursing home staff having a criminal history are being identified. Also, some registries are being flagged appropriately for use by current and prospective employers. However, there is no assurance that nursing home staff who could place elderly residents at risk are systematically identified and excluded from employment.

## **RECOMMENDATIONS**

We are recommending that the Health Care Financing Administration (HCFA) and the Administration on Aging work with the States to improve the safety of long term care residents and to strengthen safeguards against the employment of abusive workers by elder care facilities. The HCFA should consider establishing Federal requirements and criteria for performing criminal background checks. Also, HCFA should consider assisting in the development of a national abuse registry and expanding the current State registries to include all workers who have abused or neglected residents or misappropriated their property in facilities that receive Federal reimbursement. The OIG suggests that legislation be enacted to allow the national abuse registry to be included in an expanded version of the current Healthcare Integrity Protection Data Bank, which the OIG has developed as required by the Health Insurance Portability and Accountability Act of 1996. More specific recommendations are on pages 11 and 12 of this report.

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In written responses, the HCFA and AoA officials generally agreed with our findings and recommendations. The HCFA and AoA comments to our draft report are included as Appendices D & E and are summarized after our recommendations.

## **TABLE OF CONTENTS**

	<u>Page</u>
<b>INTRODUCTION</b>	1
Background	1
Objectives, Scope, and Methodology	2
<b>OBSERVATIONS</b>	3
State Requirements for Criminal Background Checks	3
State Registries	4
Selected State Experiences with Criminal Background Checks	6
Maryland Nursing Home Employees With Criminal Records	7
Reports on Background Checks	9
Convicted Maryland Nursing Home Staff	10
Surveillance and Utilization Review Systems	10
<b>CONCLUSIONS AND RECOMMENDATIONS</b>	11
<b>APPENDICES:</b>	
A - 33 States with Criminal Background Check Requirements	
B - Matrix on Eight Selected State Requirements and Experiences	
C - 450 Crimes by Nursing Home Staff, and 51 Employees with Convictions	
D - Health Care Financing Administration Response	
E - Administration on Aging Response	

## INTRODUCTION

### **BACKGROUND**

Under Health Care Financing Administration (HCFA) regulations, residents of nursing homes and other long term care (LTC) facilities, have the right to reside in a safe and secure environment and be free from abuse and neglect. Title 42, Code of Federal Regulations 483.156 requires the States to establish and maintain a registry of nurse aides that includes information on “any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual” involving the elderly. This Code (483.13) also requires that the LTC facility: “...must not employ individuals who have been found guilty by a court of law or have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.” The regulations also require that nursing facilities “report any knowledge it has of actions taken by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.” The HCFA does not require registries for other health care providers, such as registered nurses (RN), licensed practical nurses (LPN), or medical practitioners.

States are encouraged to conduct national background checks of job applicants by the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994. However, there is no Federal requirement to conduct criminal background checks of current or prospective employees of federally assisted LTC facilities or to maintain a registry for staff other than CNAs who work in these facilities. The Federal Bureau of Investigation criminal history record system (FBI system) may be accessed by States, under Public Law 92-544, if authorized by State statute. This national system, which contains records of serious crimes, is dependent on the voluntary reporting of crime data by State and Federal courts, prosecutors, and arresting authorities.

There is a Federal requirement that States provide criminal information to the Department of Health and Human Services (HHS), Office of Inspector General’s (OIG) national database which includes individuals who have been convicted of elder abuse and neglect by the States’ Attorney General (AG) offices. Using this information, the OIG publishes a monthly Exclusion List<sup>1</sup> which is available on the Internet.

Also, the Health Insurance Portability and Accountability Act of 1996 authorized the OIG to develop the Healthcare Integrity Protection Data Bank (HIPDB). The HIPDB is intended to

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<sup>1</sup> Persons are excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant, and Block Grants to States for Social Services Programs. These exclusions are mandated by section 1128(a)(2) of the Act (42 U.S.C. 1320-a-7(a)(2)), and are in addition to any sanction an individual State may impose under the authority of State law.

provide a “one stop shop” data base for public information on the imposition of health care sanctions. It includes information about health care-related criminal, civil, and administrative final adverse actions taken against health care providers, suppliers, and practitioners.

### ***OBJECTIVES, SCOPE, AND METHODOLOGY***

The objectives of our review were to determine whether all States: (1) maintained registries for various health care workers and if a selected number of those States were properly identifying on their registries individuals involved with elder abuse or other crimes; and (2) required background checks of individuals working in LTC facilities and, if so, to determine the specific provisions as well as their assessment of results obtained from doing background checks. We obtained applicable State laws for the 33 States that require criminal background checks. In a few selected States, we tested the accuracy of the registries in recording (flagging) individuals who were guilty of abuse to residents in nursing homes. We determined whether States voluntarily used their Surveillance and Utilization Review System (SURS) to screen Medicaid records for potential unreported elder abuse.

In Maryland, we conducted criminal background checks of all employees at eight randomly selected nursing homes receiving Medicare and/or Medicaid funds to determine if any of these employees had a criminal record, particularly crimes against people. We also compared the individuals convicted of elder abuse by the Maryland Medicaid Fraud Control Unit (MFCU) with those cited in the FBI system and in Maryland’s registry to determine if that information was properly recorded and to determine if individuals had prior convictions. In Illinois, we conducted criminal background checks on a selected number of individuals who had a substantiated finding of abuse to determine if any had a prior criminal record. These efforts required the use of the FBI system and the Maryland and Illinois district court and circuit court systems for information on arrests and dispositions. The Maryland and Illinois reviews were done in accordance with generally accepted government auditing standards.

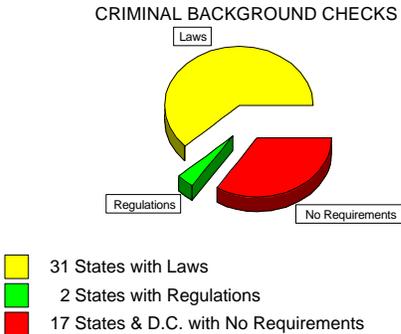
We contacted Federal Administration on Aging (AoA) and HCFA officials, various States’ Ombudsmen, Departments of Health, Licensing and Certification offices, Boards of Nursing, Physicians Boards, SURS units and States’ AG offices to obtain information and statistical data. We interviewed 52 State nursing home officials in 6 States (Illinois, Indiana, Maryland, Minnesota, Ohio and Virginia) who have been conducting background checks to identify their procedures, practices, and experiences relating to these checks. We also interviewed State registry officials, in these six States, as well as, Michigan and Wisconsin. Our field work was performed from July 1996 through January 1998.

# Observations

## STATE REQUIREMENTS FOR CRIMINAL BACKGROUND CHECKS

Although there is no Federal requirement for criminal background checks of persons employed or seeking employment in nursing homes and other long term care facilities, 33 States require such checks, either by law (31) or regulation (2). However, there are wide diversities in the States' requirements concerning: facilities and personnel covered, systems used for the check-- State or Federal records, use of fingerprinting, types of crimes which disqualify employment, factors for determining suitability for employment, costs, and payments for the criminal background check. See **Appendix A** for a summary of State requirements. Four States (Nebraska, Pennsylvania, Wisconsin and West Virginia) have enacted laws which will become effective in 1998. Seventeen States and the District of Columbia do not require criminal background checks for LTC facilities, although four States have either attempted to pass such legislation or will attempt to in the future.

### STATE REQUIREMENTS



### Diversities in Background Check Requirements

Where background checks are required, the coverage varies. Not all facilities serving the elderly are included. A majority of the States require background checks of CNAs seeking employment, but do not include current employees or other personnel, such as owners, nurses, dietitians, and

housekeeping staff. Most States do not include staff currently employed, contractor staff, or volunteers.

The sources used for the criminal background checks also vary. State records are used by 24 States. Nine States have laws permitting the use of both State and FBI records, although two of these States do not, in practice, use FBI records. Officials from these States informed us that they prefer to use their own State system because it provides a quicker response, is less costly, and contains crimes and disposition data that are not in the FBI system.

There are 24 States that have specified crimes which, if convicted, would automatically disqualify a person from employment, but the disqualifying crimes vary by State. Only a few State laws identified factors to consider in determining suitability for employment when a person has a disqualifying conviction, such as the level, seriousness, and date of the crime, the connection between the person's criminal conduct, duties of the position to be filled, and prison, probation, rehabilitation, and employment history of the person since the crime was committed. As a result, nursing home officials particularly in States without disqualification laws use their own judgment in deciding whether to employ applicants with criminal records.

Costs of a criminal background check depend upon the type of search that is requested and whether or not fingerprinting is used in the search. The costs ranged from "no charge" to as high as \$84 which included fingerprinting and a criminal background check using State and FBI records. Payments for the criminal background check also varied among the 33 States--in most States the employer pays, while employees pay in 4 States.

## **STATE REGISTRIES**

We contacted 37 States to obtain information on the registries they maintain. All 37 States maintain registries for CNAs, LPNs, RNs, and medical practitioners, although the CNA registry is the only one required by HCFA regulations. The CNA registries are mostly maintained by State officials who issue certificates to approved applicants to practice, whereas the other registries are maintained by respective Boards which issue licenses.

Based on our survey of registry officials, we were informed of the following information about the registries:

- ✓ convictions for crimes committed outside of the LTC facilities, which are required to be reported to the CNA registry as well as other appropriate licensing authorities, are not systematically reported to the registry.
- ✓ 94 percent do not initiate criminal background checks on applicants when they apply for certification or licensure.
- ✓ 29 percent do not require information of prior arrest or conviction on the renewal application.
- ✓ 13 percent did not provide for a penalty for making false statements on the certification or license application.
- ✓ 18 percent are published on the Internet.

The majority of the registry officials stated that when an abuse complaint is filed, an investigation is conducted independently of the court system, and substantiated allegations

are annotated on the registry by the respective board. According to registry officials, their investigations are done because it may take many months or several years before the court renders a verdict.

### **Test of Nurse Aide Registries**

The HCFA regulations require that each State's nurse aide registry includes information on convictions for elder abuse and on findings of abuse, neglect, or misappropriation of property. The information must remain in the registry permanently unless it was in error, the individual was found not guilty in a court of law, or the individual dies. In addition, nursing facilities must report to the State nurse aide registry or to licensing authorities any knowledge they have of court actions against an employee that would indicate unfitness for service as a nurse aide or other facility staff. As explained below, these requirements were not always followed.

### **Maryland's Nurse Aide Registry**

We reported<sup>2</sup> that the State did not maintain an up-to-date and complete CNA registry to record elder abuse committed by nurse aides of LTC facilities. In our review of 45 alleged abuses, there were 7 cases in which an abuse to a nursing home resident occurred. In six of the seven cases, the CNA was terminated, and in one case the aide was suspended for 3 days because the nursing home felt it had sufficient evidence to take action on the nurse aide's abusive behavior. These seven cases were neither substantiated nor prosecuted and consequently not flagged on the registry.

We also reported that many CNAs convicted for abuse by the MFCU within the Attorney General's Office were not flagged on the registry. Of the 24 CNAs found guilty or who pled guilty in a court of law for elder abuse, only 10 were flagged on the registry. Two others were found guilty prior to establishment of the registry and there was no retroactive provision to include them. The remaining 12 CNAs should have been flagged but were not.

### **Illinois's Nurse Aide Registry**

In our review of the Illinois Department of Public Health (IDPH)<sup>3</sup> we reported that IDPH was adequately maintaining the CNA registry for substantiated cases of abuse and the registry was available to the LTC facilities to screen candidates during their hiring process. Illinois is the only State which records criminal background results (both positive and negative) to the registry. However, convictions for crimes, other than those with

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<sup>2</sup>OIG Report "State of Maryland's Ombudsman Program for Processing Elder Abuse and Neglect Complaints and Accuracy of Geriatric Nurse Aide Registry", CIN: A-12-96-00016, issued November 28, 1997.

<sup>3</sup>OIG Report "Review of Elder Abuse Identification and Resolution Procedures for Illinois Long Term Care Facilities", CIN: A-05-97-00010, issued in May 1998.

disqualifying conditions as specified in the Illinois State law, are not provided to the registry or the facility to determine if the CNA is suitable for employment. In Illinois, the disqualifying crimes are: abuse/neglect of an adult or child, arson, assault, kidnapping and abduction, murder, and theft.

We sampled 88 closed cases of alleged abuse and found that the IDPH did not substantiate, through an independent investigation, whether 13 of these allegations occurred, although these employees were terminated from employment or had disciplinary actions imposed. Accordingly, these 13 cases were not annotated on the CNA registry. These terminated and disciplined CNAs were free to seek employment at other LTC facilities or allowed to continue their employment, which could potentially place residents at further risk.

The benefit of implementing the Illinois criminal background check law is evident from the result of our review. The law should mitigate the number of future abuses by not allowing nursing homes to hire prospective employees who have disqualifying criminal convictions. We noted 15 CNAs and 2 non-CNA employees with prior disqualifying criminal backgrounds who were currently working at LTC facilities but would have been identified and excluded had the Illinois law been in place before their employment and had been applicable to workers in addition to CNAs. All 17 of these employees were later involved in instances of alleged elder abuse. Fourteen of the 15 CNAs are no longer employed by LTC facilities. Seven of the CNAs were terminated as a result of substantiated findings of abuse, and the other seven were dismissed by the LTC facility or resigned subsequent to the abuse allegation. The remaining CNA was transferred to a non-direct resident care position. The two non-CNA employees (who, under current Illinois law, are not subject to a background check) were terminated by the facility due to elder abuse.

### **Other Selected State Registries**

We compared the names of individuals contained on the OIG Exclusion List in eight States to the appropriate nurse aide, nurse, and medical practitioner registries and found that, with the exception of Maryland, they generally flagged convictions. Only a few cases were omitted and some of those were due to an administrative oversight.

### **SELECTED STATE EXPERIENCES WITH CRIMINAL BACKGROUND CHECKS**

We selected six States that have been performing background checks using State records to determine their experiences and opinions of the process. Based on our discussions with 52 nursing home and registry officials in these six States, they generally are in favor of background checks (see **Appendix B**). While most of these background check laws contained disqualifying crimes which would bar employment, some of the 52 officials said they would automatically exclude everyone with a criminal conviction. The nursing home officials view the background check as a deterrent, although not absolute, to incidents of

elder abuse because applicants with a history of criminal offenses are either identified through the check, or do not apply for employment because they know the background check will disclose their crimes. We found from the responses received, that many facilities are more comprehensive in their background checks than their State law requires. In most cases, the State law specified certain personnel that are subject to the background check but many nursing home administrators said they check every applicant for employment.

Some may argue that performing background checks for all applicants can be burdensome especially if the current employee turnover rate continues. A number of nursing homes in our survey estimated that the turnover rate for nurse aides averaged 63 percent, with a low of 8 percent and a 300 percent high. However, if the results of all checks, both positive and negative, were to be posted to the registry, as Illinois does, then background checks could be minimized for those who apply for employment in multiple facilities within a specific period of time. Rather than each facility doing a background check of prospective employees, the central registry would already have that information available to them.

Among the positive factors mentioned to us for initiating background checks and utilizing resulting information were: the relatively low cost for the State background check; identification of disqualifying crimes in the State law; motivation for the individual to be truthful on the employment application; State conviction data contains up-to-date convictions; and subsequent to enactment of the background check law, the administrators told us they have experienced fewer instances of abuse. Negative factors include: results of background checks were not always provided timely; arrest outcomes were not always included on the State system; and checks were only statewide and did not cover all employees, such as volunteers and on-board staff.

## **MARYLAND NURSING HOME EMPLOYEES WITH CRIMINAL RECORDS**

Using the FBI system and the list of employees who were on-board at the 8 Maryland nursing homes we visited, we determined that at least 51 or 5 percent of the employed staff were convicted of crimes which should raise concern over their employability. Many of these individuals were working in occupations providing direct care to residents. We believe the number of employees with convictions is understated because the conviction data available in the FBI system, as well as the State's system, were not recorded in more than half of the cases in which a crime was committed. If that information were available, the magnitude of employed individuals working in a nursing home with a criminal conviction could be as high as 10 percent. Illinois, the only State in our survey that requires checks on current and prospective employees, found a similar number of convictions for current staff. Of 21,000 checks conducted, 5 percent had disqualifying crimes. As a result of these checks, employers for 759 CNAs were instructed to terminate their employment and another 216 CNAs were granted waivers to continue working.

The following is a summary of the arrest and conviction information for employees at the eight nursing homes.

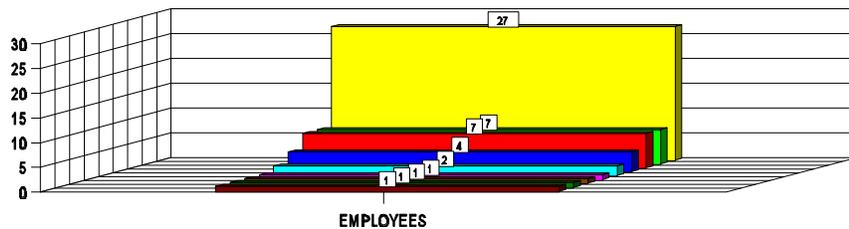
### Arrests and Convictions by Nursing Home

Nursing Home	Number of Staff	Number with Arrest Record	%	Total Number of Arrests	Total Number of Crimes	Dispositions (Convictions)			Employees with Convictions	%
						No Convictions	Number of Convictions	Not Known		
A	123	10	8	29	40	13	5	22	4	3
B	37	9	24	26	37	10	5	22	4	11
C	67	11	16	29	43	6	15	22	7	10
D	62	10	16	27	42	8	9	25	5	8
E	156	22	14	66	100	17	16	67	9	6
F	242	24	10	77	116	23	26	67	8	3
G	172	19	11	41	48	19	14	15	8	5
H	209	15	7	20	24	7	7	10	6	3
<b>TOTAL</b>	<b>1,068</b>	<b>120</b>	<b>11</b>	<b>315</b>	<b>450</b>	<b>103</b>	<b>97</b>	<b>250</b>	<b>51</b>	<b>5</b>

Appendix C contains details on these 450 crimes and convictions.

Based on data from the FBI and the State systems, and as illustrated, the 51 employees had 97 convictions for such crimes as assault, child abuse, possession, manufacturing, and distribution of illicit drugs, robbery with a deadly weapon, theft, and handgun violations. See Appendix C for details on the convictions for the 51 nursing home employees.

### 51 EMPLOYEES WITH CONVICTIONS



Of the 51 employees with convictions, we found 43 did not truthfully state on their job applications that they had been convicted and 4 did not respond to the question. For the remaining four employees, two appropriately indicated their convictions and two other employee applications did not have a question regarding conviction information.

### **Crimes after Employment**

We found that 15 employees and 1 contractor staff in our sample were arrested for 58 crimes after they had been employed by the nursing homes. They were convicted of crimes such as: assault, battery, disorderly conduct and forgery. The employees involved were: six nurse aides, four dietary aides, four housekeeping staff, one LPN, and one maintenance staff. Dispositions on 28 of the crimes were not recorded on the FBI or State criminal information systems.

### **Crimes by Contractor Employees**

Although contractor staff are not required under Maryland law to undergo background checks, the dietary service contractor at one nursing home allowed us to perform background checks on all 26 contractor employees. For the six employees hired after July 1, 1996, the effective date for Maryland's background check law, the checks showed that five employees had no criminal record and that one had been charged with a crime but the court records did not show the outcome.

However, for the contractor's other 20 employees who were hired before July 1, 1996, we found a different situation. Based on the FBI system, 4 of these employees had 37 arrests for 54 crimes, as well as 18 convictions for such crimes as fourth degree sex offense, various assault charges, battery, larceny, armed robbery, manufacturing and distribution of illicit drugs, and handgun violations.

## **REPORTS ON BACKGROUND CHECKS**

A number of nursing home officials informed us that the background check laws resulted in a decline in abuses. In the 33 States that had requirements for performing criminal background checks, we attempted to determine if there was a rise or decline in the number of reported cases of elder abuse by seeking national data from AoA Headquarters. However, since AoA did not have elder abuse data for all States over several years, we could not perform this analysis. The AoA was only able to furnish elder abuse data from 29 States for 1995, which the States provided on a voluntary basis.

With the exception of Maryland, the remaining 32 States performing background checks did not have data to show whether the checks were beneficial. In Maryland, the State legislation required the Maryland Association of Nonprofit Homes for the Aging (MANPHA) and the Health Facilities Association of Maryland (HFAM) to report on the effects of criminal background checks. These reports did not comment on the potential need and impact of mandating national criminal records checks, but offered information indicating benefits obtained from performing checks.

The MANPHA's report stated that, of the 1272 job applicants checked for 70 health care facilities statewide in the last calendar quarter of 1996, about 19 percent had criminal records. This was a decrease from the 22 percent in the third quarter of 1996. The report stated that it "would appear that the new procedures have reduced the number of applications submitted by individuals with criminal backgrounds."

The HFAM's report, which covered such facilities as nursing homes and hospitals, stated that during the period between July 1996 and January 1997, over 10,000 background investigations were conducted and that 22 percent of the individuals had criminal records. There was no other information reported to show whether this was a change from the prior period.

## **CONVICTED MARYLAND NURSING HOME STAFF**

Between 1989 and 1996, Maryland's MFCU identified 35 nursing home staff who were found guilty, or pled guilty in a court of law. All of these individuals were sanctioned/excluded from participation in certain HHS health care programs by the OIG for criminal offenses against the elderly. We found that many of these individuals' arrest and conviction data, however, were not recorded on either the State or FBI systems. Specifically, 10 of the 35 did not have a record of either the abuse arrest or the outcome in either system. The State criminal information system lacked data on 17 arrests and 17 convictions, and the FBI system lacked data on 28 arrests and 33 convictions. As a result, facilities that request State or FBI criminal history information on these individuals would not be informed of all arrests and convictions for elder abuse. Both the State and Federal systems depend on such sources as the arresting agency, the prosecutor, or the court having jurisdiction over the crime to submit arrest and disposition data to the criminal information systems. We did not determine where the breakdown in reporting occurred.

The benefit of performing background checks is again shown by further examination of the 35 nurse aides. Seven nurse aides who were convicted for elder abuse or neglect also had a prior conviction. Since these crimes were committed before Maryland began requiring criminal history checks, the nursing homes were likely unaware of the arrests and convictions when the employees were hired.

## **SURVEILLANCE AND UTILIZATION REVIEW SYSTEMS**

Each State is required, under HCFA regulations, to establish a SURS to safeguard against erroneous payments and unnecessary or inappropriate use of Medicaid services. Although there is no Federal requirement, a few SURS screen medical records of Medicaid patients for the purpose of identifying potential elder and child abuse and referring suspicious findings to appropriate State offices for investigation. These States had identified a limited number of potential elder abuse cases, but generally information was not available to show the overall

effectiveness of the screens. However, Idaho informed us that between 10 and 20 cases of possible child abuse were identified each week by screening medical records. We could not tell whether elderly abuse screens were equally successful because performance information was not maintained. To further illustrate the likely effectiveness of screens, Oregon did not screen for elder abuse but, like Idaho, this technique was effective in identifying potential child abuse (22 to 72 cases per week). Accordingly, there is a strong likelihood that screens of medical records could offer an opportunity for surfacing elder abuse cases for further investigation.

## **CONCLUSIONS AND RECOMMENDATIONS**

Criminal background checks offer LTC facilities an important measure to help safeguard against hiring persons who abused and neglected vulnerable elderly residents or have been convicted of other serious crimes.

Interviews with nursing home officials in six selected States indicated that they were requesting statewide criminal background checks on all of their applicants, many of whom were not covered by their individual State requirements. From the State officials' perspective, this suggests the requirements for performing background checks by nursing facilities be more inclusive. Further, some persons with abusive histories were not reported to the registry system--a system designed to investigate alleged abuse and neglect cases and record those with substantiated findings.

We are recommending that HCFA:

- Ensure States record convictions for, or findings of, abuse and neglect in the CNA registry.
- Work with State officials to ensure that all convictions which could have an impact upon the safety of residents in LTC facilities are properly reported to the State and Federal law enforcement systems.
- Consider developing a Federal requirement for criminal background checks. There are many factors to assess in establishing this requirement, such as: use of State and/or FBI criminal information systems or State registries; use of fingerprinting to ensure accuracy of identity; types of facilities and nursing home and other LTC staff to be covered; whether periodic checks of employed staff are necessary given the indicated high turnover rates; determine who pays for the checks; whether the registry, instead of the individual facilities request the checks and whether specific crimes should exclude or bar a person from employment after considering such factors as, rehabilitation, nature of crime and frequency.

- Consider assisting in the development of a national abuse registry and expansion of the current State registries to include all workers who have abused residents in facilities that receive Federal reimbursement. The registry, using the background check data, should include workers whose behavior outside the facility demonstrates unfitness for working in a health care setting. It should also include workers who were terminated or suspended for abuse and neglect from a nursing home and substantiated by the registry.

The OIG suggests that legislation be enacted to allow the national abuse registry to be included in an expanded version of the current HIPDB, which the OIG has developed as required by the Health Insurance Portability and Accountability Act of 1996. The expanded data bank would be a Healthcare Integrity and Patient Protection Data Bank.

Further, we are recommending that AoA require improved State reporting of abuse statistics to better monitor national trends in the rise or decline of abuse.

***HCFA Response to Recommendations:***

The HCFA generally concurs with our recommendations. Earlier the Administration proposed implementing legislation which was forwarded to Congress on July 29, 1998 requiring criminal background checks, expanding State registries, and developing a national abuse registry for nursing facility employees. However, the HCFA indicated that it must examine further whether the expanded version of the HIPDB is the appropriate vehicle for the national registry. It plans to continue discussions with the OIG and to coordinate possible legislative proposals and an implementation plan for the national registry. In addition, HCFA stated it may be useful to conduct further studies to look beyond the perpetrators of abuse to factors in the broader nursing home environment.

***AoA Response to Recommendations:***

The AoA agreed to take action on our recommendation. The AoA will compile State and national totals of abuse complaints reported by the ombudsman programs, compare the increase or decrease of such complaints against the base year 1996, and indicate for 1996 and all subsequent years the number and percentage of total complaints made to ombudsmen which are categorized as abuse complaints, according to the seven specific categories in the National Ombudsman Reporting System. It will utilize the information to target assistance to State programs showing increased instances of abuse. The AoA will provide this information to HCFA and other interested parties for comparison with data from other sources in order to identify any national trends which might emerge over a multi-year period.

## APPENDICIES

**33 STATES WITH CRIMINAL BACKGROUND CHECK REQUIREMENTS**

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Alabama	✓								
Alaska		✓				✓	Nursing Home and Assisted Living	All paid employees, owners and independent contractors	\$84; includes State and Federal check and fingerprinting; Employee pays
Arkansas		✓				✓	Long Term Care facility; Home Health Care Service; and Hospice	Operators applying for license, Applicants and employees providing care to elderly/individuals with disabilities. Family members, volunteers, and administrative persons are excluded.	Cost not specified; Employer pays
Arizona	✓								
California		✓		✓			Any facility that employs Nurse Aides and Home Health Aides; Most often this would be a Nursing Home, Home Health Agencies (HHAs), and Hospitals	Nurse Aides and Home Health Aides	\$5 for Nurse Aides and \$25 for Home Health Aides; part of license renewal
Colorado		✓		✓			Nursing Care Facilities	All Applicants	Fee varies; \$14 for Statewide check.; payment as agreed to by employee and employer

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Connecticut	✓								
Delaware	✓								
District of Columbia	✓								
Florida		✓		✓			Assisted Living  Adult Family Care Homes	Nurse Aides, Applicants, Administrators, General Partner, and Corporate officers  Nurse Aides, Applicants, House-hold members, Relief person, and all staff	\$15; Employer Pays
Georgia		✓		✓			Nursing Homes, Personal Care Homes, Group Homes, and Alternative Living Unit	All employees	\$27; Employer pays
Hawaii	✓								
Idaho			✓	✓			All Long Term Care Facilities	All employees	\$5 for name search and \$10 for fingerprint search; State Pays
Illinois		✓		✓			Community Living, Long Term Care, Life Care, Home Health Agency, Community Residential Alternative, Nurse Agencies, Respite Care, Hospice, Mental Health, Community Integrated Living, and Hospitals as defined in Law	Direct care employees and Nurse Aides	\$12 for name search and \$15 for fingerprint search; Employee or employer may pay

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Iowa		✓		✓			Nursing Facilities, Skilled Nursing Facilities, Intermediate Care Facilities (ICF) for the Mentally Retarded, ICF for Persons with Mental Illnesses, Residential Care Facilities (RCF), RCF for the Mentally Retarded, Three to five Bed RCF for the Mentally Retarded, RCF for the Mentally Ill	All employees, anyone providing services to residents, including independent contractors	\$13-\$15; Facility pays
Indiana		✓		✓			Health Facility, Hospital based Facility that employs Nurse Aides or an entity in business of contracting to provide Nurse Aides or other non licensed employee of a facility covered in the law	Operators, Administrators, Nurse Aides, and non-licensed employees	\$7 to \$10; Employer pays but may require employee reimbursement; \$32 by private firm
Kansas		✓		✓			Any elderly or disabled residential facility for eight or more persons that is licensed by the State	Operators and Administrative staff	\$10; State pays
Kentucky		✓		✓			Any nursing facility (Nursing Homes, Adult Day Care, Domiciliary Care, Psychiatric Hospital, Sheltered Housing, Hospice, and Acute Care Hospital) and Agencies (such as Home Health Agencies) providing services to senior citizens	Nursing facility employees providing direct service to senior citizens	\$4; Employer pays
Louisiana		✓		✓			Nursing Homes, Intermediate Care, Adult Residential Care, Adult Day Care, Home Health and Residential Services Agencies, Hospice, and Ambulance Services	Non-licensed direct care employees and licensed ambulance personnel	\$10; Employer pays

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Maryland		✓		✓			Adult Dependent Care Programs, Adult Day Care, Domiciliary Care, Group Homes, Home Health Agencies, Sheltered Housing, Residential Service Agency, Alternative Living Unit, and Hospice Facility	Compensated employees having routine direct access to dependent adults, and not licensed or certified under the Health Occupations Article (i.e., RNs, LPNs, and CNPs)	\$7 to \$18 for State check; \$24 for FBI check; Employer Pays
Maine			✓	✓			Nursing Homes, Group Homes, HHAs, Psychiatric Hospitals, and Hospice	Nursing Home employees and Nurse Aides	No Charge
Massachusetts	✓								
Michigan	✓								
Minnesota		✓		✓			Hospital, Boarding Care Homes, Outpatient Surgical Centers, Nursing Homes, Home Care Agencies, Residential Care Homes, Board and Lodging establishments	Persons providing services which have direct contact with patients and residents. (Applicants, current employees, contractors, and volunteers)	\$5; Employer pays for State check; \$24 for an FBI check
Mississippi	✓								
Missouri		✓		✓			Continuing Care Retirement Community, Health Care Facilities, Long Term Care, In-home Service Providers, and Employment Agencies for Nurses and Nurse Assistants	Applicants for a full-time, part-time, or temporary position that has contact with any patient or resident.	\$5 to \$22; Employer pays but may require employee reimbursement
Montana	✓								
Nebraska		✓		✓			Assisted Living	Direct care staff of the facility	Not specified



STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
North Carolina		✓		✓			Nursing Homes, Adult Care Home, Home Care Agencies, Domiciliary Care Facility, Group Homes, Residential Service Agencies, Psychiatric Hospitals, Area Mental Health, Developmental Disabilities, Substance Abuse, and Hospice, any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to the sick, the disabled, or the elderly	Non-licensed job applicants and consenting volunteers who provide treatment for or services to the disabled and the elderly, non-licensed applicants for employment in Nursing Homes, Adult Care Homes, and Home Care Agencies	Capped at \$14; Either employer or employee pays
North Dakota	✓								
Ohio		✓		✓			Hospice, Home Health Care, Adult Day-Care, Adult Care Facility, Nursing Homes, Residential Care facilities, County and District Homes, Homes for the Aging, Passport Agencies.	All applicants under final consideration for providing direct care to an older adult. Does not include volunteers.	\$5 for State check; \$25 for FBI check; Facility pays
Oklahoma		✓		✓			Nursing and Specialized Facility, or Residential Care Homes, Adult Day Care, and Home Health or Home Care Agencies	Applicants for employment or contract offers to non-licensed nurse aide or other person providing nursing care, health related services, or supportive assistance	\$10; Employer pays
Oregon		✓				✓	Adult Foster Care Homes and Residential Care facilities	Administrators, Direct and Non-direct Care Staff	\$36; Employer pays

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Pennsylvania		✓				✓	Domiciliary Care Home, Home Health Care Agencies, Long Term Care Nursing Care Facilities, Older Adult Daily Living Center, Personal Care Home	All applicants being considered for employment	\$10 for State check and if Federal check is required the State Police may not charge the applicant more than the established charge by the FBI; Employee pays
Rhode Island		✓		✓			Nursing Homes, Home Health Agencies, In-patient Hospice, Nursing Service Agencies, and Assisted Living Facilities	Persons seeking employment at a facility covered by the law	No Charge
South Carolina		✓				✓	Health Facility licensed under this article including, but not limited to Nursing Homes and Community Residential Care facilities	Administrators	\$39; Employee pays
South Dakota	✓								
Tennessee	✓								
Texas		✓		✓			Nursing Homes, Adult Day Care, Home Health Agencies, Adult Day Health Care, Intermediate Care, Adult Foster Care, Custodial Care Home, Personal Care, Non-licensed Attendant Care, and Mental Health and Mental Retardation	Direct Contact Employees	\$8 or less; Employer pays
Utah	✓								
Virginia		✓				✓	Nursing Homes, Adult Day Care, Hospice, and other State licensed facilities	Compensated employees	\$15; Employer pays

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	
		LAW	REG	STATE	FED	FED & STATE			
Vermont		✓		✓			Nursing Homes, Home Health Agencies, Adult Day Care, and Residential Service Agencies	Employees, Contractors, and Grantees involved in care giving	No Charge
Washington		✓				✓	Nursing Homes, Home Health Agencies, Adult Day Care, Group Home, and Sheltered Housing for the elderly	All prospective employees and volunteers having unsupervised access to vulnerable adults	No Charge for nonprofit and \$10 for profit businesses
West Virginia		✓		✓			Residential Care Facility, Home Care, and licensed Day Care Facilities	Compensated employees and contractors	\$10; Employer pays
Wisconsin		✓		✓			Nursing Homes and Community Based Residential facilities	All Nursing Home employees	\$13; Employer pays
Wyoming	✓								
TOTAL	18	31	2	24	0	9			

## CRIMINAL BACKGROUND CHECKS

### SUMMARY of STATE REQUIREMENTS AND EXPERIENCES

	IL	IN	MD	MI	MN	OH	VA	WI	Notes
1. State Law? <i>Effective Date</i>	Y 1/96	Y 3/96	Y 7/96	N N/A	Y 7/95	Y 1/97	Y 4/93	Y 7/98	
2. Who Pays for Check?	NH	NH Employee	NH	N/A	State	NH	NH	NH	<b>Note 1</b>
3. Cost	\$12-\$15	\$7-\$32	\$7-\$24	N/A	\$5-\$24	\$15	\$15	\$13	<b>Note 2</b>
4. Who is Checked?	Direct Care Employees	Non-licensed Employees	All New Employees	N/A	Direct Care Employees	Direct Care Employees	All New Employees	All New Employees	<b>Note 3</b>
<i>Volunteers/Contractors</i>	N	N	N	N/A	N	N	N	N	
<i>On-Board Staff</i>	Y	N	N	N/A	Y	N	N	Y	
<i>Prospective Staff</i>	Y	Y	Y	N/A	Y	Y	Y	Y	
<i>Other Staff</i>	Y	Y	Y	N/A	Y	N	Y	Y	
5. Are Checks Periodic?	N	N	N	N/A	N	N	N	Y	
6. Query Registry/State Board?	Y	Y	Y	N/A	Y	Y	Y	Y	
7. Extent of Check	Statewide	Statewide	Statewide	N/A	Statewide	Statewide	Statewide	Statewide	
8. Response Time: Per Law	2 wks	N/A	N/A	N/A	2 wks	4 wks	4 wks	2 wks	
Response Time: Per Nursing Home	1-5 wks	2-6 wks	1 - 3 days	N/A	4 wks	3-7 wks	1-3 wks	N/A	
9. Use Federal System?	N	N	N	N/A	N	N	N	N/A	
10. Fingerprinting Used?	N	N	N	N/A	N	Y	N	N	<b>Note 4</b>
11. List of Disqualifying Crimes? <i>Comprehensive List?</i>	Y Y	Y N	N N	N/A N/A	Y Y	Y N	Y Y	Y Y	
12. Penalties for False Statements on Application?	N	N	N	N/A	N	N	Y	N	
<i>Penalty for not Doing Check?</i>	N	Y	N	N/A	N	N	N	N	
13. Aware of OIG Exclusion List? <i>Were Excluded Persons Usually Flagged?</i> <i>Registry for Non-Medical Staff?</i>	N Y N	N Y N	N N N	N/A Y N	N Y N	N Y N	N Y N	N/A Y N	
14. Were Crimes Committed Outside NH Reported?	Y	N	N	N/A	N	N	N	N/A	
15. Turnover: Aides <i>Nurses</i>	HIGH MED	HIGH HIGH	HIGH HIGH	N/A N/A	HIGH HIGH	LOW HIGH	MED HIGH	N/A N/A	<b>Note 5</b>

**Note 1:** Minnesota recoups the cost of background checks with increased licensing fees. Illinois statute allows nursing home to recoup cost from applicant.

**Note 2:** Cited costs refer to checks from State agencies. Different charges may apply for private firm or NCIC checks.

**Note 3:** Illinois does not include doctors or licensed nurses in its definition of direct care employees.

**Note 4:** Data refers to background checks requested from State agencies. Fingerprinting is used for requests when additional identification is required.

**Note 5:** LOW = 15%; MED= 16-50%; HIGH= more than 50%

NH = Nursing Home  
N/A = Not Applicable

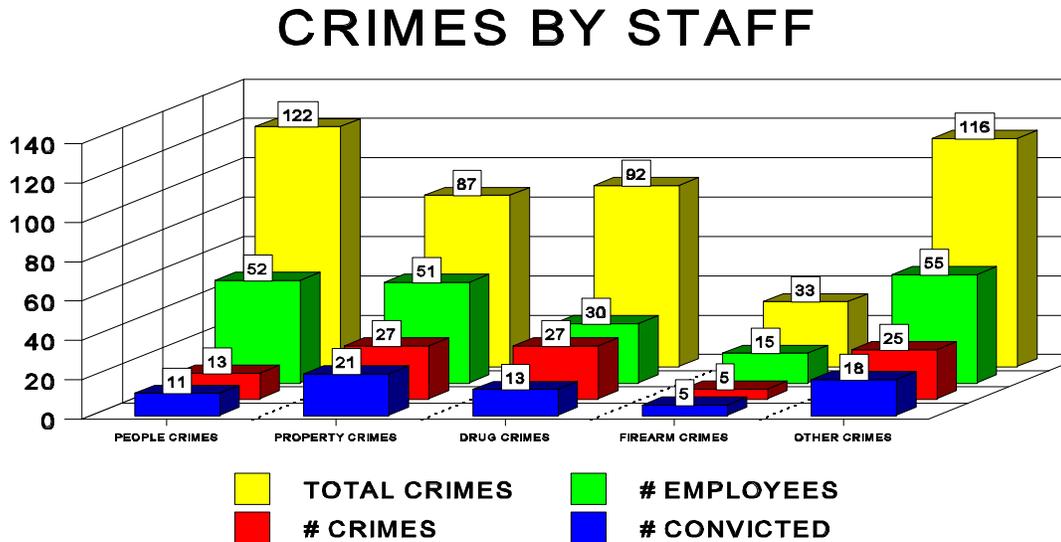
# CRIMINAL BACKGROUND CHECKS

## SUMMARY of STATE REQUIREMENTS AND EXPERIENCES

	IL	IN	MD	MI	MN	OH	VA	WI
<b>Positive Comments:</b>								
List of Disqualifying Crimes	Y	Y	N	N/A	Y	Y	Y	N/A
Check is Incentive to be Truthful on Application	Y	Y	Y	N/A	Y	Y	Y	N/A
Conviction Data Current	Y	Y	N/A	N/A	Y	Y	Y	N/A
Cost Reasonable per Nursing Home	Y	Y	Y	N/A	Y	Y	Y	N/A
Few Instances of Abuse Reported by Nursing Home	Y	Y	Y	N/A	Y	Y	Y	N/A
<b>Negative Comments:</b>								
Only Statewide Check - Federal System Not Used	Y	Y	Y	N/A	Y	Y	Y	N/A
Fingerprinting Used	Y	Y	Y	N/A	Some Times	N	Y	N/A
Arrests Not Reported: Inaccurate-State System	Y	Y	Y	N/A	Y	Y	Y	N/A
Checks Are An Absolute Deterrent	N	N	N	N/A	N	N	N	N/A
Checks Are Only of New Hires	N	Y	Y	N/A	N	Y	Y	N/A
Some Nursing Homes Checks Include:								
Doctors	N	N	N	N/A	N	N	N	N/A
Nurses	N	Y	Y	N/A	Y	Y	Y	N/A
Volunteers	N	N	N	N/A	N	N	N	N/A
Contractors	N	N	Y	N/A	Y	N	Y	N/A
High Turnover Rates Aides--New Hires	Y	Y	Y	N/A	Y	Y	Y	N/A
NH Involved in Abuse Investigations	N	N	N	N/A	N	N	Some Times	N/A
<b>Employers Immune from Liability on References</b>	N	N	Y	N/A	N	N	N	N/A
Rely on Registry/Board for Abuse Data	Y	N	N	N/A	N	N	N	N/A
Informed of Investigation Disposition	N	N	N	N/A	N	N	N	N/A

## 450 CRIMES BY NURSING HOME STAFF

The 450 arrests involving 120 employees include:



Note: The total number of employees cited is more than 120 because an employee committed more than 1 crime.

- ✓ 122 crimes by 52 employees were against people, such as assault, battery, child and sexual abuse, robbery with deadly weapon, 11 employees were convicted for 13 crimes against people;
- ✓ 87 crimes by 51 employees were against property such as burglary, robbery, theft, trespassing and shoplifting, 21 employees were convicted for 27 crimes against property;
- ✓ 92 crimes by 30 employees involved illicit drugs, such as possession of cocaine, heroin, marijuana, distribution and manufacture of illicit drugs, as well as forged prescriptions, 13 employees were convicted for 27 crimes against controlled substances;
- ✓ 33 crimes by 15 employees involved firearms, such as carrying and use of handguns, 5 employees were convicted for 5 crimes against firearms; and
- ✓ 116 other crimes by 55 employees involved forgery, welfare and unemployment benefits fraud, resisting arrest, bad checks, and prostitution, 18 employees were convicted for 25 other crimes.

## **51 Employees with Convictions**

Fifty-one employees had been convicted of a crime based on data from both the State systems and FBI system. They were arrested for other crimes, but the dispositions on these crimes was unknown. The following is a list of the number of employees classified by job and the crimes for which they were convicted.

- ✓ 27 Nurse aides were convicted of: assault; simple assault; assault common; assault strong arm; battery; child abuse; theft; grand theft; robbery; possession of controlled substances, such as PCP and Marijuana; possession with intent to distribute; possession of narcotic paraphernalia; welfare fraud; forgery; conspiracy; false pretenses; resisting arrest; driving while intoxicated; intoxication; and disorderly conduct.
- ✓ 7 LPNs were convicted of : robbery with a deadly weapon, theft, trespassing, larceny, shoplifting, prostitution, driving while intoxicated, disorderly conduct, and possession of narcotic drugs.
- ✓ 7 Housekeeping staff were convicted of: assault, assault common, assault with a handgun, handgun violations, robbery with a deadly weapon, possession of cocaine, violation of probation, driving with suspended license, disorderly conduct, and malicious destruction of property.
- ✓ 4 Dietary aides were convicted of: battery, shoplifting, forgery, possession of marijuana or heroin, distribution of heroin and other narcotics, consuming alcohol, bad checks, and violation of immigration laws.
- ✓ 2 Food service staff were convicted of: handgun violations, and possession of cocaine.
- ✓ 1 RN was convicted of carrying a pistol without a license.
- ✓ 1 Environment services staff was convicted of: possession of PCP and marijuana, and possession with intent to distribute.
- ✓ 1 Laundry staff was convicted of two counts of child abuse.
- ✓ 1 Maintenance staff was convicted of: robbery, possession of marijuana, handgun violation, and violation of probation.



The Administrator  
Washington, D.C. 20201

**DATE:**

SEP 3 1998

**TO:** June Gibbs Brown  
Inspector General

**FROM:** Nancy-Ann Min DeParle *NMD*  
Administrator

**SUBJECT:** Office of Inspector General (OIG) Draft Report: "Safeguarding Long Term Care Residents," (A-12-97-00003)

We have reviewed the above-referenced **report** that examines measures taken **by** states to safeguard residents **from** abuse in long-term care (**LTC**) facilities. The report **focused** on state requirements and implementation of background checks, reporting abusers centrally in state registers, investigations of alleged abuses, and experiences of **nursing home officials**.

The report recommends **that** the Health Care Financing **Administration (HCFA)** and the Administration on Aging work collaboratively **with** the states to improve the safety **of** long-term care residents and to strengthen **safeguards** against the employment of abusive workers by elder care **facilities**. The report further recommends establishing Federal requirements and criteria for performing criminal background checks, expanding the current **state registries** to include all workers who have abused residents in **facilities** that receive Federal reimbursement, and HCFA assist in the development of a national abuse registry for nursing home employees. The **OIG** suggests that legislation be enacted to include the national abuse registry in an expanded version of the current **Healthcare Integrity Protection Data Bank (HIPDB)**.

The Inspector General's conclusions echo our own findings. Nursing home residents and their families deserve compassionate caregivers, not convicted criminals and known abusers. As you know the President on **July 21** launched a wide-ranging initiative to better protect nursing home residents and improve their quality of care. This report strengthens the case for the President's, proposal to require criminal background checks for nursing home workers and to create a national abuse registry. On July 29, we forwarded proposed **implementing** legislation to Congress and we hope that members will take quick action.

We concur with OIG's recommendations for **criminal** background **checks** and **expanding** state registries. We also agree conceptually with the OIG recommendation to develop a **national abuse registry** for nursing **facility** employees. However, we must further examine whether the expanded version of the HIPDB is the appropriate vehicle for the **registry**. While **the** idea of an integrated database is appealing, a number of **operational** issues must first be examined. **Staff from** my office have engaged in **preliminary** discussions **with** members of your **staff** to discuss the capacity of the HIPDB, OIG's proposals for expansion, and the goals of the President's initiative. We plan to continue these discussions and to coordinate possible legislative proposals and an implementation plan for the registry.

In addition to enactment of the legislative **proposals**, it may be useful to conduct further studies, looking beyond the perpetrators of abuse to factors in **the** broader nursing home environment. **Examining** the relationship between abuse of residents **and factors** such as employee working conditions, pay, and "no-lift" policies to ease injuries may allow **us** to **identify** preventive steps that can be taken. The combination of thorough background checks and preventive measures should help reduce **abuse** of **LTC** residents.

Additionally, another factor which needs to be addressed is **the** awareness and sensitivity **training** which is provided to caretakers **in** dealing with disabilities **common** among **the** beneficiaries who receive LTC. **Without understanding these disabilities and how to** address them, abuse-even unintentional-can occur because of ignorance and/or **frustration**, or the lack of adequate accommodations and technical support to properly care for the patient.

Thank **you** for **the** opportunity to comment on this **report**.

**SEP 2 1998**

Washington, D.C. 20201

To: June Gibbs Brown  
Inspector General

From: Assistant Secretary for Aging

Subject: Safeguarding Long-Term Care Residents (A- 12-97-00003)

We appreciate having the opportunity to review the draft of this report and to discuss it with staff of the Office of Audit Services.

Regarding abuse data collected at the Federal level, the Administration on Aging's (AoA) role relative to such data and action which AoA is in a position to undertake are provided below and are based upon the following background information.

#### Background

Beginning in FY 1996, all states submit to AoA annual long-term care ombudsman reports which show numbers of complaints made to the statewide ombudsman programs in 133 specific categories. The first seven of these categories are complaints which ombudsmen classify as abuse, gross neglect or exploitation. These include: physical abuse, sexual abuse, verbal/mental abuse, financial exploitation, gross neglect, resident-to-resident abuse and "other". The definition of abuse used in the instructions for documenting complaints is that contained in the Older Americans Act, which is the same definition used by the Health Care Financing Administration (HCFA); definitions and specific examples of types of abuse are from HCFA's "Survey Forms and Interpretive Guidelines for the Long-Term Care Survey Process," April 1992.

While ombudsmen investigate and document numerous complaints about abuse, other state agencies, including adult protective services, the nursing home survey and certification agency, and the Medicaid Anti-Fraud and Abuse Units, also investigate abuse complaints. Thus, the data reflected in the state ombudsman reports provide only part of the picture of the incidence of abuse which might be occurring in long-term care facilities in a state. Also, many complaints may be classified as abuse which are not really abuse but are injuries due to accidents or mishandling.

#### Response

The AoA will provide guidance to the states to eliminate complaints which may be classified as abuse but may instead be injuries due to accidents or mishandling. AoA will compile state and national totals of abuse complaints reported by the ombudsman programs, compare the increase

or decrease of such complaints against the base year 1996, and indicate for 1996 and all subsequent years the number and percentage of total complaints made to ombudsmen which are categorized as abuse complaints, according to the seven specific categories in the National Ombudsman Reporting System (NORS). We will utilize the information to target assistance to state programs showing increased instances of abuse. AoA will provide this information to HCFA and other interested parties for comparison with data from other sources in order to identify any national trends which might emerge over a multi-year period.

Again, thank you for the opportunity to comment on this important report.

  
Jeanette C. Takamura