

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NURSE AIDE REGISTRIES:  
STATE COMPLIANCE AND  
PRACTICES**



Inspector General

February 2005  
OEI-07-03-00380

# *Office of Inspector General*

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## OBJECTIVE

To determine State compliance with Federal regulations for (1) updating the nurse aide registry records of nurse aides who had substantiated findings of abuse, neglect, or misappropriation of property, (2) removing the records of nurse aides who had not performed nursing or nursing-related services for 24 consecutive months, and (3) to review State nurse aide registry practices.

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## BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 contained provisions designed to assure delivery of quality care to long-term care facility residents. Federal regulations (42 CFR § 483.156) require each State to establish and maintain a registry of individuals who have completed training and who the State finds to be competent to function as nurse aides. Nurse aide registries also must include information on any substantiated finding of abuse, neglect, or misappropriation of property made by the State survey agency related to an individual.

Used properly, State nurse aide registries prevent unemployable individuals from being employed in long-term care facilities. Federal regulations require that States update the nurse aide registry records of nurse aides with a substantiated finding within 10 working days of substantiating that finding. States also must remove from the registry the records of nurse aides who have not performed nursing or nursing-related services for a period of 24 consecutive months, unless the records include substantiated findings. Those records must remain on the registry indefinitely, except under specific circumstances, such as notification of the death of the individual.

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## FINDINGS

### **Some States failed to update registries with substantiated adverse findings.**

At least 24 of the 38 States that we analyzed in detail did not meet Federal regulations for updating registry records of nurse aides with substantiated findings within 10 working days. Records of 1 in 4 nurse aides (450/1,978) with recent substantiated findings were not updated on the appropriate State registry 10 working days after the last possible substantiation date in our review period. Of the 450 nurse aide records

not updated, 236 still were not updated on the appropriate nurse aide registry 3 months after our initial verification.

**Over half of State survey respondents reported failure to remove records of inactive nurse aides from registries; some individuals with substantiated adverse findings in one State were actively certified in others.**

Twenty-eight State survey respondents reported that they did not remove records of inactive nurse aides from their registries as required, and over 99,000 nurse aides had active certifications in multiple States. Additionally, more than 1,500 nurse aides with substantiated findings had certifications in at least 1 other State, and were, therefore, potentially employable in that other State. More than 300 nurse aides had substantiated findings in more than 1 State.

**Some State-specific practices could make it more difficult to prevent certain individuals from working as nurse aides.**

State survey respondents reported using status classifications in their registries other than, and in addition to, those required in Federal regulation. In addition, some registries lacked complete information and many States relied on nurse aides to keep registry information up-to-date, contributing to inaccurate or out-of-date information existing on registries.

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## RECOMMENDATIONS

To assure that nurse aide registries effectively fulfill their intended purpose, we recommend that the Centers for Medicare & Medicaid Services (CMS):

- Ensure States update records of nurse aides with substantiated adverse findings timely and remove registry records of nurse aides who have not performed nursing or nursing-related services for 24 consecutive months, in accordance with Federal regulations. CMS could achieve this by: (1) issuing program memoranda that address updating nurse aide registry records, (2) conducting periodic reviews of State registries, or (3) implementing greater oversight.
- Reduce the potential for nurse aides with substantiated findings to commit similar acts in another State. CMS could achieve this by seeking legislative authority to create a national nurse aide registry (a national registry also could be used to address identified data limitations, such as the lack of dates when substantiated findings

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are placed on registries). CMS also could work with States to increase information sharing.

- Work with States to ensure registry records contain current information on nurse aides. CMS could achieve this by requiring long-term care facilities to report current information of nurse aides they employ to the State registry upon hire and periodically thereafter.

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### AGENCY COMMENTS

We appreciate the level of detail that CMS provided in their comments to our recommendations. CMS generally concurred with our recommendations, and we note that CMS has taken action to address some of the findings raised in our report.

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## OBJECTIVE

To determine State compliance with Federal regulations for (1) updating the nurse aide registry records of nurse aides who have substantiated findings of abuse, neglect, or misappropriation of property, (2) removing the records of nurse aides who have not performed nursing or nursing-related services for 24 consecutive months, and (3) to review State nurse aide registry practices.

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## BACKGROUND

### Federal Regulation

The Omnibus Budget Reconciliation Act of 1987 was designed to assure delivery of quality care to long-term care facility residents. Federal regulations (42 CFR § 483.156) require each State and the District of Columbia (hereinafter referred to as a State) to maintain a nurse aide registry of all individuals who are certified to work as nurse aides in that State (all individuals who have completed nurse aide training and that the State deems competent to function as nurse aides<sup>1</sup>) as well as all individuals who have been prohibited from employment as nurse aides in long-term care facilities because of substantiated findings of abuse, neglect, or misappropriation of property.<sup>2</sup> Throughout the report, we use the term “substantiated findings” to refer to State survey and certification agencies’ substantiated findings (against a nurse aide) of abuse, neglect, or misappropriation of property.

Nurse aide registries must include at a minimum: (1) the full name of the individual, (2) identifying information, (3) the date the individual became eligible for placement in the registry, and (4) information regarding substantiated findings (as appropriate).<sup>3</sup>

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<sup>1</sup> Nurse aide refers to any individual who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide nursing or nursing-related services without pay and who provides nursing or nursing-related services to residents in a facility (42 CFR § 483.75(e)).

<sup>2</sup> The applicable regulations define abuse as “. . . the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.” Neglect is defined as “. . . failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.” Misappropriation of resident property is defined as “. . . the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent . . .” (42 CFR § 488.301).

<sup>3</sup> 42 CFR § 483.156(c)(1).

The nurse aide registry should include information only on those individuals who have “active” certifications and are thus employable and individuals whose records include substantiated findings. Federal regulations require States to remove registry records of individuals who have not performed nursing or nursing-related services for a period of 24 consecutive months, thus becoming “inactive” and no longer employable.<sup>4</sup> Individuals with records of substantiated findings must remain on the registry permanently, unless the findings were made in error, the individual was found not guilty in a court of law, or the State is notified of the individual’s death.<sup>5</sup> The Balanced Budget Act of 1997 (Public Law 105-33 § 4755) established the only exception, which allows nurse aides with substantiated findings of neglect to petition the State to have their name removed from the registry. Such an individual must wait at least 1 year from the date on which the substantiated finding was added to the State nurse aide registry, and the State must determine that the employment and personal history of the nurse aide did not reflect a pattern of abusive behavior or neglect, and that the neglect involved a singular occurrence.

#### **Purpose of State Nurse Aide Registries**

State nurse aide registries are intended to assure that long-term care facilities employ only certified nurse aides who do not have substantiated findings. Federal regulation requires long-term care facilities to not employ individuals who have a substantiated finding entered into the State nurse aide registry<sup>6</sup> and to check the State registry before hiring nurse aides to verify competency.<sup>7</sup> Assuring the integrity of States’ registries is a critical step in providing a safe living environment for more than one million, mostly elderly, residents in long-term care facilities nationwide.<sup>8</sup> While the majority of nurse aides perform their duties without committing acts of abuse, neglect, or misappropriation of property, those who do create concerns. Examples of investigative case histories follow:

- A nurse aide pushed a resident, causing the resident to fall to the floor. The nurse aide later retrieved a snow shovel from the kitchen,

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<sup>4</sup> 42 CFR § 483.156(c)(2).

<sup>5</sup> 42 CFR § 483.156(c)(1)(iv)(D).

<sup>6</sup> 42 CFR § 483.13(c)(1)(ii)(B).

<sup>7</sup> 42 CFR § 483.75(e)(5).

<sup>8</sup> We will refer to nursing homes and skilled nursing facilities as long-term care facilities in this report. All CFR references refer to these facilities as long-term care facilities.



and while the resident was still on the floor, struck the resident with the shovel and yelled that she was going to kill the resident (from the Virginia registry).

- A nurse aide neglected a resident by leaving the resident in the facility transport van. The nurse aide left for the day at approximately 5:00 p.m. The resident was found alone in the van later that day at approximately 6:20 p.m. when he could not be located in the facility (from the North Carolina registry).
- A nurse aide took a resident's debit card without permission, got the personal identification number, and withdrew money from the resident's bank account totaling approximately \$1,100 over an unknown period of time (from the Texas registry).

State survey and certification agencies receive and investigate allegations against nurse aides regarding abuse, neglect, or misappropriation of property. Federal regulations require placing information regarding a substantiated finding on the registry within 10 working days of substantiating that finding.<sup>9</sup> In 13 States, the State survey agency was responsible for both investigations and maintenance of the nurse aide registry. In 38 States, investigations were performed by 1 State agency and maintenance of the registry by another.

### **Overview of State Nurse Aide Registries**

As of September 15, 2003, State nurse aide registries contained 2.6 million nurse aide certifications in the United States.<sup>10</sup> Out of these, 39,061 records (33,768 unique individuals)<sup>11</sup> were of nurse aides who were listed with substantiated findings and/or had their certifications revoked.<sup>12</sup> There were an additional 14,243 records (13,435 unique individuals) of nurse aides who were listed as suspended or under investigation for abuse, neglect, or misappropriation of property. We note that Federal regulations do not require State nurse aide registries to maintain records of suspension or findings under investigation.

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<sup>9</sup> 42 CFR § 483.156(c)(1)(iv)(D).

<sup>10</sup> The results presented in this section are based on Office of Evaluation and Inspections analysis of nurse aide registry data during preparation for this report.

<sup>11</sup> There are more records than there are unique individuals because an individual nurse aide may be listed on more than one State registry.

<sup>12</sup> We use the term "revoked" to indicate nurse aides with denied, terminated, or revoked certifications or who have records with substantiated findings.

The size and scope of the registries varied greatly among States, ranging from 2,690 nurse aides in Alaska to 298,327 in Florida. The amount and types of information States stored on their registries also varied greatly. Some States included many details regarding topics such as identifying information, method and date of testing, certification and expiration dates, and the nature, investigation, and dates of any allegations or substantiated findings against the nurse aides; other States maintained registries that included only the information that Federal regulations specifically require.

### **Other Studies Found Weaknesses with Registries**

Previous studies of nurse aide registries identified a number of weaknesses with registry practices in some States and indicated that State compliance with Federal nurse aide registry regulations was inconsistent. A 1997 Office of Inspector General (OIG) audit on the Maryland nurse aide registry reported that the registry did not always include information on all nurse aides with substantiated findings.<sup>13</sup> A 1998 OIG audit reported that criminal background checks were limited to State records, and individuals with criminal histories were not recorded on registries.<sup>14</sup>

A 2002 Government Accountability Office (GAO) report also identified a number of potential problems with nurse aide registries.<sup>15</sup> Based on a review of three States, GAO found that there were “frequent and long delays” in including information about substantiated findings on registry entries. The GAO also found that State registries only reflected a nurse aide’s history in that particular State, leaving open the possibility that long-term care facility residents could be exposed to nurse aides who had substantiated findings in other States, or whose registry records were not updated. Further, the report found that variations in the way that States applied the definition of abuse caused inconsistencies in nurse aide registry information across States. Finally, GAO found that one State’s electronic registry failed to update its Web site with substantiated findings.

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<sup>13</sup> *State of Maryland’s Ombudsman Program for Processing Elder Abuse and Neglect Complaints of Geriatric Nurse Aide Registry*. Office of Inspector General, A-12-96-00016 (11/97).

<sup>14</sup> *Safeguarding Long-Term Care Residents*. Office of Inspector General, A-12-97-00003 (09/98).

<sup>15</sup> United States Government Accountability Office, *Long-term Care Facilities: More Can Be Done to Protect Residents from Abuse*, GAO-02-312 (Washington, DC: March 2002).

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## METHODOLOGY

This study was based on information from several different sources: (1) a review of Federal regulations regarding nurse aide registries; (2) a review of the existing literature and studies on nurse aide registries; (3) survey responses from the agencies responsible for the registries in all States; and (4) actual registry information and substantiated findings data from all States.

### **State Survey**

We asked representatives from the State agencies that were responsible for maintenance of the registries and the investigative units in all States to complete an online survey regarding the practices, policies, and procedures they followed in maintaining their registries, their opinions on the effectiveness of their registry practices, and the challenges they faced in maintaining accurate information. We received responses from all such agencies. Where appropriate, we defined instances in which information came solely from survey data.

### **Registry and Investigative Agency Data**

We requested and received data from all States comprising their entire nurse aide registry as of September 15, 2003. Per our request, the data included information on both employable nurse aides and those nurse aides with substantiated findings, as determined by the State survey and certification agency. For the 38 States that had a separate agency responsible for investigating allegations of abuse, neglect, or misappropriation of property, we also requested from the investigative agency a list of the nurse aides with substantiated findings between September 15, 2002, and September 15, 2003. Because a single agency handled both investigative and registry maintenance in the remaining 13 States, we did not request a separate list of nurse aides with substantiated findings from those States because there was no data source independent from the registry itself to generate a list of nurse aides with substantiated findings in these States. These States were excluded from analyses used to determine if registries were updated timely with substantiated findings.

### **Analysis**

For the 38 States with separate State registry maintenance and investigative agencies, we compared the list of substantiated findings provided by the investigative agency covering the period

September 15, 2002 through August 28, 2003<sup>16</sup> to the State registry data we received from the agency responsible for maintaining the registry to determine if all the nurse aides with substantiated findings on the investigative agency list also appeared on the registry having substantiated findings. Where nurse aides with substantiated findings were included on the investigative agency list but not on the nurse aide registry, we accessed the appropriate State registry 3 months later, in December 2003, by telephone or online to determine whether their records had been updated.

We combined the nurse aide registry data from all States, including those nurse aides with substantiated findings, to create a simulated national nurse aide registry as of September 15, 2003. We then compared the data included in the simulated registry to determine how many nurse aides had active or revoked certifications in multiple States. We also analyzed the data provided by all 51 States to determine States' compliance with Federal regulations regarding required information for nurse aides on the registry, including full name, identifying information, date of certification, and information regarding substantiated findings.

#### **Limitations of Updates to Registries and Multi-State Analysis**

Nurse aide registries did not consistently contain data regarding the date when findings were substantiated and/or when those findings were placed on the registries. Therefore, we could not determine exactly how many States failed to update registries with substantiated findings timely, nor could we determine how long it took States to update registries with substantiated findings in the 38 States where 1 agency was responsible for registry maintenance and another agency was responsible for investigations. We could not determine the number of records not updated timely that were at least 10 working days beyond the date the finding was substantiated.

Our ability to definitively determine the number of nurse aides with certifications and/or substantiated findings in multiple States was compromised by the lack of a nationally unique identifier (i.e., Social Security number or national certification number) in nurse aide

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<sup>16</sup> 42 CFR § 483.156(c)(1)(iv)(D) requires that information be included within 10 working days of the finding; therefore, we reviewed substantiated findings up to 10 working days prior to September 15, 2003, or August 28, 2003. Federal law allows nurse aides with findings of neglect to petition to have their names cleared after 1 year; thus, we limited our scope to a period of 1 year.

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registries across all States. Therefore, we included only exact matches based on nationally unique identifiers that did exist (e.g., we matched Social Security numbers for States that provided us this information) when identifying nurse aides with certifications and/or substantiated findings in multiple States. Because of these limitations, our estimate of the magnitude of nurse aide movement between States was conservative.

### **Standards**

This inspection was conducted in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

## ► FINDINGS

### **Some States failed to update registries with substantiated adverse findings**

Federal regulations require that State survey and certification agencies list

nurse aides with substantiated findings on the State nurse aide registry within 10 working days of the substantiation of the finding.<sup>17</sup> Based on the previously described data limitations, we believe our estimates of failure to comply, both in terms of number of States and number of records not updated timely, are conservative.

**Twenty-four States reviewed did not meet Federal regulations for updating registry records of nurse aides with substantiated adverse findings timely; one in four nurse aide records were not updated with recent substantiated adverse findings.**

Based on our comparison of investigative agency and registry data, at least 24 of the 38 States with separate registry maintenance and investigative agencies<sup>18</sup> had substantiated findings that were not updated in their respective registries as of September 15, 2003, 10 working days after the end of our review period (see Appendix A).

In addition to the 24 noncompliant States, survey respondents from 4 other States acknowledged that it typically took them more than the required 10 working days to update their registries with information about substantiated findings. However, survey respondents from 19 of the 24 States that we found to be out of compliance based on registry data indicated that they believed they typically met the 10 working day requirement contained in the regulation.

Thirty-eight States with separate registry maintenance and investigative agencies had substantiated findings against 1,978 nurse aides from September 15, 2002, through August 28, 2003.<sup>19</sup> Of these, 23 percent (450/1,978) of the nurse aides' records were not updated with substantiated findings on the appropriate State's registry as of September 15, 2003, 10 working days after the end of our review period. Although the State survey and certification agencies had substantiated findings for these 450 nurse aides, the nurse aides were potentially employable in any long-term care facility in that State because their

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<sup>17</sup> 42 CFR § 483.156(b)(2) and 42 CFR § 483.156(c)(1)(iv)(D).

<sup>18</sup> Thirty-eight States had two separate agencies responsible for investigating allegations and maintaining the registry. Thirteen States had one agency responsible for both investigating allegations and maintaining the registry; therefore, it was not possible to obtain an independent list of the nurse aides who had substantiated findings.

<sup>19</sup> August 28, 2003, is 10 working days prior to September 15, 2003.

registry records did not include information on their substantiated findings.

Because most States did not record the dates they added substantiated findings to their registries, we were unable to determine when the remaining 1,528 (1,978 less 450) substantiated findings were updated on the appropriate registries. It is, therefore, possible that the number of noncompliant States and the number of nurse aide records not updated within the required 10 working days could be higher. For example, had a record with a substantiated finding been updated 30 days after substantiation, but before September 15, 2003, we would not have identified it based on the methods available to us to assess compliance.

**Almost one in eight nurse aide records with substantiated adverse findings were not updated 3 months later.**

In December 2003, we accessed the registries of those 24 States in which we found 450 nurse aides with substantiated findings whose records were not updated as of September 15, 2003. Upon completion of the second review, 236 records of nurse aides still were not updated with substantiated findings.<sup>20</sup> Thus, 3 months later, and after States were aware of our study, 12 percent (236/1,978) of the records of nurse aides with substantiated findings, representing 19 States, still were not updated.

Two examples of the behavior that led to substantiated findings for nurse aides whose records were not updated on the registry, taken from information the investigative agencies provided, follow:

- A nurse aide poured milk on a resident's head, grabbed his arms and pushed him back into the wheelchair, and hit him on the head, causing multiple skin tears and bruises (from the Texas investigative agency).
- A nurse aide struck a resident in the face, fracturing his nose, and breaking his glasses (from the Alaska investigative agency).

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<sup>20</sup> Florida State officials indicated that responsibility for the nurse aide registry transferred among different agencies within the State. Few record updates of nurse aides with substantiated findings occurred during these transitions. None of the 109 nurse aides with substantiated findings in Florida during our review period were identified as such on the nurse aide registry at any time during our review.

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The well-being of long-term care facility residents was placed at risk because these nurse aides continued to appear employable due to registry records not updated to reflect their substantiated findings.

**Over half of State respondents reported failure to remove records of inactive nurse aides from registries; some individuals with substantiated adverse findings in one State were actively certified in others**

As of September 15, 2003, 2.6 million nurse aides were listed with active certifications on nurse aide registries nationwide, with 99,006 having active certifications in more than 1 State (see Table 1).

**Many States failed to remove records of inactive nurse aides from their registries.**

Federal regulations do not prohibit nurse aides from holding certifications in different States simultaneously; however, Federal regulations require States to remove from the registries the records of nurse aides who have not performed nursing or nursing-related services for a period of 24 consecutive months, as long as the nurse aides' records do not contain substantiated findings.<sup>21</sup>

Survey respondents from 28 of 51 States reported that they did not remove the records of nurse aides who failed to maintain their certification. Five of these twenty-eight States reported that the status of records was changed when nurse aides failed to maintain their certification; however, the remaining 23 States did not report making a distinction between the records of active and inactive nurse aides on the registry. Oftentimes, the nurse aide registry data available to us did not allow us to determine if nurse aide records should be removed from the registry.

Number of States	Number of Nurse Aides
2	93,697
3	4,919
4	342
5	35
6	10
7	1
9	1
10	1
<b>Total</b>	<b>99,006</b>

Source: OIG analysis of all collected nurse aide registry records

States failing to remove the records of inactive nurse aides could lead to nurse aides being employed in long-term care facilities even though they have not maintained their certification or, more significantly, returning

<sup>21</sup> 42 CFR § 483.156(c)(2).



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to a State where they have an active certification despite having a substantiated finding in another State.

Some States acknowledged failing to remove the records of nurse aides who had not maintained their certifications and our analysis showed that some of the nurse aides with multiple certifications held them in nonneighboring States. Thus, it was possible that some of the 99,006 nurse aides with more than 1 active certification should have had their records in the other State(s) removed to reflect that the certification was no longer active.

### **More than 2,000 nurse aides with substantiated or pending adverse findings in 1 State had active certifications in other States.**

A total of 1,552 nurse aides with either substantiated findings and/or revoked certifications, and another 450 nurse aides with pending findings in a State were also actively certified in 1 or more other States (see Table 2). A detailed State breakdown for substantiated findings can be found in Appendix B and pending findings in Appendix C.

Nurse aides with pending or substantiated findings not only held active certifications in neighboring States, but also held active certifications across the Nation. For example, 33 nurse aides with substantiated findings from Virginia had active certifications in Florida, and 19 nurse aides with substantiated findings in California had active certifications in Illinois.

<b>Actively Certified in</b>	<b>Number of Nurse Aides with Substantiated Findings</b>	<b>Number of Nurse Aides with Pending Findings</b>
1 State	1,412	418
2 States	122	29
3 States	14	3
4 States	3	0
5 States	1	0
<b>Total</b>	<b>1,552</b>	<b>450</b>

Source: OIG analysis of all collected nurse aide registry records

The data provided did not allow us to conclude where the nurse aides resided at the time of our study. In addition, the data did not allow us to determine the date the findings were substantiated in one State or the dates the certifications were granted in another State. Thus, the active certification in one State could have been granted before or after the nurse aide had a substantiated finding in a different State.

## F I N D I N G S

### **More than 300 nurse aides had substantiated adverse findings in multiple States.**

Based on the data we received, we were able to conclusively identify 314 nurse aides who had records with matching unique identifiers and substantiated findings in multiple States (i.e., the same individual had different substantiated findings in different States). Our analysis indicated that there could be as many as 4,569 nurse aides with unique substantiated findings in multiple States. However, due to how States maintained information in their registries, we could not definitely determine whether substantiated findings of some nurse aides were unique, independent events or were instead substantiated findings included on that State's registry, but had occurred in another State.

### **Some individuals who had substantiated adverse findings as nonnurse aides in one State were actively certified as nurse aides in others.**

The data that Arkansas provided allowed us to identify 3,391 nonnurse aides (e.g., staff who were not nurse aides, such as janitors) with histories of abuse. Of these, 1 percent (36/3,391) also had records listing them as active nurse aides in at least 1 other State. Since we were only able to assess the number of nonnurse aides with substantiated findings from one State, it was possible that similar situations existed in other States.

### **Despite States' efforts, nurse aides with substantiated adverse findings had active certifications.**

According to survey data, 33 States responded that they included substantiated findings from other States on their registries and that an out-of-State finding disqualified a nurse aide from certification and employment in their respective State.<sup>22</sup> Yet, as of September 15, 2003, 32 of these 33 States had an active certification for at least 1 nurse aide who was prohibited from working in another State. As previously stated, data available in State registries did not always allow us to determine when a substantiated finding was placed on a registry; therefore, we could not determine if the substantiated finding occurred before or after a certification was issued in these 32 States. Possible explanations as to how nurse aides with substantiated findings could become certified in a new State include: (1) while a certification in one State remains active, the nurse aide moves to a new State, becomes

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<sup>22</sup> Twelve additional States indicated that a substantiated finding in another State would have to be reviewed before they might disqualify the nurse aide from working in their State.

certified, and subsequently abuses, neglects, or misappropriates a resident’s property; (2) the State where the offense occurred does not enter the substantiated finding on the registry timely, thus allowing the nurse aide to appear employable in another State; or (3) the new State does not become aware of the substantiated finding because of inadequate information sharing. These problems are exacerbated when States do not remove records of nurse aides from registries as required.

**Some State-specific practices could make it more difficult to prevent certain individuals from working as nurse aides**

States have implemented varying practices in the maintenance of their registries. For example, some

States used status classifications other than those required in Federal regulation and States differed in their efforts to update registry information. Some of these practices, while beneficial to the individual States, may increase difficulties as other States work to prevent certain individuals (e.g., those with substantiated findings) from working as nurse aides. This problem is compounded when the information contained on registries is inaccurate or incomplete.

Although we did not specifically ask State survey respondents about a national nurse aide registry, the most commonly suggested improvement was the creation of a national registry. Twenty State survey respondents expressed the opinion that a national registry would be helpful, both for reciprocity purposes and in preventing nurse aides with substantiated findings from working in other States.<sup>23</sup> See Appendix D for examples of efforts some States have undertaken to improve their registry processes and State survey respondents’ suggestions for improvement.

**Eighteen States used status classifications in addition to those Federal regulations require.**

Substantiated findings leading to prohibition of employment as a nurse aide were not the only punitive sanctions that States established and maintained in their State registries. Eighteen States had various

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<sup>23</sup> Reciprocity is a process by which a certified nurse aide from another State may qualify for certification in a new State by virtue of his or her status in the previous State. An individual is only eligible for reciprocity if he or she has been entered on a nurse aide registry in another State in accordance with the training and competency evaluation requirements of the Omnibus Budget Reconciliation Act of 1987, as amended, and if the individual is currently listed on that State’s nurse aide registry as active and without substantiated findings.

## F I N D I N G S

status classifications to distinguish levels of misconduct. For example, we encountered status classifications such as “Suspended,” “Revoked,” “Dismissed,” “Lapsed,” and “Lapsed-Conditional” in one State’s registry (in addition to the federally required indications of nurse aides with substantiated findings). Another State had 40 status classifications to classify the various dispositions of individuals listed on their registry. Nationwide, we found that 14,243 nurse aide records were listed as “Suspended,” “Surrendered,” “Pending,” or some similar status classification. From the information States provided, we were unable to determine if the acts indicated within these other status classifications fit the Federal definition of abuse, neglect, or misappropriation of property. This created a potential challenge for another State attempting to use this information in determining whether to certify an individual as a nurse aide.

While Federal regulations do not require States to do so, 10 of 51 States reported pending cases of abuse, neglect, or misappropriation of property on the registry before the case had actually been substantiated, thus alerting employers of potential problems. One State noted this as a special concern because it could result in nurse aides who did not have substantiated findings being prohibited from employment. Four other States noted pending cases on a section of the registry that was not available to the public.

### **Most States relied on nurse aides to keep registry information up-to-date.**

Survey respondents from 48 States reported that they relied mainly on the nurse aides themselves to report changes in personal information directly to the registry. However, this approach did not work effectively. Eighteen State survey respondents indicated that they experienced difficulties in keeping accurate and up-to-date personal information, such as names, addresses, and renewals of certification, in their registries. Eleven State survey respondents expressed that nurse aides frequently changed employers and residences, making it difficult to assure that the nurse aides’ most recent information was available.

F I N D I N G S

**Several State registries lacked complete information.**

We reviewed individual State nurse aide registry records for full name, certification date, and other identifying information as provided in 42 CFR § 483.156(c)(1). According to registry data, 45 of 51 States had at least 95 percent of all records with the 3 basic fields completed, while 6 States had less than 90 percent of records with at least 1 required field complete (see Table 3 for general and Appendix E for specific information).<sup>24</sup> A listing of data elements contained in State registries appears in Appendix F.<sup>25</sup> Given that Federal regulations do not require States to maintain a nationally unique identifier for nurse aide records, information that could be used in lieu of such an identifier becomes more important.

<b>Table 3: State Level of Compliance with Federal Requirements</b>		
<b>Requirement</b>	<b>Level of Compliance</b>	<b>Number of States</b>
<b>Full Name</b>	100%	24
	90-99+%	26
	below 90%	1
<b>Identifying Information*</b>	100%	40
	99-99+%	11
<b>Date Certified</b>	100%	19
	90-99+%	28
	70-89+%	4
	below 70%	1

\*Social Security number, certification or license number, date of birth, or other State specific identifier

Source: OIG analysis of all collected nurse aide registry records

<sup>24</sup> We included records of nurse aides deemed active on the registry, as well as those with revoked or terminated certifications and indications of abuse, neglect, or misappropriation. The table reflects key regulations as listed in 42 CFR § 483.156(c)(1).

<sup>25</sup> Information in Table 3 is based on review of actual registry data, whereas, Appendix F is based on States' responses to our survey questions. Discrepancies between the two tables result from differences between what States reported to us and what we observed in their data.

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## RECOMMENDATIONS

Nurse aide registries are intended to assure that only certified nurse aides without substantiated findings on their records are employed in long-term care facilities. Noncompliance with registry processes, such as the failure to list substantiated findings of nurse aides on registry records timely, and the failure to remove nurse aides who have not maintained an active certification, exposes long-term care facility residents to greater risk of harm.

To assure that nurse aide registries effectively fulfill their intended purpose, we recommend that CMS:

- Ensure States update records of nurse aides with substantiated adverse findings timely and remove registry records of nurse aides who have not performed nursing or nursing-related services for 24 consecutive months, in accordance with Federal regulations. CMS could achieve this by: (1) issuing program memoranda that address updating nurse aide registry records, (2) conducting periodic reviews of State registries, or (3) implementing greater oversight.
- Reduce the potential for nurse aides with substantiated findings to commit similar acts in another State. CMS could achieve this by seeking legislative authority to create a national nurse aide registry (a national registry also could be used to address identified data limitations, such as the lack of dates when substantiated findings are placed on registries). CMS also could work with States to increase information sharing.
- Work with States to ensure registry records contain current information on nurse aides. CMS could achieve this by requiring long-term care facilities to report current information of nurse aides they employ to the State registry upon hire and periodically thereafter.

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## AGENCY COMMENTS

We appreciate the level of detail that CMS provided in its comments to our recommendations. CMS generally concurred with our recommendations, and we note that CMS has taken action to address some of the findings raised in our report.

## R E C O M M E N D A T I O N S

CMS has committed to issuing additional communications to States affirming that all findings of abuse, neglect, and misappropriation of resident property must be included in the nurse aide registry within 10 working days of the finding, and the names of nurse aides who have performed no nursing or nursing-related services for 24 consecutive months must be promptly removed from the nurse aide registry. In addition, CMS will follow up with some of the States that seem to have the most serious problems in maintaining an effectively functioning nurse aide registry and offer support for a limited number of States that wish to undertake quality improvement projects to improve the effective operation of their nurse aide registry. Finally, CMS will consider a variety of methods to work with States to ensure registry records contain current information on nurse aides.

▶ A G E N C Y C O M M E N T S



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** NOV 2 2004

**TO:** George F. Grob  
Assistant Inspector General  
For Evaluation and Inspections

**FROM:** Mark B. McClellan, M.D., Ph.D. *MM*  
Administrator

**SUBJECT:** Office of the Inspector General (OIG) Report:  
*Nurse Aide Registries: State Compliance and Practices (OEI-07-03-00380)*

We appreciate the contribution that the above OIG report makes to improving quality assurance in our nation's nursing homes. In this memo we provide specific comments to the draft report, and request further work.

In particular, further work would be useful to look at the barriers that impede full and effective state compliance with the law in all states, and not only at the manifestations of the problems. Better understanding of barriers that States encounter in fully implementing this law could assist in more effectively administering and strengthening the nurse aide registry system.

In our review of issues related to complaint investigations and to nurse aide registries, it became apparent that improvements in the tracking, management, and investigation of complaints are necessary in order for the nurse aide registry to achieve its full promise. The reason is that complaint investigations form the basis for an important source of information that is instrumental in determining that a nurse aide ought to be disqualified. To improve the foundation of usable information derived from complaint investigations, we have implemented the following.

**Uniform Definitions:** We issued uniform definitions via survey and certification (S&C) policy memoranda so that all states could use the same definitions in classifying behavior that constitutes abuse, neglect, or misappropriation of resident property (see S&C 02-20 and S&C 04-09). These memoranda are available on our website at [www.cms.hhs.gov/medicaid/survey-cert/memos](http://www.cms.hhs.gov/medicaid/survey-cert/memos).

**Training:** We developed and disseminated the "Abuse and Neglect Detection and Prevention Training Manual" to provide surveyors and other reviewers with an additional resource to support their work in detecting and preventing abuse and neglect.



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**Automated Complaint Tracking System:** Effective January 2004 we implemented a national electronic complaint tracking system (the *ASPEN Complaints/Incidents Tracking System*, or “*ACTS*”). For the first time there exists a uniform system for logging in complaints electronically, tracking the progress of investigations, managing the investigation results, and tracking follow-through.

Your report offers useful information for us to build on the above advances. Our responses to the report’s recommendations are discussed below.

### **Recommendation**

- 1) Ensure States update information regarding nurse aides with substantiated adverse findings timely and remove registry records of nurse aides who have not performed nursing or nursing related services for 24 consecutive months, in accordance with Federal regulations. CMS could achieve this by: (1) issuing program memoranda that address updating nurse aide registry records, (2) conducting periodic reviews of State registries, or (3) implementing greater oversight.

### **Comment**

We concur with items #1 and #3, and will further consider items #2 in the recommendation above. We will accomplish the following:

**Instructions to States:** We will issue additional communications to states affirming the law and CMS policy, as well as the importance of the nurse aide registries. The guidance will include instructions that (a) all findings of abuse, neglect and misappropriation of resident property must be included in the nurse aide registry by the State survey agency within ten working days of the finding, and (b) the names of nurse aides who have performed no nursing or nursing-related services for 24 consecutive months must be promptly removed from the nurse aide registry.

**Regional Follow-Up System:** Through the CMS Regional Follow-Up System, we will formalize expected follow-up with some of the states that seem to have the most serious problems in maintaining an effectively functioning nurse aide registry system. In addition to defined expectations for improvement, we will offer structured assistance (see below).

**Quality Improvement Projects:** We will offer structured support for a limited number of states that wish to undertake quality improvement projects to improve the effective operation of their nurse aide registry system.

We will consider the possibility of periodic reviews by CMS of state nurse aide registries. Such reviews, however, can be very time-consuming and require independent data

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collection, as the significant investment made by your office in this study well demonstrates. We must await a more comprehensive review of workload priorities before making any such commitment.

So far in 2004, CMS has committed to a twenty-fold increase in Federal monitoring surveys of state life-safety code inspections of nursing homes, validation surveys<sup>1</sup> of hospitals accredited by the Joint Commission on the Accreditation of Health Care Organizations, and various other additional initiatives in the survey and certification arena while managing a workforce reduction. We cannot say at this time that the addition of further work on the oversight of nurse aide registries (beyond the efforts articulated above) will warrant a higher priority compared to other demands.

#### **Recommendation**

- 2) Reduce the potential for nurse aides with substantiated findings to offend again in another State. CMS could achieve this by seeking legislative authority to create a national nurse aide registry (a national registry also could be used to address identified data limitations, such as the lack of dates when substantiated findings are placed on registries). CMS also could work with States to increase information sharing.

#### **Comment**

We concur with the basic recommendation to find ways of reducing the potential for nurse aides to offend again in other states. However, we cannot at this time concur with the suggestion of creating a national registry. We analyzed the potential cost of creating a national nurse aide registry. At the present time, we have rejected pursuit of a national registry for the following reasons:

**Opportunity Cost:** We placed the highest priority on a number of management information system improvements that are critical to other aspects of the survey and certification process. Design and implementation of the automated complaint tracking system (ACTS), and the automated enforcement manager (AEM) are key examples. We are concerned that taking on new initiatives will detract from such other vital commitments.

**Dollar Cost:** Considerable additional funding would be required to develop, implement, and maintain a national registry system.

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<sup>1</sup> Section 1864(c) of the Social Security Act permits the Secretary to conduct random surveys to check up on an approved accrediting body and verify compliance with applicable CMS regulations. These are conducted by the state survey agencies within 60 days of the accrediting organization's inspection and evaluated for disparity.

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**Integration with Other State Systems:** Adding to the complexity of a national registry system would be the need for adequate electronic connection with a great variety of other state registries (e.g. professional boards), various levels of state law enforcement, and criminal record systems in 50 states and the District of Columbia.

**National Legislation:** The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) sets aside funds for the HHS Secretary, in consultation with the Attorney General, to conduct a Background Check demonstration for long-term care facilities or providers on prospective direct patient access employees. We recently announced a competitive solicitation to States to implement the demonstration. The demonstration substantially extends background checks to many more provider types and workers. If Congress were to adopt national legislation along such lines, the environment of the nurse aide registry would change dramatically. It is therefore prudent to complete the Background Check demonstration before pursuing the legislative authority to create a national registry.

#### **Recommendation**

- 3) Work with States to ensure registry records contain current information on nurse aides. CMS could achieve this by requiring long term-care facilities to report current information of nurse aides they employ to the State registry upon hire and periodically thereafter.

#### **Comment**

We concur with the recommendation to work with states to ensure registry records contain current information. We will consider a variety of methods by which this might be affected, and also expect that the new Background Check Pilot (described in answer to recommendation #2 above) will provide added insight. CMS affirms the recommendation that nursing home providers check the nurse aide registry before hiring a nurse aide. In fact, the current regulations prohibit nursing homes from employing individuals who have been found guilty of abusing, neglecting or mistreating residents by a court of law or have had a finding entered into the State nurse aide registry concerning resident abuse, neglect or misappropriation of property.

Current regulations require that nursing homes must report any knowledge of actions 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 other licensing authority. We expect facilities to be thorough in their investigations of the past histories of individuals they are considering hiring.

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Nursing homes' policies and procedures to screen potential employees are reviewed during a survey.

As CMS examines this issue further in the future, we will consider the pros and cons of a requirement that facilities must periodically check the nurse aide registry for individuals that the facility has already hired.

Thank you very much for the investment of time and expertise from the Office of Inspector General on important issues related to nursing home residents' protection and quality of service.

➤ **A P P E N D I X ~ A**

**Many States do not update registry records with substantiated adverse findings timely**

In 38 States, 2 separate agencies were responsible for maintaining the registry and investigating allegations of abuse, neglect, or misappropriation of property. These States are listed below along with the number of nurse aides with substantiated findings based on information provided to us by the State investigative agency. The number of nurse aides with substantiated findings identified in the registries in September 2003 and December 2003 is listed along with the remaining number of nurse aides yet to be updated on their registry record at the conclusion of our review. “Updated by 12/03” includes both nurse aides updated as of September 15, 2003, and those who were updated in the 3 months leading to December 2003.

State	Nurse Aides with Substantiated Adverse Findings	Updated by 9/15/03	Updated by 12/03	Yet to be Updated by 12/03
AK	3	1	1	2
AL	98	98	98	0
AZ	93	89	92	1
CA	107	93	102	5
CO	36	32	35	1
CT	36	1	36	0
DC	1	1	1	0
DE	15	15	15	0
FL	109	0	0	109
HI	3	3	3	0
ID	15	14	15	0
IL	290	227	289	1
IN	18	15	15	3
KS	7	7	7	0
KY	42	40	40	2
LA	14	14	14	0
MD	19	17	19	0
ME	57	41	41	16
MI	33	28	32	1
MN	66	66	66	0

State	Nurse Aides with Substantiated Adverse Findings	Updated by 9/15/03	Updated by 12/03	Yet to be Updated by 12/03
MT	49	0	38	11
NC	83	83	83	0
NV	9	9	9	0
NY	102	83	86	16
OH	91	83	89	2
OK	101	60	84	17
OR	4	1	4	0
PA	29	27	28	1
SC	18	18	18	0
SD	6	6	6	0
TN	26	25	26	0
TX	97	54	59	38
UT	10	9	10	0
VA	45	45	45	0
VT	15	0	7	8
WA	78	78	78	0
WI	148	140	146	2
WY	5	5	5	0
<b>Total</b>	<b>1,978</b>	<b>1,528</b>	<b>1,742</b>	<b>236</b>

Source: OIG analysis of all collected nurse aide registry records

► A P P E N D I X ~ B

**Nurse aides with substantiated adverse findings may have active certifications in other States**

The table below summarizes the number of nurse aides with substantiated findings in one State and active certifications in another at the time of our review.<sup>1</sup> In the table below, “Certified Nurse Aides with Substantiated Adverse Findings in Other States” refers to the number of active nurse aides in that State with substantiated findings in a different State.<sup>2</sup> For example, Alabama (AL) had 42 active nurse aides who each had substantiated findings in at least 1 of 18 different States.

State	Certified Nurse Aides with Substantiated Adverse Findings in Other States	Number of Other States
AK	1	1
AL	42	18
AR	35	10
AZ	9	7
CA	21	10
CO	21	10
CT	40	17
DC	19	4
DE	4	4
FL	222	34
GA	45	19
HI	3	3
IA	12	6
ID	7	6
IL	280	29
IN	18	12
KS	27	10
KY	110	19
LA	135	20
MA	6	6
MD	18	6
ME	4	3
MI	6	5
MN	21	10
MO	31	9

State	Certified Nurse Aides with Substantiated Adverse Findings in Other States	Number of Other States
MS	11	9
MT	8	5
NC	42	16
ND	10	6
NE	13	6
NJ	15	5
NM	24	14
NV	5	3
NY	31	17
OH	132	30
OK	52	16
OR	6	4
PA	30	14
RI	4	2
SC	12	7
SD	28	12
TN	15	10
TX	62	17
UT	4	3
VA	26	16
WA	34	14
WI	1	1
WV	10	4
WY	3	2

Source: OIG analysis of collected nurse aide registry records

<sup>1</sup> New Hampshire did not use a nationally unique identifier; therefore, we were unable to evaluate interstate movement for this State. Vermont only supplied a nationwide unique identifier for nurse aides with substantiated findings; therefore, we were unable to determine whether nurse aides with substantiated findings from other States had active certifications in Vermont.

<sup>2</sup> There are 1,715 records for the 1,552 nurse aides because some nurse aides with substantiated findings may be listed as active in more than 1 State. Only States with values are listed.

➤ **A P P E N D I X ~ C**

**Nurse aides with pending adverse findings may have active certifications in other States**

The table below summarizes the number of nurse aides with pending findings in one State and active certifications in another at the time of our review.<sup>3</sup> In the table below, “Certified Nurse Aides with Pending Adverse Findings in Other States” refers to the number of active nurse aides in that State with pending findings in a different State.<sup>4</sup> For example, Alabama (AL) had 12 active nurse aides who each had pending findings in at least 1 of 4 different States.

State	Certified Nurse Aides with Pending Adverse Findings in Other States	Number of Other States
AK	1	1
AL	12	4
AR	5	3
AZ	9	3
CA	3	3
CO	4	2
CT	10	2
DC	3	1
FL	116	9
GA	14	7
HI	1	1
IA	8	4
ID	3	1
IL	21	6
IN	1	1
KS	3	3
KY	11	5
LA	13	3
MA	15	4
MD	3	2
ME	2	2
MI	2	2
MN	1	1

State	Certified Nurse Aides with Pending Adverse Findings in Other States	Number of Other States
MO	8	4
MT	3	1
NC	16	5
ND	4	3
NE	5	2
NJ	2	1
NM	8	3
NV	2	1
NY	37	4
OH	28	8
OK	17	4
OR	2	1
PA	6	3
RI	5	3
SC	10	5
SD	8	3
TN	5	3
TX	13	2
UT	2	1
VA	11	6
WA	28	6
WV	3	1
WY	1	1

Source: OIG analysis of collected nurse aide registry records

<sup>3</sup> New Hampshire did not use a nationally unique identifier; therefore, we were unable to evaluate interstate movement for this State. Vermont only supplied a nationwide unique identifier for nurse aides with substantiated findings; therefore, we were unable to determine whether nurse aides with pending findings from other States had active certifications in Vermont.

<sup>4</sup> There are 485 records for the 450 nurse aides because some nurse aides with pending findings are listed as active in more than 1 State. Only States with values are listed.

## ► A P P E N D I X ~ D

### **State suggestions and improvement efforts**

#### **State Efforts**

- Some States shared with other States data on nurse aides with substantiated findings. For example, 1 State received lists of nurse aides with substantiated findings from 13 States, and sent out their own list to all States every 3 months. However, one State received information from other States, but had no way to record it on their present database.
- Five States required long-term care facilities to periodically check their registry to ensure that employed nurse aides renewed their certifications.
- Twenty-one of fifty-one States conducted criminal background checks before certification and may deny certification based on the results. However, only 10 of these States reported the findings of those criminal background checks on their registries.
- Of the States that conducted criminal background checks, 10 States reported conducting national checks. One State reviewed every address where the nurse aide had ever lived, while another reviewed for convicted criminal acts within the past 20 years.

#### **State Survey Respondents' Suggestions for Improvement**

- Twenty States proposed creation of a national nurse aide registry.
- Eight States proposed increasing automation of the registry processes.
- Three States suggested implementing better methods for keeping nurse aides' personal information up-to-date.
- Five States included results of criminal background checks on registry records.



► A P P E N D I X ~ E

**State compliance with specific registry components**

The table below summarizes, by State, the percentage of records with full name, identifying information, and certification date fields complete as of September 15, 2003. All numbers were based on the total population of active nurse aides and nurse aides with substantiated adverse findings. This population is labeled “Records.” We excluded nurse aides with inactive records and nurse aides whose records were clearly marked on the registry as having substantiated findings from another State.

State	Records	Full Name	Identifying Information	Certification Date
AK	2,690	99.963%	100%	98.959%
AL	71,120	99.999%	99.999%	99.999%
AR	22,422	99.996%	100%	99.938%
AZ	22,311	99.996%	99.996%	97.176%
CA	131,022	99.997%	100%	100%
CO	25,462	99.988%	100%	100%
CT	61,762	99.953%	99.955%	99.955%
DC	4,965	100%	100%	100%
DE	5,624	100%	100%	100%
FL	298,327	99.997%	100%	100%
GA	57,876	99.998%	100%	100%
HI	8,367	100%	100%	99.988%
IA	38,080	100%	100%	71.657%
ID	11,639	99.991%	100%	100%
IL	283,717	99.994%	100%	100%
IN	43,612	99.989%	99.998%	99.819%
KS	38,443	100%	100%	100%
KY	93,656	99.996%	100%	36.208%
LA	121,816	99.984%	100%	100%
MA	48,844	100%	100%	99.679%
MD	18,769	99.995%	100%	99.995%
ME	18,122	99.906%	100%	96.441%
MI	41,098	100%	100%	100%
MN	50,609	33.739%	100%	99.945%
MO	62,288	99.989%	99.998%	99.255%
MS	16,572	100%	100%	98.678%

State	Records	Full Name	Identifying Information	Certification Date
MT	9,632	100%	99.990%	99.886%
NC	104,319	100%	100%	99.995%
ND	15,469	100%	100%	76.023%
NE	25,141	99.992%	99.992%	99.992%
NH	12,228	100%	100%	99.207%
NJ	28,802	99.993%	100%	100%
NM	23,629	99.979%	100%	99.945%
NV	5,731	100%	99.215%	99.215%
NY	102,646	100%	100%	100%
OH	195,903	96.200%	99.999%	99.836%
OK	44,753	100%	99.991%	99.806%
OR	17,918	99.994%	100%	100%
PA	85,997	100%	100%	100%
RI	10,563	100%	100%	99.328%
SC	23,849	100%	100%	100%
SD	19,501	100%	100%	99.995%
TN	32,704	99.997%	100%	99.966%
TX	107,718	100%	100%	100%
UT	14,360	100%	100%	100%
VA	46,154	99.417%	99.417%	89.095%
VT	4,674	100%	100%	99.080%
WA	49,055	99.994%	100%	80.349%
WI	58,237	99.998%	100%	99.840%
WV	14,235	100%	100%	99.993%
WY	4,996	100%	100%	100%

Source: OIG analysis of all collected nurse aide registry records

► A P P E N D I X ~ F

**Information available on the State nurse aide registry**

This table summarizes States' survey responses regarding the types of information contained in their registry.

<b>Description</b>	<b>Number of States (including DC)</b>
Full Name	51
Substantiated Findings	50
Social Security Number	48
Date of Birth	47
Date of Certification	39
Record of Changes to Registry	37
Employment Verification	14
Criminal Background Check	10

Source: Data reported by State respondents



## A C K N O W L E D G M E N T S

This report was prepared under the direction of Brian T. Pattison, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office, and Gina C. Maree, Assistant Regional Inspector General. Other principal Office of Evaluation and Inspections staff who contributed include:

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