

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NURSE AIDE REGISTRIES:  
LONG TERM CARE FACILITY  
COMPLIANCE AND PRACTICES**



Daniel R. Levinson  
Inspector General

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# *Office of Inspector General*

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## OBJECTIVE

To determine (1) the extent to which long term care (LTC) facilities report that they are in compliance with Federal regulations as related to the use of State nurse aide registries, and (2) what additional procedures LTC facilities have established to screen nurse aides.

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## BACKGROUND

Federal regulations (42 CFR § 483.156) require each State and the District of Columbia to maintain a nurse aide registry of all individuals who are registered to work as nurse aides in that State, as well as all individuals who have been prohibited from employment as nurse aides in LTC facilities due to substantiated adverse findings of abuse, neglect, or misappropriation of property.

Federal regulations (42 CFR § 483.13(c)(1)) prohibit LTC facilities from employing individuals who have a substantiated adverse finding entered into the State nurse aide registry or who have been found guilty in a court of law of abusing, neglecting, or mistreating LTC facility residents. Federal regulations (42 CFR § 483.75 (e)(5)) require LTC facilities to check their State nurse aide registry to ensure that potential nurse aides are registered. The LTC facilities must also check every other State nurse aide registry they believe will include any information on that individual (42 CFR § 483.75(e)(6)). In addition, Federal regulations (42 CFR § 483.75(e)(2)) prohibit LTC facilities from using [employing] any individual as a nurse aide for more than 4 months unless that individual is registered as a nurse aide.

This study was based on questionnaire responses from a simple random sample of 200 LTC facility administrators, as well as nurse aide employment information from each of these facilities. We evaluated all nurse aides' records to determine if they were registered or had substantiated adverse findings on nurse aide registries.

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## FINDINGS

**Long term care facility administrators reported checking their State nurse aide registries before hiring, as Federal regulations require; the registry results affected some hiring decisions.** All LTC facility administrators reported checking their State nurse aide registries prior to hiring nurse aides. Furthermore, we did not identify any nurse aides

with substantiated adverse findings of abuse, neglect, or misappropriation of property entered on the nurse aide registry of the State in which they were employed. Forty-four percent of administrators reported periodically rechecking employed nurse aides against their State nurse aide registry to ensure that substantiated adverse findings had not been posted to the registry.

**Fifty-five percent of administrators reported checking only their own State registry and thus are most likely not in compliance with Federal regulations.** In a 2005 OIG study “Nurse Aide Registries: State Compliance and Practices” (OEI-07-03-00380), we found that approximately 99,000 nurse aides had active registrations in multiple States, that 1,552 nurse aides had substantiated adverse findings, that 450 nurse aides had pending findings in one State and an active registration in another State, and that 314 nurse aides had substantiated adverse findings in multiple States. These findings support the importance of LTC facilities’ checking other States’ registries that they believe will include information on a nurse aide to ensure that employed nurse aides do not have substantiated adverse findings.

**Seventeen percent of LTC facilities employed individuals as nurse aides without required registrations.** Fifteen percent of LTC facilities employed individuals without registrations as nurse aides for longer than 4 months. Five percent of LTC facilities employed individuals with expired registrations due to State regulations; of these, half also employed nurse aides for longer than 4 months without registration. The LTC facilities that employ nurse aides without registrations are not in compliance with Federal regulations.

**Eighty-five percent of administrators reported establishing additional screening procedures; some of these methods may not be fully effective.** The LTC facility administrators reported establishing various procedures in attempts to ensure that they do not hire or employ individuals with court convictions or criminal backgrounds. The most common screening procedures were criminal background checks and/or personal and employment reference checks. However, of the 159 LTC facilities that conducted criminal background checks, 50 percent conducted checks that were limited in scope. Those LTC facilities that conduct criminal background checks of limited scope (e.g., covering only the State in which the LTC is located) may fail to identify nurse aides who have criminal histories in other States.

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## RECOMMENDATIONS

Ensuring that only registered nurse aides without substantiated adverse findings of abuse, neglect, or misappropriation are employed in LTC facilities necessitates a partnership among States, the Centers for Medicare & Medicaid Services (CMS), and LTC facilities. States and LTC facilities must diligently comply with Federal regulations regarding nurse aide registries. The LTC facilities that do not comply with Federal regulations or do not use available information about potential nurse aides could expose facility residents to greater risk of harm. We recommend that CMS:

- Utilize existing communication channels (e.g., survey and certification processes) to ensure that LTC facilities comply with Federal regulations that require them to check the nurse aide registries of other States that they believe will contain information about an individual prior to hiring and to not employ individuals as nurse aides for more than 4 months without registration.
- Encourage LTC facilities to use available resources (e.g., State nurse aide registries, background check services) to ensure that nurse aides with substantiated adverse findings or criminal backgrounds are not employed. Possible methods that CMS could use to achieve this include: (1) requiring all LTC facilities to perform periodic (e.g., annual or biennial) inquiries of State nurse aide registries on employed nurse aides and (2) requiring comprehensive criminal background checks by all LTC facilities prior to hiring nurse aides. CMS concurred with a 1998 OIG recommendation that CMS consider developing a Federal requirement for criminal background checks. While no such requirement has yet been developed, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173, section 307) established a Background Check Pilot Program for long term care facilities or providers to conduct background checks on prospective direct patient access employees in up to 10 States. The results of this pilot will be informative as to the viability of this second option.

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## AGENCY COMMENTS

In its comments to the draft report, CMS recognized the effort and expressed appreciation for OIG's work related to nurse aide registry requirements. CMS concurred with our recommendations. CMS will

## E X E C U T I V E   S U M M A R Y

issue a survey and certification letter to all State survey agencies asking them to share the communication with all long term care facility providers to reinforce the importance of checking nurse aide registries and not allowing nurse aides to work for more than 4 months without successfully passing a competency evaluation examination. In addition, CMS will utilize the existing Background Check Pilot Program to provide insight on further efforts to ensure that only nurse aides in good standing are employed in long term care facilities.

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### OIG RESPONSE

We appreciate CMS's comments to this report and note that CMS is taking action to address issues raised in this report. We look forward to learning the results of the Criminal Background Check Pilot Program. Changes were made to the report to reflect technical comments received from CMS.

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## OBJECTIVE

To determine (1) the extent to which long term care (LTC) facilities report that they are in compliance with Federal regulations as related to the use of State nurse aide registries, and (2) what additional procedures LTC facilities have established to screen nurse aides.

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## BACKGROUND

### **Federal Requirements.**

The Omnibus Budget Reconciliation Act of 1987 contained provisions designed to ensure delivery of quality care to LTC facility residents.<sup>1</sup> Federal statute (42 U.S.C. § 1395i-3) and regulations require each State and the District of Columbia (hereinafter referred to as a State) to maintain nurse aide registries of all individuals who are registered to work as nurse aides in that State (i.e., all individuals who have completed nurse aide training and/or whom the State deems competent to function as a nurse aide<sup>2</sup>), as well as all individuals who have been prohibited from employment as nurse aides in LTC facilities because of substantiated adverse findings of abuse, neglect, or misappropriation of property.<sup>3</sup> Nurse aide registries are intended to ensure that LTC facilities employ only registered nurse aides who do not have substantiated adverse findings. (For a description of the components of nurse aide registries as required by Federal regulation, see Appendix A.)

Federal regulations prohibit LTC facilities from employing individuals who have had a finding of abuse, neglect, mistreatment of residents, or misappropriation of residents' property entered into the State nurse

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<sup>1</sup> We refer to nursing homes and skilled nursing facilities as long term care (LTC) facilities in this report.

<sup>2</sup> 42 CFR § 483.75(e) defines a nurse aide as “any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.”

<sup>3</sup> 42 CFR § 488.301 defines 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.”



aide registry or who have been found guilty in a court of law of abusing, neglecting, or mistreating LTC facility residents.<sup>4</sup> Information regarding court convictions may or may not be included on State nurse aide registries. Federal regulations require LTC facilities to check the State nurse aide registry for all hired nurse aides and to check every State nurse aide registry that they believe will include information on an individual.<sup>5</sup>

Federal regulations allow nurse aides to work for up to 4 months before becoming registered in the State in which they are working to provide sufficient time for their training. However, individuals must become registered within 4 months to continue working as nurse aides.<sup>6</sup>

#### **Other Studies Found Weaknesses With Nurse Aide Registries.**

Previous studies of nurse aide registries identified a number of weaknesses with nurse aide registry practices in some States and indicated that State compliance with Federal nurse aide registry regulations was inconsistent. A 2005 Office of Inspector General (OIG) study addressed State compliance with nurse aide registry requirements and examined the accuracy of nurse aide registry information.<sup>7</sup> That study found that some States failed to update their nurse aide registries timely with substantiated adverse findings and that inactive nurse aides were not removed from some nurse aide registries, as Federal regulations require. Further, OIG found that some States charged an access fee or limited the number of nurse aide records that could be requested per access. States had concerns regarding the usefulness of nurse aide registries to LTC facilities and whether facilities checked the nurse aide registry for all hired nurse aides.

Although criminal background checks are not required by Federal statute or regulation,<sup>8</sup> such checks can enable LTC facilities to comply with the Federal requirement that such facilities not hire nurse aides

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<sup>4</sup> 42 CFR § 483.13(c)(1).

<sup>5</sup> 42 CFR §§ 483.75(e)(5) and (6).

<sup>6</sup> 42 CFR § 483.75(e).

<sup>7</sup> “Nurse Aide Registries: State Compliance and Practices.” Office of Inspector General, OEI-07-03-00380.

<sup>8</sup> Public Law 108-173, Section 307 established a Background Check Pilot Program for LTC facilities or providers to conduct background checks on prospective direct patient access employees in 10 States.

who have been found guilty in a court of law of abusing, neglecting, or mistreating residents. A 1998 OIG audit reported that, in most States, criminal background checks for nurse aides were limited to State records, and some individuals with criminal histories were not recorded on nurse aide registries.<sup>9</sup> OIG recommended that the Centers for Medicare & Medicaid Services (CMS) work with the Administration on Aging and the States to improve the safety of LTC facility residents and to strengthen safeguards against employment of abusive workers.

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## METHODOLOGY

This study was based on information from multiple sources:

(1) a review of Federal statutes and regulations regarding nurse aide registries, (2) a review of the existing literature and previous studies on nurse aide registries, (3) questionnaire responses from a simple random sample of 200 LTC facility administrators, and (4) nurse aide employment information from each of the 200 sampled LTC facilities.

### **Sample Selection.**

We selected a simple random sample of LTC facilities from the population of such facilities contained in the Online Survey, Certification and Reporting (OSCAR) database as of March 26, 2004. Our sample consisted of 200 of the 16,261 LTC facilities in the 51 States.

### **LTC Facility Administrator Questionnaire.**

The administrators of each of the 200 LTC facilities completed a mail questionnaire regarding the practices, policies, and procedures they followed in checking potential and employed nurse aides on nurse aide registries. We analyzed the questionnaire data to determine LTC facilities' reported compliance with Federal regulations and the types of additional procedures LTC facilities had instituted to screen potential nurse aides.

### **Nurse Aide Employment Information.**

From each of the 200 LTC facilities, we requested information on all of the nurse aides employed by the facility on September 1, 2003. The information requested included the full name, Social Security number, date of birth, registration number, and the beginning and ending dates of employment for each nurse aide. We received employment

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<sup>9</sup> "Safeguarding LTC Residents." Office of Inspector General, A-12-97-00003, 09/98.

information from all 200 LTC facilities, for a total of 8,123 nurse aides. We also requested documentation of the LTC facilities' verification(s) of each nurse aide's registration.

As part of the 2005 OIG study reviewing State compliance with nurse aide registry requirements, we received complete nurse aide registries from all States as of September 1, 2003. We matched the 8,123 nurse aides hired prior to September 1, 2003, with the 51 State nurse aide registries to determine if any nurse aides had a substantiated adverse finding of abuse, neglect, or misappropriation of property.

Because Federal regulations allow individuals to work for up to 4 months before becoming registered as nurse aides, our analysis regarding registration included only those individuals who were hired before May 1, 2003. By removing the 1,529 nurse aides hired by the 200 LTC facilities between May 1 and September 1, 2003, the number of nurse aides included in our analysis was reduced from 8,123 to 6,594. We matched the 6,594 nurse aides with the 51 State nurse aide registries to ensure they were registered as of September 1, 2003. For any nurse aide we could not match in the 51 State nurse aide registries due to incorrect Social Security numbers and/or incorrect names, we recontacted the LTC facilities to either verify or obtain correct identifying information. We queried the nurse aide registries a second time in August 2004 using the corrected identifying information.

We determined that an LTC facility was not in compliance with Federal regulations if it employed one or more nurse aides without registration.

**Limitations of Identifying Nurse Aides Without Registrations or With Substantiated Adverse Findings.**

It is possible that some LTC facilities may not have provided employment information on all of their nurse aides. In an attempt to identify LTC facilities that may have provided incomplete information, we compared the number of nurse aides each facility provided with the number of nurse aides listed in the OSCAR database. To ensure that a complete list of nurse aides had been provided, we identified extreme outliers and contacted the nine LTC facilities that provided employment information for less than half the number of nurse aides listed in the OSCAR database. To ensure that the information provided by the LTC facilities included only nurse aides and not other LTC facility staff, we also contacted the 14 LTC facilities that provided employment information for more than twice the number of nurse aides listed in the OSCAR database. The LTC facility administrators either provided

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updated lists of nurse aides or stated that the information they originally provided was correct. We then repeated the matching process with any new information provided.

### **Standards.**

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

## ► FINDINGS

### **Long term care facility administrators reported checking their State nurse aide registries before hiring; the registry results affected some hiring decisions**

Federal regulations require LTC facilities to check their State nurse aide registry to ensure that all hired nurse aides are registered.<sup>10</sup> Federal

regulations also require that LTC facilities must not employ individuals whose records contain substantiated adverse findings.<sup>11</sup>

All LTC facility administrators reported that they checked their own State nurse aide registry to ensure that potential nurse aides are registered. In fact, 42 administrators reported not hiring a potential nurse aide because of the results of a registry inquiry. Furthermore, when we matched the employment information for the 8,123 nurse aides that the 200 LTC facility administrators supplied with the appropriate State nurse aide registry, we did not identify any nurse aides with substantiated adverse findings of abuse, neglect, or misappropriation of property entered on the nurse aide registry for the State in which they were employed. Given this evidence, it seems likely that LTC facility administrators are in compliance with Federal requirements prohibiting the employment of nurse aides with substantiated adverse findings.

Although not required to do so, 44 percent of administrators reported rechecking employed nurse aides against their State nurse aide registry to ensure that substantiated adverse findings had not been posted to the registry. (See Appendix B for confidence intervals for all point estimates.) The most commonly reported reason for this practice was concern that nurse aides may be employed by more than one LTC facility and could have substantiated adverse findings resulting from actions at another facility. Of the 87 administrators who reported rechecking the nurse aide registry for substantiated adverse findings subsequent to hiring, 15 identified at least one nurse aide who had a change of status (e.g., conviction of abuse at a previous job, failure to attain registration, or failure to renew registration due to a change of address), and 14 of these administrators terminated those nurse aides.<sup>12</sup>

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<sup>10</sup> 42 CFR § 483.75(e)(5).

<sup>11</sup> 42 CFR § 483.13(c)(1).

<sup>12</sup> The remaining LTC facility administrator reported that she may terminate nurse aides based on the nature of the change identified.

**Fifty-five percent of administrators reported checking only their own State registry and thus are most likely not in compliance with Federal requirements**

In addition to requiring that they check their own State nurse aide registry, Federal regulations require LTC facilities to check every other State nurse aide registry they

believe will include any information on a potential nurse aide.<sup>13</sup> Although “believe” is not specifically defined in regulation, employment applications, reference checks, or background checks would provide LTC facilities with clear evidence of the other State nurse aide registries that might contain information about a potential nurse aide. In the 2005 OIG study, we identified approximately 99,000 nurse aides who had registrations in multiple States, suggesting that interstate movement of nurse aides is not uncommon. This finding supports the importance of LTC facilities’ checking the registries of other States before hiring a nurse aide.

When surveyed about checking other State registries, administrators had the choice of choosing one of the following: (1) Yes, we check other States’ registries; (2) No, we only check our own State registry; or (3) No, we do not check any State registries. Fifty-five percent of administrators selected option 2, reporting that they only check their own State’s nurse aide registry prior to hiring a nurse aide.<sup>14</sup> Given that our prior studies clearly demonstrated that some nurse aides have moved from one State to another, it is possible that LTC facilities have at least some nurse aides who worked as nurse aides in other States prior to seeking employment at their facility. Thus, LTC facilities that reported checking only their own registry are likely not in compliance with Federal regulations.

From our prior study,<sup>15</sup> when we examined the universe of nurse aides, we found that 1,552 nurse aides had substantiated adverse findings and 450 nurse aides had pending findings of abuse, neglect, or

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<sup>13</sup> 42 CFR § 483.75(e)(6).

<sup>14</sup> The remaining administrators selected other responses.

<sup>15</sup> “Nurse Aide Registries: State Compliance and Practices.” Office of Inspector General, OEI-07-03-00380.

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misappropriation of property in one State and an active registration in another State;<sup>16</sup> and 314 nurse aides had records with substantiated adverse findings in multiple States.

Through our process of matching identifying information that the LTC facilities provided for the 8,123 nurse aides against the 51 State nurse aide registries, we identified a nurse aide who had a record with a substantiated adverse finding from 1999 on the New Mexico nurse aide registry and was employed in Texas on September 1, 2003. The administrator of the Texas LTC facility reported that the facility does not check other States' nurse aide registries prior to hiring potential nurse aides.

**Seventeen percent of LTC facilities employed individuals as nurse aides without required registrations**

**Fifteen percent of LTC facilities employed at least one individual as a nurse aide for longer than 4 months without registration.**

Federal regulations prohibit LTC facilities from using [employing] any individual as a nurse aide for more than 4 months unless that individual is registered as a nurse aide.<sup>17</sup> However, LTC facilities can hire nurse aides for up to 4 months before they are registered, allowing the individual to participate in a training program to become registered. At the end of the 4 months, if an individual is not listed in the appropriate State nurse aide registry, the LTC facility must follow up to ensure that the individual actually becomes registered. Evidence of registration is maintained in the appropriate State nurse aide registry.<sup>18</sup>

On September 1, 2003, 15 percent of LTC facilities employed at least one individual as a nurse aide for longer than 4 months without registration, accounting for a total of 40 nurse aides. We queried the nurse aide registries in August 2004 to verify whether these nurse aides were listed as registered. We found that 29 nurse aides were still not listed as registered and 11 nurse aides were listed as registered, but

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<sup>16</sup> Although Federal regulations do not require that nurse aides with pending findings of abuse, neglect, or misappropriation of property be listed as such on their respective registries, we include information about these 450 nurse aides because it suggests information that LTC facilities could learn about nurse aides if registries in other States were checked.

<sup>17</sup> 42 CFR § 483.75(e)(2).

<sup>18</sup> 42 CFR § 483.75(e)(5).

their registration dates were after September 1, 2003. Thus these nurse aides were employed without registration for more than 4 months, a violation of Federal regulations. Despite the administrators of these LTC facilities' reporting that they had practices in place to ensure that individuals without registrations are not employed for longer than 4 months (e.g., confirming registration by checking the nurse aide registry after 4 months of employment, requiring nurse aides to provide proof of registration, and completing the paperwork required to obtain registrations for nurse aides), none of these LTC facilities could produce documentation of registration for any of the nurse aides in question.

**Five percent of LTC facilities (three percent of which are included above) employed nurse aides with expired registrations.**

Federal regulations require State nurse aide registries to remove registrations for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months (unless the individual's registry record includes documented findings of abuse, neglect, or misappropriation of property). However, some States have established more stringent requirements that call for nurse aide registrations to expire at regular intervals unless the nurse aide takes action to renew his or her registration. We identified 5 percent of LTC facilities that employed nurse aides with expired registrations that had expired due to State requirements, accounting for 16 nurse aides. In effect, these 10 LTC facilities employed nurse aides without valid registrations, per State requirements. We could not confirm whether these individuals met the Federal requirement for performing nursing or nursing-related services in accordance with 42 CFR § 483.75(e). Three percent of LTC facilities exhibited both conditions (employing individuals as nurse aides without registrations and nurse aides with expired registrations).

**Eighty-five percent of administrators reported establishing additional screening procedures; some of these methods may not be fully effective**

Federal regulations prohibit LTC facilities from employing any individual who has been found guilty of abusing,

neglecting, or mistreating residents by a court of law;<sup>19</sup> however, these convictions are not necessarily recorded on a State's nurse aide registry. Although not required to do so by Federal regulation, some LTC facility

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<sup>19</sup> 42 CFR § 483.13(c)(1)(ii)(A).



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administrators reported establishing various procedures in attempts to ensure that they do not hire or employ individuals with such convictions.

In addition to checking the State nurse aide registry, the most common screening procedures, as reported by 85 percent of administrators, were conducting criminal background checks and/or checking personal and employment references. Table 1 illustrates the number of administrators who reported conducting criminal background and/or reference checks.

<b>Table 1: Screening Procedures of the 200 LTC Facilities</b>	
<b>Check Conducted</b>	<b>Number of LTC Facilities</b>
<b>Criminal Background Only</b>	<b>91</b>
<b>Reference Only</b>	<b>10</b>
<b>Criminal Background Check and Reference</b>	<b>68</b>
<b>Neither</b>	<b>31</b>

Source: Office of Inspector General, 2004

However, of the 159 LTC facilities that conducted criminal background checks, 50 percent conducted checks that were limited in scope (covering only their State or the individual’s reported previous addresses). Those LTC facilities that conduct criminal background checks of limited scope may fail to identify nurse aides who have criminal histories in other States. This finding is consistent with a 1998 OIG audit, which reported that in most States criminal background checks for nurse aides were limited to State records. In that report, OIG recommended that CMS consider developing a Federal requirement for criminal background checks and CMS concurred.

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## RECOMMENDATIONS

Ensuring that only registered nurse aides without substantiated adverse findings of abuse, neglect, or misappropriation are employed in LTC facilities necessitates a partnership among States, CMS, and LTC facilities. States and LTC facilities must diligently comply with Federal regulations regarding nurse aide registries. The LTC facilities that do not comply with Federal regulations or do not use available information about potential nurse aides could expose facility residents to greater risk of harm. We recommend that CMS:

- Utilize existing communication channels (e.g., survey and certification processes) to ensure that LTC facilities comply with Federal regulations that require them to check the nurse aide registries of other States that they believe will contain information about an individual prior to hiring and to not employ individuals as nurse aides for more than 4 months without registration.
- Encourage LTC facilities to use available resources (e.g., State nurse aide registries, background check services) to ensure that nurse aides with substantiated adverse findings or criminal backgrounds are not employed. Possible methods that CMS could use to achieve this include: (1) requiring all LTC facilities to perform periodic (e.g., annual or biennial) inquiries of State nurse aide registries on employed nurse aides and (2) requiring comprehensive criminal background checks by all LTC facilities prior to hiring nurse aides. CMS concurred with a 1998 OIG recommendation that CMS consider developing a Federal requirement for criminal background checks. While no such requirement has yet been developed, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173 section 307) established a Background Check Pilot Program for LTC facilities or providers to conduct background checks on prospective direct patient access employees in up to 10 States. The results of this pilot will be informative as to the viability of this second option.

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## AGENCY COMMENTS

In its comments to the draft report, CMS recognized the effort and expressed appreciation for OIG's work related to nurse aide registry

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

requirements. CMS concurred with our recommendations. CMS will issue a survey and certification letter to all State survey agencies asking them to share the communication with all LTC facility providers to reinforce the importance of checking nurse aide registries and not allowing nurse aides to work for more than 4 months without successfully passing a competency evaluation examination. In addition, CMS will utilize the existing Background Check Pilot Program to provide insight on further efforts to ensure that only nurse aides in good standing are employed in LTC facilities.

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### OIG RESPONSE

We appreciate CMS's comments to this report and note that CMS is taking action to address issues raised in this report. We look forward to learning the results of the Criminal Background Check Pilot Program. Changes were made to the report to reflect technical comments received from CMS.

▶ AGENCY COMMENTS




DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator  
Washington, DC 20201

**TO:** Daniel R. Levinson  
Acting Inspector General  
Office of Inspector General

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

**SUBJECT:** Office of Inspector General (OIG) Draft Report, "Nurse Aide Registries: Long-Term Care Facility Compliance and Practices" (OEI-07-04-00140)

The Center for Medicaid and State Operations (CMSO) recognizes the efforts of the OIG in collecting information about nursing homes' compliance and practices with regard to the nurse aide registry requirements. This report closely follows an earlier OIG report about states' compliance and practices related to the nurse aide registry requirements. We appreciate this additional work related to the nurse aide registry requirements.

The nurse aide registry is one of the tools to ensure that nursing homes are employing qualified nurse aides who are properly trained, appropriately tested, and have no adverse findings against them of abuse, neglect or misappropriation of property. Competent and caring nurse aides are essential to providing quality care to nursing home residents.

Assuring that state and nursing homes fully comply with the requirements related to the operation of the nurse aide registry are components of our overall goal to further improvement in nursing home quality. In fact, the Centers for Medicare & Medicaid Services (CMS) recently posted its official Action Plan for Nursing Home Quality at [www.cms.hhs.gov](http://www.cms.hhs.gov). This detailed action plan outlines a coordinated and comprehensive strategy for improvement that includes providing understandable information for consumers, initiatives to improve the effectiveness of inspections and investigations, focused quality improvement efforts, and dynamic partnerships to accelerate positive changes.

Our responses to the report's recommendations are discussed below.

**Recommendation**

Utilize existing communication channels (e.g., survey and certification processes) to ensure that LTC facilities comply with Federal regulations that require them to check the nurse aide registries of other states that they believe will contain information about an individual prior to hiring and to not employ individuals as nurse aides for more than four months without certification.

**Response**

The guidance in the State Operations Manual related to the Abuse Prohibition Review instructs state surveyors to determine if a nursing home has developed and implemented policies and procedures

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that prohibit abuse, neglect, involuntary seclusion, and misappropriation of property for all residents. These include policies and procedures for:

- screening potential hires;
- training employees (initial training for new employees and ongoing training for all employees);
- prevention policies and procedures;
- identifying possible incidents or allegations needing investigation;
- investigating incidents and allegations;
- protecting residents during investigations; and
- reporting incidents, investigations, and facility responses to the results of their investigations.

As part of this review, surveyors select five employees from a list of all employees hired within the previous four months and ask that the nursing home provide written evidence that the nursing home conducted pre-screening activities to prohibit mistreatment, neglect and abuse of residents and misappropriation of their property. As part of the Abuse Prohibition Review and/or as a consequence of surveyor observations of deficient care practices, the state survey agency could identify compliance issues with requirements related to checking the nurse aide registry of other states and employing nurse aides for more than four months who have not met the training requirements.

Last November, CMS issued a survey and certification letter (S&C-05-05) to all states affirming the law and CMS policy, as well as the importance of the nurse aide registries. The guidance included instructions asking states to assess their compliance with the nurse aide registry requirements and submit their self-assessment to their respective CMS regional office. Currently, CMS regional offices are collecting the self-assessments from their states. In the near future, we will begin analyzing this information and planning follow up activities to support improvements to this area. (A copy of this communication may be downloaded at <http://www.cms.hhs.gov/medicaid/survey-cert/letters.asp>.)

The CMS will evaluate the current process and the results from the states' self-assessments and issue a survey and certification letter to all state survey agencies. As part of this letter, CMS will ask states to share this communication with all nursing home providers to reinforce the importance of the nursing homes' screening procedures for new employees, the requirement to check the nurse aide registries of other states that the employer believes might contain information about an individual. We will also point out to nursing homes that Federal regulations allow nurse aides to work up to 4 months, performing only those skills for which their trainer has determined proficiency, before successfully passing their nurse aide competency evaluation examination and being included on the nurse aide registry.

**Recommendation**

Encourage LTC facilities to use available resources (e.g., State nurse aide registries, background check services) to ensure that nurse aides with substantiated adverse findings or criminal backgrounds are not employed. Possible methods that CMS could use to achieve this include: (1) requiring all LTC facilities to perform periodic (e.g., annual or biennial) inquiries of State nurse

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aide registries on employed nurse aides and (2) requiring comprehensive criminal background checks by all LTC facilities prior to hiring nurse aides. CMS concurred with a 1998 OIG recommendation that CMS consider developing a Federal requirement for criminal background checks. While no such requirement has yet been developed, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173, Section 307) established a Background Check Pilot Program for prospective direct patient access employees in 10 States. The results of this pilot will be informative as to the viability of this second option.

**Response**

We support the recommendation to encourage nursing homes to use available resources to ensure that nurse aides with substantiated adverse findings are not employed. 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. As CMS examines this issue further in the future, we will consider the pros and cons of imposing a requirement that facilities must periodically check the nurse aide registry for individuals that the facility has already hired.

As described in the Action Plan for Nursing Home Quality, CMS has initiated activities to conduct the Background Check Pilot Program referenced in the recommendation above. The pilot substantially extends background checks to many more provider types and workers. The pilot's background check requires that facilities and providers search any available registries that would likely contain disqualifying information about the prospective employee, as well as conducting a search of state and national criminal history records. Recently, CMS selected seven states to participate in the Background Check Pilot. The states represent a mix of rural and urban areas and include ethnically and culturally diverse populations. The pilot states include: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. We expect the new Background Check Pilot will provide additional insight to further our efforts to assure that only nurse aides in good standing work in our nation's nursing homes.

## ▶ A P P E N D I X ~ A

### Required Components of State Nurse Aide Registries

Pursuant to 42 CFR § 483.156(c), nurse aide registries must include:

- (1) The full name of the individual,
- (2) Identifying information,
- (3) The date the individual became eligible for placement in the nurse aide registry, and
- (4) Information regarding substantiated adverse findings (as appropriate).

Each State's nurse aide registry must include information on individuals who have active registrations and are thus employable and on individuals whose records include substantiated adverse findings. States are required to remove nurse aide 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. Individuals with records of substantiated adverse findings must remain on the nurse aide registry permanently except in certain cases of neglect.

► A P P E N D I X ~ B

Confidence Intervals for Key Estimates

Finding		Point Estimate	Confidence Interval 95 Percent	Ratio
Administrators Who Reported Rechecking Nurse Aide Registries		43.5%	36.5% - 50.7%	87/200
Administrators Who Reported Not Checking Other States' Nurse Aide Registries		55.0%	47.8% - 62.0%	110/200
LTC Facilities That Employed Nurse Aides Without Registrations For Longer Than 4 Months		14.5%	9.9% - 20.2%	29/200
LTC Facilities That Employed Nurse Aides With Expired Registrations		5.0%	2.4% - 9.0%	10/200
LTC Facilities That Established Additional Screening Procedures		84.5%	78.7% - 89.2%	169/200
	LTC Facilities That Conducted Background Checks of Limited Scope	50.3%	42.3% - 58.3%	80/159





## 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:

Tricia Fields, *Team Leader*

Brian T. Whitley, *Project Leader*

Dennis Tharp, *Program Analyst*

Michala Walker, *Program Analyst*

Sandy Khoury, *Program Specialist*

Tricia Davis, *Director, Medicare & Medicaid Branch*

Barbara Tedesco, *Mathematical Statistician*