

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NATIONAL BACKGROUND
CHECK PROGRAM FOR
LONG-TERM-CARE
EMPLOYEES: INTERIM
REPORT**



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January 2016
OEI-07-10-00420

EXECUTIVE SUMMARY: NATIONAL BACKGROUND CHECK PROGRAM FOR LONG-TERM-CARE EMPLOYEES: INTERIM REPORT

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WHY WE DID THIS STUDY

Long-term-care employees provide essential care to patients in settings such as nursing facilities, home health agencies, and hospices. Ensuring that these employees have undergone a minimum level of screening helps protect the safety of beneficiaries in these settings. The Patient Protection and Affordable Care Act (ACA) provides grants to States to implement background check programs for prospective long-term-care employees. The ACA also requires the Office of Inspector General (OIG) to conduct an evaluation of this grant program—known as the National Background Check Program—after its completion. This interim report describes the overall implementation status and States' results from the first 4 years of the program, and provides the Centers for Medicare & Medicaid Services (CMS) with information that may assist its ongoing administration of this program. OIG also plans to issue a final evaluation of the grant program after its completion.

HOW WE DID THIS STUDY

We reviewed reports that each of the 25 States participating in the grant program submitted to CMS. These reports contained data on implementation milestones and expenditures and reflected each State's progress from program inception through September 30, 2014. The earliest program inception date was September 30, 2010. We also reviewed the data that 14 States provided regarding the number of background checks completed. CMS permits States to determine when their programs are sufficiently implemented to begin submitting background-check data.

WHAT WE FOUND

Four years into the grant program, the 25 States that are receiving grants reported having achieved varying levels of program implementation. Specifically, some States have not obtained legislation that would enable them to conduct background checks. Other States have not yet implemented processes to collect fingerprints and monitor criminal history information after individuals begin employment. Only 6 of the 25 States have submitted to CMS data sufficient to calculate the percentage of prospective employees who were disqualified because of their background checks. In these six States, 3 percent of prospective employees were disqualified from employment. Of the remaining 19 States, 11 States were not yet submitting data reports and 8 States had data gaps that prevented the calculation of disqualification rates.

WHAT WE RECOMMEND

We recommend that CMS continue to work with participating States to fully implement their background check programs and to improve required reporting to ensure that CMS can conduct effective oversight of the grant program. CMS concurred with both of our recommendations.

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OBJECTIVE

To provide an interim report on the implementation status and early results of the National Background Check Program for long-term-care employees.

BACKGROUND

National Background Check Program

The Patient Protection and Affordable Care Act (ACA) established the Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term-Care Facilities and Providers (National Background Check Program or program).¹ This voluntary program provides grants to States, the District of Columbia, and U.S. territories (States) to implement programs to conduct background checks on prospective long-term-care employees in settings such as nursing facilities, home health agencies, and hospices. The Centers for Medicare & Medicaid Services (CMS) administers and oversees the program.

The ACA mandates that the Office of Inspector General (OIG) conduct an evaluation of the program and that it submit a report to Congress within 180 days of completion of the program.² On the basis of the expected end dates of the grants, the program will not be complete until 2018 at the earliest.³

This interim report describes the current overall implementation status and States' early results from the first 4 years of the program, fiscal years (FYs) 2010–2014. The goal of this report is to provide CMS with information to assist in its ongoing administration of this program.

Grant Solicitations. CMS began soliciting applications for grant awards on a national basis in June 2010. At the end of FY 2014, 25 States had received grants to participate in the program. As of December 2015, CMS was still accepting new grant applications. Grants for this program are not competitive; rather, any application that meets a minimum score receives an award.

¹ P.L. No. 111-148, § 6201.

² The ACA does not specify a completion date for the program. We will define a State program as complete when the State's grant expires, regardless of whether the State has a fully implemented program or has depleted all grant funds. When all participating States' grants have expired, we will consider the program complete with regard to the due date for the mandated evaluation.

³ Kansas was awarded a grant on July 1, 2015. This report only includes States that had been awarded grants as of September 30, 2014; therefore, Kansas is not included in this report. Because of Kansas' recent grant award, the program will not be complete until 2018 at the earliest.

The dates that States received their grant awards and the length of the States' grant periods vary. States began receiving grant awards in September 2010. The first six States to receive grants had 2-year grant periods, with opportunities to request up to four 1-year extensions.⁴ The remaining States had 3-year grant periods, with opportunities to request three 1-year extensions. Appendix A lists each participating State, grant award date, and expected grant end date.

Funding. The ACA provides up to \$160 million in Federal funds to implement the program.⁵ To receive funding, a State must guarantee “a particular amount of non-Federal contributions as a condition of receiving the Federal match.”⁶ The ACA provides that “[t]he payment amount to each State . . . shall be three times the amount that the State guarantees to make available. . . .”⁷ See Appendix B for each State's grant award amount and percentage of funds spent as of September 30, 2014.

Participating State Requirements. Some States may need to obtain legislative authority to meet grant requirements (e.g., to conduct background checks on prospective employees). Other States may have already had such authority prior to receiving their grants.

Participating States are required to include three types of background checks in their processes: (1) a search of State-based abuse and neglect registries and databases (e.g., nurse aide registries), (2) a check of State criminal history records, and (3) a fingerprint-based check of FBI criminal history records.⁸ To obtain FBI criminal history records, States must establish methods for collecting and processing fingerprints.

Participating States must also require background checks for all prospective direct-patient-access employees of 10 types of long-term-care

⁴ These extensions give the States an extra year to spend their existing grant funds.

⁵ P.L. No. 111-148, § 6201(b)(1).

⁶ *Ibid.*, § 6201(a)(5).

⁷ *Ibid.*, § 6201(a)(5)(A).

⁸ P.L. No. 111-148, § 6201(a)(3)(A); CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers, Ninth Announcement CFDA # 93.506*, May 2013, p. 6. Accessed online at <http://www.cms.hhs.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/nbgcpgmsoli.pdf> on July 20, 2015. Statewide background checks are typically conducted by a State law enforcement agency and include information for crimes committed within that State. For an FBI background check, a State law enforcement agency provides the FBI with an individual's identifying information and fingerprints. The FBI checks them against its criminal background database and sends the results back to the State law enforcement agency. The FBI's database includes information both on Federal crimes and State-reported crimes from all States.

providers that receive Medicare or Medicaid payments.⁹ The 10 provider types are:

1. skilled nursing facilities,
2. nursing facilities,
3. home health agencies,
4. providers of hospice care,
5. long-term-care hospitals,
6. providers of personal care services,
7. providers of adult day care,
8. residential care providers that arrange for, or directly provide long-term-care services,
9. intermediate care facilities for the mentally retarded,¹⁰ and
10. any other facility or provider of long-term-care services that a State determines to be appropriate.¹¹

Finally, participating States are required to describe and test methods to reduce duplication of fingerprinting.¹² Such methods continuously monitor individuals who have undergone a fingerprint-based background check and whose fingerprints are retained after the check for subsequent arrests. If the individual is subsequently arrested, he or she will be fingerprinted. The post-arrest fingerprints are then matched against a database that contains the fingerprints that were initially submitted, and the State notifies the employer of the individual's arrest. Once such processes are implemented in a State, there is no further need for employers to conduct periodic criminal background checks or to collect additional sets of fingerprints on continuously employed individuals in that State for as long as the State retains the initial set of fingerprints.

State laws and Federal regulations govern long-term-care providers' employment of individuals with criminal convictions. State laws concerning what types of convictions disqualify individuals from

⁹ Section 6201(a)(6)(D) of the ACA defines direct patient access employee as "any individual who has access to a patient or resident of a long-term-care facility or provider through employment or through a contract with such facility or provider and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program."

¹⁰ P.L. No. 111-256, enacted October 5, 2010, required the Federal Government to replace the term "mental retardation" with "intellectual disability" in Federal health, education, and labor policy.

¹¹ P.L. No. 111-148, § 6201(a)(6)(E).

¹² *Ibid.*, § 6201(a)(4)(B)(viii). This section refers to these methods as "rap back" capabilities.

long-term-care employment vary among States. Federal law does not address this issue, although Federal regulation does prohibit Medicare and Medicaid nursing facilities from employing individuals found guilty of abusing, neglecting, or mistreating residents by a court of law, or who have had a finding entered into the State nurse aide registry concerning abuse, neglect, or mistreatment of residents or misappropriation of their property.¹³ States participating in the program must establish an independent appeal process for individuals who believe that they should not have been disqualified based on the background check information.¹⁴

Quarterly Reports. Participating States are required to submit quarterly reports to CMS. The purpose of the quarterly reports is to “allow CMS to highlight project accomplishments, and identify best practices, strengths, obstacles, and technical assistance needs.” Furthermore, “the quarterly reports provide a basis to evaluate . . . overall progress toward obtaining your State’s goals and objectives.”¹⁵ The quarterly reports have four parts:

1. a project narrative, which describes progress toward implementation milestones;
2. a Federal Financial Report (i.e., SF-425);
3. expenditure data for the current quarter and since program inception; and
4. a file containing cumulative data (e.g., provider type, fingerprint collection date, employment eligibility determination date, appeal decision) on each background check conducted since program inception. These data files should contain 30 data elements; see Appendix C for a list of the 30 elements.

CMS provided additional guidance to States with respect to the fourth part on data reporting. It instructs States how to report the records representing continuous monitoring of criminal history information.¹⁶ This guidance was effective beginning with the report for the quarter ending March 31, 2014. The guidance states that a new record identifier should be created for every notification resulting from continuous monitoring that matches an existing employee in the background check system. The notification should not be connected to any previous background check conducted on that employee. Fewer data elements are required for records

¹³ 42 CFR § 483.13(c)(1)(ii).

¹⁴ P.L. No. 111-148, § 6201(a)(4)(B).

¹⁵ CMS, memo to participating States, *CMS National Background Check Program Quarterly Report*, June 7, 2011.

¹⁶ CMS, *Upcoming Changes to CMS Program Data Report for NBCP*, February 1, 2014.

representing continuous monitoring of criminal history information than are required for records representing pre-employment background checks.

Technical Assistance. CMS awarded a technical assistance contract to support participating States. The technical assistance contractor can assist States with all aspects of participating in the program, such as writing proposals for necessary State law or administrative rule changes, defining information system specifications, implementing fingerprinting technology, and integrating existing State databases. The technical assistance contractor also reviews States' quarterly reports and works with States to improve their data reporting. Finally, the technical assistance contractor facilitates conference calls, Web seminars, and in-person conferences with participating States and CMS officials.

Mandated OIG Evaluation

To fulfill the ACA mandate, OIG must submit an evaluation report to Congress not later than 180 days after the completion of the program. The final evaluation must identify appropriate, efficient, and effective procedures for conducting background checks, assess program costs, and determine the extent to which conducting background checks led to any unintended consequences. It will also attempt to address the impact of the program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

Related Reports

Since 2010, OIG has issued five reports that address criminal background checks for and employment of individuals with criminal convictions in long-term care. See Appendix D for information on selected OIG reports related to this subject.

METHODOLOGY

This interim report includes the 25 States that had received grants as of September 30, 2014. We relied on two data sources for this report: (1) quarterly reports from participating States and (2) discussions with CMS and technical assistance contractor staff.

Data Collection and Analysis

Quarterly Reports. We obtained and analyzed quarterly reports for the period ending September 30, 2014, for all 25 participating States.¹⁷ We analyzed the project narratives from the quarterly reports to obtain information on each State's reported progress toward completing

¹⁷ The State of Maryland put its program on hold in summer 2014; the program was still on hold as of September 2015. The last quarterly report submitted by the State of Maryland was for the quarter ending June 30, 2014. Therefore, we used Maryland's June 2014 quarterly report in this evaluation.

implementation milestones. We used the expenditure data from the quarterly reports to calculate each State's grant award amount and percentage of funds expended as of September 30, 2014.¹⁸

Fourteen of the twenty-five States included data files in their quarterly reports representing the background checks they had conducted.¹⁹ We reviewed the background check data files for completeness. However, only 6 of the 14 States' data reports were sufficiently complete to calculate the percentage of checks that resulted in disqualification. We performed those calculations and confirmed our results with State officials.

Both CMS and its technical assistance contractor maintain ongoing contact with States regarding implementation of their programs and required reporting. We conferred with staff from CMS and from the technical assistance contractor to ensure that we had a complete understanding of the quarterly reports and differences in the ways that States reported information.

Scope

This interim report includes the 25 States that had received grants as of September 30, 2014. The ACA mandate requires OIG to submit a report within 180 days of completion of the program. On the basis of expected end dates of grants, the program will not be complete until 2018 at the earliest. We will continue to follow the progress of the national program in each State as it is implemented, and we will issue a final report as required.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

¹⁸ The information from the Federal Financial Reports was not necessary to address the objective of this evaluation.

¹⁹ The remaining 11 States included project narratives and expenditure data in their quarterly reports, but not data files. It is unknown whether these 11 States were conducting background checks and not reporting them, or if they were not yet conducting checks.

FINDINGS

The 25 States receiving grants reported having achieved varying levels of program implementation

The 25 States vary in their progress in reaching three key milestones: obtaining legislative authority, collecting fingerprints, and implementing continuous monitoring of criminal history information. This variation arises from unique factors affecting each State. One of these factors is the date that each State received its grant award. Six of the twenty-five participating States were awarded grants after September 30, 2012; therefore, these States have had less time to implement their programs than States that received grant awards earlier.²⁰

Further, the key milestones need not be reached in the same order in every State. One State might begin building program infrastructure (e.g., information systems) while working with its legislature to obtain the authority to conduct background checks. Another State might decide to obtain legislative authority before building any program infrastructure. A third State may have had some program infrastructure in place for conducting background checks before it received its grant.

Chart 1 shows the number of participating States that had not yet reached three key milestones.

Chart 1: Number of Participating States That Had Not Yet Reached Three Key Milestones



Source: OIG analysis of September 2014 program narratives, 2015.

²⁰ Participating States received grant awards between September 2010 and July 2013.

Thirteen of twenty-five States reported that they were in the process of obtaining enabling legislation

Thirteen of the twenty-five participating States reported that they were in the process of obtaining legislative authority to fully implement the requirements of the program. The remaining 12 participating States reported having obtained such authority.²¹ In Missouri, attempts to pass legislation in four sessions were not successful. However, Missouri has moved ahead with building an information system that meets the requirements of the program (e.g., execution of registry checks and State and FBI background checks). Missouri is using its system to conduct registry checks while awaiting legislative authority to conduct fingerprint-based State and FBI background checks. Similarly, legislation has been submitted three times in Kentucky, but has not passed. The Kentucky State agency made another attempt to obtain legislative authority in the 2015 session, and implemented a voluntary background check program for providers through administrative regulation.

Ten of twenty-five States reported that they did not yet have the ability to collect fingerprints

Ten of the twenty-five participating States reported that they did not yet have the ability to collect fingerprints. Of these 10 States, 7 States reported that they were beginning to develop the ability to collect fingerprints and 3 States reported that they had not yet begun to develop the ability to collect fingerprints. The remaining 15 States reported that they were able to collect fingerprints.

Among the States collecting fingerprints, New Mexico reported that implementing electronic fingerprinting resulted in efficiencies and savings for both the State agency and long-term-care providers. The State agency reduced its program staff by one employee and cut average timeframes for processing background checks from over 7 weeks to less than 1 week. Costs for long-term-care providers to conduct background checks were reduced through a combination of decreased postage expenses and staff hours.

Fifteen of twenty-five States reported that they did not yet have the capability to monitor criminal history information subsequent to initial background checks

Of the 25 participating States, 11 States reported that they were in the process of developing continuous monitoring capabilities and 4 States reported that they had not yet started developing such capabilities. The

²¹ Two of the twelve States that reported that they had obtained legislative authority appear—on the basis of the comments in their September 2014 program narratives—to have only partial authority to conduct background checks as required by the program.

remaining 10 States reported that they had implemented continuous monitoring capabilities. For some States, legislation is needed to implement continuous monitoring of criminal history information. Even if States have legislation that requires fingerprint-based background checks, the legislation may not include the authority to retain fingerprints over time.

In States that have implemented continuous monitoring of criminal history information, employers are alerted when current employees are arrested. Continuous monitoring reuses the original set of fingerprints collected from each employee during the initial background check, rather than requiring additional subsequent sets of fingerprints.

Florida began continuously monitoring criminal history information on January 1, 2013. Florida reported that from that date to May 31, 2014, approximately 4,300 individuals were flagged through the continuous monitoring system. Approximately 30 percent of the flagged individuals became ineligible for employment as a result of offenses that occurred after their initial background checks.

In the six States with sufficiently complete data to calculate disqualification rates, 3 percent of prospective employees were disqualified from employment

Six States conducted a total of 1,046,121 background checks between the inception of their programs and September 30, 2014. Three percent of prospective employees were disqualified from long-term-care employment on the basis of those checks. These six States conducted all three types of required background checks and reported their outcomes, conducted checks on at least 9 of the 10 required types of providers, and submitted cumulative data in their data reports.²² Table 1 shows the number and outcomes of background checks conducted in six States.

²² As of September 2014, Michigan was not yet conducting checks on employees of adult day health providers, and Oklahoma was not yet conducting checks on employees of long-term-care hospitals.

Table 1: Number of Background Checks Conducted by Six States Between Program Inception and September 30, 2014

State	Total Checks Conducted	Checks With a Determination of:					Percentage of Checks Resulting in Determinations of "Ineligible"
		Eligible for Employment	Ineligible for Employment	Pending	Closed Prior to Determination	Unknown ¹	
Alaska	46,969	21,875	1,872	20,625 ²	2,597	0	4.0% ³
District of Columbia	15,091	12,412	148	149	2,382	0	1.0%
Florida ⁴	787,683	733,081	26,007	28,227	152	216	3.3%
Michigan	138,134	116,897	1,479	1,237	18,448	73	1.1%
New Mexico	39,110	33,914	441	69	4,686	0	1.1%
Oklahoma	19,134	14,139	78	435	4,482	0	0.4%
Total	1,046,121	932,318	30,025	50,742	32,747	289	2.9%

¹ Two States included some records in their data reports that had contradictory information in the fields for determinations and for appeal results. Other records from these two States had different determinations for multiple records with the same record identification number. For both types of records, we counted one instance of each unique record identification number among the total checks conducted. Because these records had contradictory information regarding the determination made, we categorized them as "determination unknown."

² Alaska program staff explained that when they prepared their September 2014 quarterly report, approximately 3,000 determinations were pending. Staff theorized that these pending determinations resulted from terminations of individuals who had been previously determined to be qualified for employment. Alaska's data system may have deleted the original determination result of "qualified" when an individual's employment was terminated, causing the status of the determination to appear to be pending.

³ The data system that Alaska used when it prepared its September 2014 report would change the *original* determination when a record resulting from continuous monitoring of criminal history information was received. If the original result was "qualified" and the new information caused the person to become disqualified, the result on the original record was changed to "disqualified." This resulted in a higher percentage of disqualified applicants than if Alaska's data system had not changed the original determinations.

⁴ In Florida's September 2014 quarterly data report, the State reported a number of records that resulted from continuous monitoring of criminal history information. However, the State was unable to distinguish these records from those resulting from initial background checks. Records resulting from continuous monitoring of criminal history information did not indicate a status of "qualified" or "disqualified," making them appear to be pending. Therefore, Florida appears to have lower numbers of qualified and disqualified applicants and a higher number of pending applicants compared to States that do not report records resulting from continuous monitoring, or to States that report records resulting from continuous monitoring that can be distinguished from initial background checks.

Source: OIG analysis of State quarterly data reports for the period ending September 30, 2014, and confirmations by State officials. Quarterly data reports accessed at <http://bgcheckinfo.cna.org/> on December 5, 2014.

Only three of these States provided data in which records resulting from continuous monitoring of criminal history information could be distinguished from records resulting from initial background checks

Six States submitted data sufficient to calculate the percentage of checks resulting in disqualification. However, only three States' data reports included records resulting from continuous monitoring of criminal history information that could be distinguished from records for initial background checks. According to CMS guidance, 13 of the 30 data elements (e.g., facility/provider type, employee type) should be left blank for records resulting from continuous monitoring.²³ Two States did not report records resulting from continuous monitoring that could be distinguished from records for initial background checks, and one State did not report any records resulting from continuous monitoring.

- Records resulting from continuous monitoring for Michigan, New Mexico, and Oklahoma can be distinguished from records representing initial background checks because they have blank values for employee type and facility type, and for the majority of the other 11 data elements that should be blank for records resulting from continuous monitoring. Staff from CMS's technical assistance contractor confirmed that these records resulted from continuous monitoring.
- None of Alaska's records had blank values for all 13 data elements that should be blank to indicate records resulting from continuous monitoring. Instead of creating a new record to represent the results of continuous monitoring, Alaska's data system changed the determination of the original background check record from "eligible" to "ineligible" when continuous monitoring disqualified a previously qualified employee. Alaska program officials confirmed that the State's data system changed determinations in this manner.
- Staff from CMS's technical assistance contractor confirmed that Florida included records resulting from continuous monitoring in the State's data report; however, none of Florida's records had blank values for all 13 data elements that should be blank to indicate records resulting from continuous monitoring. It is not possible to distinguish the records that have blank values for some of the 13 data elements because they are the results of continuous

²³ CMS, *Upcoming Changes to CMS Program Data Report for NBCP*, February 1, 2014.

monitoring from the records that have blank values because the information is simply missing.

- The District of Columbia's data report did not include records resulting from continuous monitoring of criminal history information. The District of Columbia reported that it had not yet started to develop continuous monitoring capabilities.

Most of the States receiving grants were not yet reporting data or reported data that could not be used to calculate disqualification rates

Nineteen States were unable to report data that could be used to calculate disqualification rates. Eleven States were not yet submitting data reports during the period of our review. Eight States conducted background checks and submitted data reports on those checks; however, gaps in the data submitted prevented the calculation of disqualification rates. Some of the gaps in the data were due to varying levels of progress in program implementation. Specifically, Georgia, Illinois, and Oregon were not yet conducting all three required types of checks.

Other gaps resulted from States' lack of reporting of required information:

- Delaware, Georgia, Kentucky, Nevada, and Oregon did not report the results of checks on employees of three or more of the required provider types.
- Georgia and Illinois did not report the results of abuse registry checks as required. Georgia did not report the results of any abuse registry checks. Illinois reported only the results of abuse registry checks that did not disqualify the applicant; applicants that were disqualified by the abuse registry check were not reported.
- Georgia did not report applications that were closed prior to the completion of the determination. Georgia program staff explained that their data system cannot yet identify applicants who voluntarily withdraw from the hiring process.
- California and Utah were not submitting cumulative data. Rather, their quarterly reports included only background checks that started and were completed in the same quarter. If a final determination was not issued in the same quarter that the background check started, it was not reflected in any quarterly report.

Without complete and comparable data reports from all participating States, program outcomes cannot be calculated, nor can the effectiveness of the background check program be assessed.

CONCLUSION AND RECOMMENDATIONS

CMS needs accurate data to determine program outcomes and conduct effective oversight of the National Background Check Program. OIG also requires accurate program data to identify the most efficient and effective methods of conducting background checks in the report mandated by Section 6201 of the ACA. Of the 25 States receiving grant awards, 6 States had sufficiently complete data to calculate disqualification rates. In those six States, 3 percent of prospective employees were disqualified from employment. Most of the States receiving grants were not yet reporting data or reported data that could not be used to calculate disqualification rates.

To ensure that effective oversight of the National Background Check Program can be conducted, we recommend that CMS:

Continue working with participating States to fully implement their background check programs

CMS, through its technical assistance contractor, should continue assisting participating States to fully implement their background check programs. CMS should assist States with activities such as:

- submitting legislative proposals to obtain authority for States to conduct all 3 required types of background checks on all 10 required provider types,
- developing the capacity to collect fingerprints, and
- implementing continuous monitoring of criminal history information.

Continue working with participating States to improve required reporting to ensure that CMS can conduct effective oversight of the program

CMS could accomplish this through:

- Working with States, as necessary, to submit records resulting from continuous monitoring of criminal history information in accordance with CMS guidance.
- Use lessons learned from States that are already reporting data to assist States that are not yet reporting data to do so as specified by CMS.
- Ensuring that States report required data elements in their quarterly reports (e.g., results of registry checks). States should report all data elements pertaining to the program milestones they have reached.
- Working with States, as necessary, to submit cumulative data.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

CMS concurred with both of our recommendations.

In response to our first recommendation, CMS stated that it has extended—for an unspecified period—the deadline for responding to the ninth solicitation for grant proposals. We ask that in its final management decision, CMS provide information on how it intends to address our first recommendation, i.e., that it continue to work with participating States to fully implement their programs.

In response to our second recommendation, CMS stated that it works with States on the required quarterly reports and provides technical assistance to States as needed. We ask that in its final management decision, CMS provide information on how it intends to address the second recommendation in full, including (1) using lessons learned from the States that are reporting data to assist States that are not reporting data and (2) providing increased oversight of the data it is receiving from States to ensure that States report all data elements pertaining to the program milestones they have reached.

For the full text of CMS's comments, see Appendix E.

APPENDIX A

Participating States and Dates of Grant Awards

State	Grant Award Date	Grant End Date*
Alaska	October 1, 2010	September 29, 2016
California	February 1, 2011	January 31, 2016
Connecticut	September 30, 2010	September 29, 2016
Delaware	September 30, 2010	January 31, 2014
District of Columbia	January 1, 2011	December 30, 2016
Florida	September 30, 2010	September 29, 2016
Georgia	July 25, 2012	July 24, 2016
Hawaii	December 17, 2012	December 16, 2016
Illinois	December 31, 2010	December 30, 2014
Kentucky	May 20, 2011	May 19, 2016
Maine	October 3, 2011	September 30, 2016
Maryland	January 31, 2013	January 30, 2016
Michigan	May 20, 2013	May 19, 2016
Minnesota	August 30, 2012	July 31, 2016
Missouri	September 30, 2010	September 29, 2016
Nevada	September 1, 2011	September 30, 2016
New Mexico	December 31, 2010	December 30, 2016
North Carolina	July 13, 2011	July 12, 2016
Ohio	April 22, 2013	April 21, 2016
Oklahoma	April 6, 2011	April 4, 2016
Oregon	July 29, 2013	July 28, 2016
Puerto Rico	December 17, 2012	December 16, 2016
Rhode Island	September 30, 2010	September 29, 2016
Utah	July 11, 2011	July 10, 2016
West Virginia	October 1, 2011	September 30, 2016

*Dates shown include extensions approved as of December 2015. Additional extensions may be subsequently approved.

Source: CNA Analysis & Solutions, *BGCheckInfo*. Accessed at <http://bgcheckinfo.cna.org/> on December 2, 2014, and confirmed with a CMS official.

APPENDIX B

Spending for the National Background Check Program

P.L. No. 108-173, § 307 established a Background Check Pilot Program, under which Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin received grants. Federal funds per State for the National Background Check Program are limited to \$1.5 million for States that participated in the pilot program and \$3 million for States that did not.

Federal funds are provided at a rate of three times the amount of funds that a State guarantees. However, States can meet their financial contributions early in the grant period, such that actual spending is not at a consistent rate of \$3 of Federal funds for every \$1 of State funds.

State	Federal Spending	State Spending	Total Federal Award and State Matching Funds	Percentage of Background Check Program Funds Spent
Alaska	\$1,476,766	\$492,255	\$2,000,000	98%
California	\$1,594,899	\$243,860	\$4,000,000	46%
Connecticut	\$1,776,661	\$945,461	\$3,462,758	79%
Delaware	\$2,639,761	\$1,000,000	\$4,000,000	91%
District of Columbia	\$1,670,441	\$518,198	\$3,565,463	61%
Florida	\$2,827,287	\$2,518,566	\$4,097,292	130%*
Georgia	\$698,376	\$263,836	\$3,628,709	27%
Hawaii	\$0	\$0	\$1,063,300	0%
Illinois	\$1,081,145	\$673,032	\$2,173,032	81%
Kentucky	\$1,253,905	\$704,325	\$4,000,000	49%
Maine	\$428,541	\$449,465	\$3,926,516	22%
Maryland	\$70,449	\$34,583	\$1,814,028	6%
Michigan	\$341,152	\$252,064	\$2,000,000	30%
Minnesota	\$223,528	\$1,489,235	\$4,489,238	38%
Missouri	\$2,388,061	\$976,271	\$4,002,628	84%
Nevada	\$369,001	\$195,603	\$1,459,289	39%
New Mexico	\$1,253,956	\$363,466	\$2,000,000	81%
North Carolina	\$176,987	\$662,024	\$3,062,765	27%
Ohio	\$992,732	\$282,523	\$2,854,006	45%
Oklahoma	\$661,578	\$220,526	\$3,431,455	26%
Oregon	\$16,548	\$5,516	\$4,000,000	1%
Puerto Rico	\$501,006	\$501,980	\$3,967,291	27%
Rhode Island	\$374,602	\$374,918	\$1,805,816	42%
Utah	\$1,339,597	\$885,523	\$4,000,000	56%
West Virginia	\$70,647	\$583,992	\$1,627,899	40%
Total	\$24,227,626	\$14,717,222	\$76,431,485	51%

*Florida has provided State funds in excess of its minimum matching amount.

Source: CNA Analysis & Solutions, *BGCheckInfo*. Accessed at <http://bgcheckinfo.cna.org/> on December 5, 2014.

APPENDIX C

Elements of Quarterly Data Files

Data Element Number	Element Name	Required for Pre-Employment Background Check Records	Required for Records Representing Continuous Monitoring
1	Record ID	Yes	Yes
2	Facility/Provider Type	Yes	No
3	Employee Categories	Yes	No
4	Record Creation Date	Yes	Yes
5	Registry/Database Search Date	Yes	No
6	Registry/Database Search Determination Results	Yes	No
7	Fingerprint Collection Date	Yes	No
8	Fingerprint Type	Yes	No
9	Fingerprint Rejection Date	Yes	No
10	State Background Check Request Date	Yes	No
11	State Background Check Response Date	Yes	Yes
12	Missing Disposition	Yes	Yes
13	State Fitness Determination Results	Yes	Yes
14	State Fitness Determination Date	Yes	Yes
15	Closed Prior to Determination	Yes	No
16	Date Application Closed	Yes	No
17	FBI Fingerprint-Based Background Check Request Date	Yes	No
18	FBI Fingerprint-Based Background Check Return Date	Yes	Yes
19	Fitness Determination Based on Federal Results	Yes	Yes
20	Fitness Determination Based on Federal Results Date	Yes	Yes
21	Fitness Determination Responsibility	Yes	No
22	Final Overall Fitness Determination	Yes	Yes
23	Final Fitness Determination Notification Date	Yes	Yes
24*	Applicant Appeal	Yes	Yes
25	Appeal Date	Yes	Yes
26	Appeal Type	Yes	Yes
27	Appeal Decision	Yes	Yes
28	Appeal Decision Date	Yes	Yes
29	Fitness Determination Renotification Date for Appeal	Yes	Yes
30	Permanent (Nonprovisional) Hire Date	Yes	No

* Fields 24–29 are required only if the applicant appeals the determination.

Source: CNA Analysis & Solutions, *BGCheckInfo*. Accessed at <http://bgcheckinfo.cna.org/> on July 29, 2014.

APPENDIX D

Related Reports

This appendix provides information on selected OIG reports published since 2010 that address criminal background checks for and employment of individuals with criminal convictions in long-term care.

Nursing Facilities' Employment of Individuals With Criminal Convictions, OEI-07-09-00110, March 2011

This evaluation determined whether and to what extent nursing facilities employed individuals with criminal convictions. It found that 92 percent of nursing facilities employed at least one individual with at least one criminal conviction. Overall, 5 percent of nursing facility employees had at least one criminal conviction. The evaluation also found that almost all nursing facilities conducted some form of background check.

Nationwide Program for National and State Background Checks for Long-Term-Care Employees—Results of Long-Term-Care Provider Administrator Survey, OEI-07-10-00421, January 2012

This report provided the results of a survey of long-term-care provider administrators about their procedures for conducting background checks, the effects of background checks on the pool of prospective employees, and the availability and quality of prospective employees. It found that 94 percent of administrators conducted background checks on prospective employees. Twenty-three percent of administrators believed that their organizations' background check procedures reduced the pool of prospective employees.

Criminal Convictions for Nurse Aides With Substantiated Findings of Abuse, Neglect, and Misappropriation, OEI-07-10-00422, October 2012

This evaluation determined the extent to which nurse aides with substantiated findings of abuse, neglect, and/or misappropriation recorded on nurse aide registries had previous criminal convictions that could have been detected through background checks. Nineteen percent of nurse aides with substantiated findings had at least one conviction in their criminal history records prior to their substantiated finding. Among these nurse aides, the most common conviction (53 percent) was for crimes against property (e.g., burglary, shoplifting, and writing bad checks). Finally, nurse aides with substantiated findings in 2010 had a higher rate of convictions than nurse aides employed in nursing facilities overall.

State Requirements for Conducting Background Checks on Home Health Agency Employees, OEI-07-14-00131, May 2014

This report provided the results of a survey of State officials regarding State requirements for conducting background checks for prospective home health agency (HHA) employees, including the job positions for

which States require HHAs to conduct background checks and the types of convictions that States consider to be disqualifying for HHA employment. The evaluation found that 41 States required HHAs to conduct background checks on prospective employees. Of the 10 States that had no requirements for background checks, 4 States reported that they planned to implement such requirements in the future. Thirty-five States specify convictions that disqualify individuals from employment, and 16 States allow an individual who has been disqualified from employment to submit an application to have his/her conviction(s) waived.

Home Health Agencies Conducted Background Checks of Varying Types, OEI-07-14-00130, May 2015

This evaluation identified the criminal convictions of employees of a sample of Medicare-certified HHAs, and included an indepth review of six purposively selected employees whose convictions were likely to disqualify them from HHA employment. It found that 4 percent of HHA employees had at least one criminal conviction; those convictions may or may not have disqualified them from employment. FBI criminal history records were not detailed enough to enable us to definitively determine whether employees with criminal convictions should have been disqualified from HHA employment. Our review of the six selected HHA employees found that three had convictions for crimes against persons that appeared—on the basis of available data—to disqualify them from employment in HHAs; however, circumstances may have allowed their employment. The remaining three individuals' convictions did not disqualify them from employment in their respective States.

APPENDIX E

Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

NOV -6 2015

To: Daniel R. Levinson
Inspector General
Office of the Inspector General

From: Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: National Background Check Program for Long-term-care Employees: Interim Report, OEI-07-10-00420

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries receive high quality health care.

Currently, CMS is sponsoring the National Background Check Program (NBCP), a national program to identify efficient, effective, and economical procedures for long term care facilities and providers to conduct background checks on a statewide basis for all potential direct patient access employees. To date, CMS has awarded nearly \$63 million to 26 States and U.S. Territories so that they may design comprehensive national background check programs. Two States, Delaware and Illinois, have graduated from the program. Delaware graduated from the program in September 2013 and with the use of grant funds expanded the breadth of provider types and transformed a paper-based, labor-intensive background check system into a fully automated system. Illinois graduated from the program in December 2014 and also used grant funds to modernize their background check computer system. This updated system interfaces with other agencies, including the Illinois State Police. Additionally, an internet-based training program was developed to educate providers on the use of the background check system.

OIG Recommendation

The OIG recommends that CMS continue working with participating States to fully implement their background check programs.

CMS Response

CMS concurs with this recommendation. CMS encourages States and U.S. Territories to participate in the National Background Check Program (NBCP). The deadline for responding to the ninth solicitation for grant proposals from States and U.S. Territories for inclusion in this National Background Check Program deadline has been extended and applications will be accepted on a flow basis and acted on every 30 days.

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OIG Recommendation

The OIG recommends that CMS continue working with participating States to improve required reporting to ensure that CMS can conduct effective oversight of the program.

CMS Response

CMS concurs with this recommendation. CMS works with the states on the required quarterly reports and provides technical assistance to states, as needed. As each state is in different stages of implementation the guidance is based upon each state's particular background check system, the other state systems that interact with the background check system and the maturity of the background check system.

ACKNOWLEDGMENTS

This report was prepared under the direction of Brian T. Whitley, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office.

Tricia Fields served as the team leader for this study. Other Office of Evaluation and Inspections staff from the Kansas City regional office who conducted the study include Michala Walker. Central office staff who provided support include Kevin Farber, Berivan Demir Neubert, Christine Moritz, and Sherri Weinstein.

Office of Inspector General

<http://oig.hhs.gov>

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