

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**STATE FEES FOR NURSE AIDE
REGISTRATION**



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Inspector General

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Office of Inspector General

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E X E C U T I V E S U M M A R Y

OBJECTIVE

To determine whether, and to what extent, States impose fees related to registration on individuals listed in their nurse aide registries.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) included numerous provisions intended to lead to improvements in the quality of care in long term care facilities. For instance, OBRA 1987 requires that each State establish and maintain a nurse aide registry. This registry consists of individuals who have successfully completed nurse aide training and competency evaluation programs or have otherwise been deemed competent to function as nurse aides, as well as individuals who have been barred from serving as nurse aides due to substantiated adverse findings of abuse, neglect, and misappropriation.

Sections 1819(e)(2) and 1919(e)(2) of the Social Security Act prohibit States from imposing any charges related to registration on individuals listed in the registry.

This study was based on two methods of data collection: (1) Web site searches and telephone inquiries to determine whether each State imposed fees related to registration of individuals on nurse aide registries; and (2) surveys mailed to those States that, based on Office of Inspector General (OIG) Web site searches and telephone inquiries, indicated they might be charging fees that statute, regulation, and manual provisions prohibit.

FINDINGS

Twenty-four States imposed fees that nurse aides may be required to pay for placement on nurse aide registries. Some States charged nurse aides more than one type of fee (e.g., a fee for initial placement and a fee for continued placement), while other States charged nurse aides only one fee. Twenty States listed nurse aides as a source of payment for initial placement fees, and 14 States listed nurse aides as a source of payment for continued placement fees on their registries. Seven States charged fees for criminal background checks and/or fingerprinting required for initial placement on their registries that nurse aides may be required to pay.

Four States imposed fees on nurse aides as a requirement to work in long term care facilities. These four States did not explicitly charge for initial or continued placement on the registry, but required fees for a nurse aide to work in a long term care facility. Failure to pay these fees could lead to nurse aides being removed from the registry.

Guidance was provided only to States that requested it and oversight conducted of all States regarding registry fees was limited. Based on survey responses from the subset of States that charged fees, five States reported that they sought additional guidance from the Centers for Medicare & Medicaid Services (CMS). The nature of the guidance these States received varied, such as advice provided over the telephone, or a mailed copy of the governing regulation. It does not appear that CMS shared the guidance with other States or regions. Ten States reported that they sought guidance from their own State legal entities, rather than CMS.

RECOMMENDATIONS

OIG recommends that CMS:

Ensure States cease imposing fees on nurse aides that violate Federal requirements. The statute, regulation, and State Medicaid Manual offer broad prohibitions against charging fees on nurse aides for placement on nurse aide registries. However, OIG found that a number of States are charging such fees. CMS should take action to ensure that this practice is discontinued.

Clarify prohibitions on the charging of fees related to nurse aide registries. The actions of States identified in this study suggest that the statute, regulation, and/or State Medicaid Manual may not provide sufficient guidance and that additional guidance is necessary. For example, CMS could issue program guidance to all States to help clarify the prohibitions on fees.

Conduct appropriate oversight to prevent States from charging inappropriate fees. This study provides specific information on which States require immediate oversight. Additionally, CMS may want to develop a process for ongoing oversight to prevent States from charging prohibited fees in the future.

AGENCY COMMENTS

CMS concurred with all three OIG recommendations. CMS indicated that it will work through the regional offices to notify States found to be imposing fees in violation of Federal requirements that such practices must cease and will ensure proper revenue offsets were made to any claims for Federal financial participation. CMS indicated that it will also ensure that all State Medicaid agencies receive written reminders of statutory and regulatory provisions that prohibit charges on nurse aides related to the nurse aide registry, that regional offices will receive a copy of the report, and that regional offices conduct periodic reviews of States' compliance with nurse aide registry requirements.

OFFICE OF INSPECTOR GENERAL RESPONSE

OIG appreciates CMS's comments to this report and is encouraged with the active participation CMS plans to take in ensuring that nurse aides are not charged fees related to their placement on their respective State's nurse aide registry.

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OBJECTIVE

To determine whether, and to what extent, States impose fees related to registration on individuals listed in their nurse aide registries.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 included numerous provisions intended to lead to improvements in the quality of care in long term care facilities, such as the requirement that each State establish and maintain a nurse aide registry. This registry lists individuals who have successfully completed nurse aide training and competency evaluation programs or have otherwise been deemed competent to function as nurse aides, as well as individuals who are barred from serving as nurse aides due to substantiated adverse findings of abuse, neglect, and misappropriation.

Prohibition Against Nurse Aide Registry Fees

Sections 1819(e)(2) and 1919(e)(2) of the Social Security Act (the Act) and Federal regulation 42 CFR § 483.156(b)(4) prohibit States from imposing any charges related to registration on individuals listed in the registry. State Medicaid Manual section 2514(H) directs that the States “. . . may not impose any charges on a nurse aide relating to the registry,” and section 4460 directs that the State must “. . . ensure that the nurse aide registry . . . does not impose any charges related to registration on individuals listed in the registry.”

Other Nurse Aide Registry Studies

This report is one of several Office of Inspector General (OIG) studies regarding nurse aide registries. The first report, “Nurse Aide Registries: State Compliance and Practices” (OEI-07-03-00380) found, in part, that States failed to update registries with substantiated adverse findings and remove records of inactive nurse aides, as required. The second report, “Nurse Aide Registries: Long Term Care Facility Compliance and Practices” (OEI-07-04-00140) found that 17 percent of long term care facilities employed individuals as nurse aides without required registrations. While conducting these studies, OIG was informed that States might be charging fees for placing individuals on their respective registries.

After initiating this study, OIG learned that the Centers for Medicare & Medicaid Services (CMS) requested all States to complete a self-assessment related to nurse aide registry requirements. This

activity occurred in response to prior OIG reports. Part of the self-assessment asked States to report compliance regarding fees charged for placement of individuals on nurse aide registries. At the time of this review, the results of this self-assessment were not available.

METHODOLOGY

OIG utilized two methods of data collection in this study: (1) Web site searches and telephone inquiries to determine whether each State imposed fees related to registration of individuals on nurse aide registries; and (2) surveys mailed to those States that, based on OIG Web site searches and telephone inquiries, indicated the State might be charging fees that statute, regulation, and manual provisions prohibit.

Web Site Searches and Telephone Inquiries

For each of the 50 States and the District of Columbia (hereinafter referred to as a State), OIG accessed the nurse aide registry Web site, if available, to determine whether or not the State imposed fees associated with placement of individuals on the nurse aide registry (excluding training and competency evaluation fees). OIG then contacted all States via telephone. For those States that had information on their Web sites about whether fees were charged, OIG confirmed this information. For all other States, OIG obtained information about whether or not fees were charged.

Survey Responses

Based on information collected through Web site searches and telephone inquiries, OIG identified States that imposed fees for such things as initial placement on the registry, renewal of registrations, and criminal background checks and/or fingerprinting. OIG mailed a brief survey to these States asking about the fees charged, sources of payment, and the guidance the States had sought, if any, when deciding to charge these fees. OIG received a 100 percent response rate to the survey.

OIG followed up with CMS central office regarding guidance provided to individual States and oversight conducted. OIG requested, and subsequently received from CMS, all guidance it reported providing to States on fees related to nurse aide registration.

I N T R O D U C T I O N

Standards

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

Twenty-four States imposed fees that nurse aides may be required to pay for placement on nurse aide registries

Based on information obtained from State nurse aide registry Web sites and telephone inquiries, and confirmed through State responses

to a mail survey, OIG determined that 24 States imposed fees that nurse aides may be required to pay for initial and/or continued placement on nurse aide registries.¹ This number might be higher as other States may have bundled the registry fees into competency evaluation or other fees; therefore, for some States OIG was unable to identify the fees specific to registration. Some States charged nurse aides more than one type of fee (e.g., a fee for initial placement and a fee for continued placement), while other States charged nurse aides only one fee. Registry fees included application, registration, initial certification, reciprocity,² renewal of registrations, criminal background checks, and/or fingerprinting. In all 24 States, either the nurse aide is solely responsible for payment of the fees, or the nurse aide pays in specified circumstances, such as if the nurse aide was unemployed at the time of renewal.

Twenty States charged a fee that nurse aides may be required to pay for initial placement on the registry

OIG identified the following types and ranges of fees for initial placement on the registry: application (\$15-\$50), registration (\$15), initial certification (\$12-\$120), and reciprocity (\$10-\$58). A listing of State fees for initial placement can be found in Appendix A. The States' various uses of "application," "registration," and "initial certification" are synonymous and are not related to completion of a training program, for which fees may sometimes be charged pursuant to sections 1819(f)(2)(A)(iv) and 1919(f)(2)(A)(iv) of the Act. Rather, these charges are merely for inclusion in the registry. Alaska charged the highest total fees (\$170) for initial placement on the registry. In response to the mail survey, 10 of the 20 States that charged fees for initial placement on the registry reported that nurse aides are the sole source of payment.

¹ All 24 States charged at least 1 fee that nurse aides may be required to pay even if other fees were paid only by the long term care facility.

² Reciprocity is a process by which a registered nurse aide from another State may qualify for registration 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 section 1919(f)(2) of the Act, and if the individual is currently listed on that State's nurse aide registry as active and without substantiated adverse findings.

FINDINGS

The remaining 10 States reported that fees were received from either nurse aides or long term care facilities.

Fourteen States charged a fee that nurse aides may be required to pay for continued placement on the registry

Fees ranged from \$5 to \$120 for (typically biennial) renewals, or more if the renewal was processed after the expiration date. A listing of State fees for continued placement can be found in Appendix B. Eight States reported that fees were received from either nurse aides or long term care facilities, and six States reported that fees were received from nurse aides only. In addition to the 14 States, 4 States reported that fees were received from long term care facilities only, which does not violate the prohibition on charging nurse aides, so long as the costs are not passed on to nurse aides. One additional State did not charge if the renewal was accomplished timely, but charged \$10 for each year past the expiration date, not to exceed \$100.

Seven States charged fees that nurse aides may be required to pay for criminal background checks and/or fingerprinting for placement on the registry

The criminal background checks and/or fingerprinting were required as a condition for initial placement on the registry, and fees ranged from \$5 to \$600. A listing of State fees for criminal background checks and/or fingerprinting can be found in Appendix C. Of the seven States, four reported that fees were received from nurse aides only, and three States reported that fees were received from either nurse aides, long term care facilities, or State entities. Other States may have conducted criminal background checks and/or fingerprinting of their nurse aides, but did not charge a fee.

Four States imposed fees on nurse aides as a requirement to work in long term care facilities

In the mail survey, four States reported not charging for initial or continued placement on the registry, but charged fees for nurse aides to work in long term care facilities. Two of these States required an initial certification, application, or renewal fee in order for a nurse aide to work in a long term care facility. For example, in its response to the mail survey, Nevada staff stated, “Nevada does not charge any amount for a person to be placed on the registry . . . however, [Nevada] charge[s] a fee for an application for a certificate to practice as a nursing assistant.” Similarly, New Hampshire responded, “No fees are applied to the registry placement process.” However, OIG learned during the

F I N D I N G S

telephone inquiry that New Hampshire nurse aides working in long term care facilities must become “licensed nursing assistants” and pay a \$20 license application fee. Both Nevada and New Hampshire charged renewal fees for this certificate or license, respectively. Arkansas and Delaware charged fees for criminal background checks and/or fingerprinting required for employment in a long term care facility. These States reported that fees were received from long term care facilities, State entities, or nurse aides.

Payment or nonpayment of fees in these States does not affect a nurse aide’s initial placement on the registry. However, 42 CFR § 483.156(c)(2) requires that individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months be removed from the registry, unless the individual’s registry record includes documented substantiated findings of abuse, neglect, or misappropriation of property. OIG alerted CMS that these fees may relate to the registry given that failure to pay the fees will ultimately result in the nurse aide’s removal from the registry. In these States, it is therefore difficult to conclude whether the fees charged to nurse aides are, in effect, fees for placement on the States’ registries.

Guidance was provided only to States that requested it and oversight conducted of all States regarding registry fees was limited

OIG asked States that charged fees what guidance they sought from CMS concerning charges to nurse aides. Based on survey responses from this subset of States, five reported that they

sought additional guidance from CMS. The nature of the guidance these States received from CMS varied, such as advice provided over the telephone or a mailed copy of the governing regulation. It does not appear that CMS shared the guidance with other States or regions. Ten States reported that they sought guidance from their own State legal entities on charging registry fees, rather than from CMS. This may demonstrate that these States were unclear about the legality of fees for nurse aide registration.

OIG requested from CMS examples of guidance it provided to States (see examples in the text box on the next page), which came from both central and regional offices. This guidance does not appear to have clarified the uncertainty regarding the breadth of the prohibition on charging fees to nurse aides, as illustrated by the results of this study.

Examples of CMS guidance to States:

Oregon—In 1992, CMS region X conducted a program review of the nurse aide registry and stated in the report that employed nurse aides cannot be charged training, testing, certification, or renewal fees and that these fees must be paid by the employer. However, unemployed nurse aides may be charged fees.

Virginia—In 1995, CMS region III issued a letter stating that if Virginia's statutory due process requirements go beyond Federal requirements, then the State is permitted to charge fees for these activities.

Arizona—In 1999, CMS region IX responded to an inquiry saying that the State may not impose a charge for fingerprinting of individuals listed in the registry.

Kentucky—In 1999, CMS central office provided a response to an inquiry via electronic mail stating that Kentucky cannot impose charges on nurse aides to remain on the registry (i.e., charge renewal fees).

OIG found little evidence of CMS oversight as it relates to fees States charge for nurse aide registration. Only one State reported in the mail survey that the CMS regional office had conducted a program review, which was in 1992, and recommended that the State cease charging employed nurse aides for certification fees. While the State has ceased charging fees to employed nurse aides, as per CMS guidance, the State continues to charge fees to unemployed nurse aides.

OIG followed up with CMS central office staff about the extent of program reviews conducted. OIG was told that the CMS component that previously performed the program reviews was disbanded in the mid-1990s. OIG was also told that the CMS regional office Medicaid Financial Management work plan for fiscal year 2005 includes one planned review of compliance with nurse aide training and competency evaluation program requirements in one region. This review would include an examination of nurse aide registry fees. Finally, in late 2004, CMS did ask all States to complete a self-assessment related to nurse aide registry requirements in response to prior OIG reports.

► R E C O M M E N D A T I O N S

Twenty-four States imposed fees on nurse aides for initial or continued placement on nurse aide registries, a violation of Federal requirements. In addition, four States imposed fees on nurse aides for the ability to work in long term care facilities, which could have a direct effect on nurse aides' placement on the registry. Finally, CMS provided guidance only in response to specific State requests and conducted limited oversight of all States regarding registry fees. Therefore, OIG recommends that CMS:

Ensure States cease imposing fees on nurse aides that violate Federal requirements

The statute, regulation, and State Medicaid Manual offer broad prohibitions against charging fees on nurse aides for placement on nurse aide registries. However, OIG found that a number of States are charging such fees. CMS should take action to ensure that this practice is discontinued.

Clarify prohibitions on the charging of fees related to nurse aide registries

The actions of States identified in this study suggest that the statute, regulation, and/or State Medicaid Manual may not provide sufficient guidance and that additional guidance is necessary. For example, CMS could issue program guidance to all States to help clarify the prohibitions on fees.

Conduct appropriate oversight to prevent States from charging inappropriate fees

This study provides specific information on which States require immediate oversight. Additionally, CMS may want to develop a process for ongoing oversight to prevent States from charging prohibited fees in the future.

AGENCY COMMENTS

CMS concurred with all three OIG recommendations. CMS indicated that it will work through the regional offices to notify States found to be imposing fees in violation of Federal requirements that such practices must cease and will ensure proper revenue offsets were made to any claims for Federal financial participation. CMS indicated that it will also ensure that all State Medicaid agencies receive written reminders of statutory and regulatory provisions that prohibit charges on nurse aides related to the nurse aide registry, that regional offices will receive

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

a copy of the report, and that regional offices conduct periodic reviews of States' compliance with nurse aide registry requirements.

OFFICE OF INSPECTOR GENERAL RESPONSE

OIG appreciates CMS's comments to this report and is encouraged with the active participation CMS plans to take in ensuring that nurse aides are not charged fees related to their placement on their respective State's nurse aide registry.

▶ A P P E N D I X ~ A

State Fees for Initial Placement on Registries				
State	Application	Registration	Initial Certification	Reciprocity*
Alaska	\$50	\$0	\$120	\$0
Arizona	\$0	\$0	\$0	\$45
California	\$15	\$0	\$0	\$0
Colorado	\$20	\$0	\$0	\$10
Connecticut	\$0	\$0	\$0	\$58
District of Columbia	\$0	\$0	\$12**	\$15
Kansas	\$0	\$0	\$20	\$0
Maryland	\$0	\$0	\$20	\$0
Massachusetts	\$0	\$0	\$0	\$20
Michigan	\$0	\$0	\$12	\$0
Mississippi	\$0	\$0	\$0	\$25
New Jersey	\$0	\$0	\$0	\$30
New Mexico	\$0	\$0	\$0	\$35
New York	\$0	\$0	\$0	\$50
Oklahoma	\$0	\$0	\$0	\$15
Oregon	\$0	\$0	\$40	\$0
Rhode Island	\$25	\$0	\$0	\$0
Vermont	\$20	\$0	\$0	\$0
Washington	\$0	\$15	\$15	\$0
Wyoming	\$0	\$0	\$60	\$0

Source: Office of Inspector General survey of State fees, 2005.

* - The reciprocity fee is in addition to application, registration, and initial certification fees. For a discussion of reciprocity, see footnote 2 on page 4.

** - Fee paid by long term care facilities only.

▶ A P P E N D I X ~ B

State Fees for Continued Placement on Registries	
State	Fee
Alaska	\$120
Arizona	fee for late renewal only
California	\$20*
Colorado	\$20*
Maryland	\$30
Michigan	\$20
Mississippi	\$25
Oklahoma	\$5
Oregon	\$40*
Rhode Island	\$24
South Carolina	\$25
Vermont	\$25*
Virginia	\$45
Washington	\$25*
Wyoming	\$50

Source: Office of Inspector General survey of State fees, 2005.

* - Renewal fee if renewal completed timely;
additional late fees apply.

▶ A P P E N D I X ~ C

State Fees for Criminal Background Check and/or Fingerprinting for Placement on Registries	
State	Fee
Alaska	\$59-\$89
California	\$42-\$62
Colorado	\$30-\$600
Florida	\$33-\$57
Pennsylvania	\$24
Rhode Island	\$5
Wyoming	\$60

Source: Office of Inspector General survey of State fees, 2005.

▶ AGENCY COMMENTS

Centers for Medicare & Medicaid Services' Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

DEC - 6 2005

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TO: Daniel R. Levinson
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FROM: Mark B. McClellan, M.D., Ph.D. *MM*
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SUBJECT: Office of Inspector General (OIG) Draft Report: "State Fees for Nurse Aide Registration" (OEI-07-05-00070)

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PROCESSED

Thank you for the opportunity to review and comment on the above-referenced draft report. This report is the third of three OIG inspections regarding nurse aide registries. The purpose of this inspection was to determine whether, and to what extent, states impose fees related to registration on individuals listed in their nurse aide registries. The OIG contacted all States and the District of Columbia to obtain information regarding the imposition of fees. It was determined that while the statute prohibits the imposition on aides of fees related to the registry, twenty four States imposed fees that nurse aides may be required to pay for initial and/or continued placement on nurse aide registries.

OIG Recommendation

Ensure states cease imposing fees on nurse aides that violate Federal requirements.

CMS Response

We concur. The Centers for Medicare & Medicaid Services (CMS) will work through the Regional Offices (ROs) to notify the States found to be imposing fees in violation of Federal requirements that such practices must cease, and assure that proper revenue offsets were made to any claims for Federal financial participation.

OIG Recommendation

Clarify prohibitions on the charging of fees related to nurse aide registries.

CMS Response

We concur. CMS will ensure that all State Medicaid Agencies receive a written reminder of the statutory and regulatory provisions that prohibit the imposition of any charges on nurse aides relating to the nurse aide registry.

A G E N C Y C O M M E N T S

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OIG Recommendation

Conduct appropriate oversight to prevent states from charging inappropriate fees.

CMS Response

We concur. CMS will ensure that all of the ROs receive copies of this report and are aware of this issue. The ROs will periodically perform focused reviews of States' compliance with nurse aide registry requirements.



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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