

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**HOME HEALTH AGENCIES  
CONDUCTED BACKGROUND  
CHECKS OF VARYING TYPES**



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## **EXECUTIVE SUMMARY: HOME HEALTH AGENCIES CONDUCTED BACKGROUND CHECKS OF VARYING TYPES**

### **WHY WE DID THIS STUDY**

Employees of home health agencies (HHAs) provide care—usually unsupervised—to patients in their homes. Ensuring that HHA employees have undergone a minimum level of screening would help protect the safety of Medicare beneficiaries. There are no Federal laws or regulations that require HHAs to conduct background checks prior to hiring individuals or to periodically conduct background checks after individuals have been hired. State requirements for background checks vary as to what sources of information must be checked, which job positions require background checks, and what types of convictions prohibit employment. This evaluation is in response to a congressional request for the Office of Inspector General to analyze the extent to which HHAs employed individuals with criminal convictions and to explore whether these convictions should have—according to State requirements—disqualified them from HHA employment.

### **HOW WE DID THIS STUDY**

We requested data from a sample of Medicare-certified HHAs regarding all individuals they employed on January 1, 2014. We compared the employee data with criminal history records from the Federal Bureau of Investigation (FBI) to identify individuals with criminal convictions who were employed by the sampled HHAs. We selected for an indepth review six employees who had convictions for crimes against persons in the last 5 years and/or were registered sex offenders. We evaluated whether compliance with State laws would have led to disqualification of these six employees.

### **WHAT WE FOUND**

All HHAs conducted background checks of varying types on prospective employees; approximately half also conducted periodic checks after the date of hire. Four percent of HHA employees had at least one criminal conviction; such 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 have convictions for crimes against persons that appear—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.

### **WHAT WE RECOMMEND**

We recommend that the Centers for Medicare & Medicaid Services (CMS) promote minimum standards in background check procedures. CMS could promote minimum standards for HHA employee background checks by encouraging more States to participate in the National Background Check Program. CMS concurred with our recommendation.

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## OBJECTIVES

1. To determine whether home health agencies (HHAs) conduct background checks on prospective and/or current employees.
2. To determine the extent to which HHA employees have criminal convictions.
3. To determine whether the criminal convictions of selected employees appear to disqualify them for HHA employment.

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## BACKGROUND

This evaluation is in response to a congressional request for the Office of Inspector General (OIG) to analyze the extent to which HHAs employed individuals with criminal convictions and whether these convictions should have disqualified them from HHA employment. This report is a companion to the May 2014 report entitled *State Requirements for Conducting Background Checks on Home Health Agency Employees* (OEI-07-14-00131), which identified State background-check requirements for HHAs and identified the types of criminal convictions that, under State law or regulation, disqualify individuals from HHA employment.

### **Medicare Home Health Services**

In 2012, HHAs provided services to approximately 3.5 million Medicare beneficiaries, averaging 34 visits per beneficiary. Medicare paid nearly \$18.5 billion for HHA services that year.<sup>1</sup>

### **Requirements for Conducting Background Checks**

There are no Federal laws or regulations that require HHAs to conduct background checks prior to hiring individuals or to periodically conduct background checks after individuals have been hired.<sup>2</sup> There are also no Federal laws or regulations that prohibit HHAs from hiring individuals who have been convicted of crimes or for whom a substantiated finding concerning abuse, neglect, or misappropriation of beneficiary property has been entered into State-based registries or databases of abuse and neglect (e.g., State registries of

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<sup>1</sup> Centers for Medicare & Medicaid Services (CMS), *2013 Medicare & Medicaid Statistical Supplement: Table 7.1*. Accessed at [http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareMedicaidStatSupp/Downloads/2013\\_Section7.pdf#Table7.1](http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareMedicaidStatSupp/Downloads/2013_Section7.pdf#Table7.1) on January 22, 2015. This was the most recent data available as of March 2015.

<sup>2</sup> In April 2014, CMS released guidance that it would phase in the implementation of fingerprint-based background checks for individuals with a 5 percent or greater ownership interest of a HHA newly enrolling in the Medicare program. This action is part of the enhanced enrollment screening provisions contained in P.L. No. 111-148 § 6401.

nurse aides).<sup>3</sup> However, as a condition of participation in Medicare, HHAs must comply with State laws.<sup>4</sup> State requirements for background checks vary in terms of what sources of information must be checked, which job positions require background checks, and what types of convictions prohibit employment.

### **Types of Background Checks**

In general, there are two types of background checks that States may require HHAs to use: statewide and Federal Bureau of Investigation (FBI). Statewide background checks are typically conducted by a State law enforcement agency (e.g., State Highway Patrol, State Police) and include information for crimes committed within that State. For an FBI background check, a State law enforcement agency initiates the process by providing the FBI with an individual's identifying information and a set of fingerprints. The FBI checks them against the criminal background information maintained in its 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.

### **National Background Check Program**

The Patient Protection and Affordable Care Act 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).<sup>5</sup> This voluntary program awards grant funds to States to conduct background checks on prospective long-term-care employees. Under the program, prospective "direct patient access" employees in any of 10 provider types (e.g., HHAs) must undergo fingerprint-based statewide and FBI background checks, as well as checks of State-based registries of abuse and neglect.<sup>6</sup> CMS began awarding grants to States in September 2010. As of April 2015, CMS had awarded grants to 25 States, totaling more than \$50 million. A list of these States can be found in Appendix A.

### **Related Reports**

A 2014 OIG report found that, of the 50 States and the District of Columbia (States), 41 States required HHAs to conduct background checks on prospective

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<sup>3</sup> State survey and certification agencies investigate allegations of abuse, neglect, and misappropriation of property made against nurse aides. If the State's investigation concludes that an allegation is valid, a substantiated finding for the individual is entered in the State's registry of nurse aides. 42 CFR § 483.156. Nursing facilities may not employ individuals who have had a substantiated finding entered into the State's registry of nurse aides.

42 CFR § 483.13(c)(1)(ii)(B).

<sup>4</sup> 42 CFR § 484.12(a).

<sup>5</sup> P.L. No. 111-148 § 6201.

<sup>6</sup> P.L. No. 111-148 § 6201(a)(3)(A).

employees as of January 2014.<sup>7</sup> Of the 10 States that had no background-check requirement, 4 States reported that they had plans to implement background-check requirements.

Thirty-five States specify convictions that disqualify individuals from employment, and 16 of these 35 States allow an individual who has been disqualified from employment to submit an application to have his/her disqualification waived.

A 2012 OIG study found that 19 percent of nurse aides who received a substantiated finding of abuse, neglect, or misappropriation of property in 2010 had been convicted of at least one offense prior to their substantiated finding.<sup>8</sup> Among these nurse aides, the most common conviction (53 percent) was for crimes against property (e.g., burglary, shoplifting, or writing bad checks).

A 2011 OIG study found that 5 percent of all nursing facility employees had at least one criminal conviction.<sup>9</sup> Federal regulation prohibits Medicare and Medicaid nursing facilities from employing individuals found guilty by a court of law of abusing, neglecting, or mistreating nursing facility residents.<sup>10</sup> The 2011 study could not determine whether individuals with criminal convictions should have been disqualified from nursing-facility employment, because FBI-maintained criminal history records do not indicate whether the victim of a crime was a nursing-facility resident. The most common criminal conviction was for crimes against property. The study recommended that CMS develop background check procedures by (1) clearly defining which employee classifications are “direct patient access,” and (2) working with States to develop a list of State and local convictions that disqualify an individual from nursing-facility employment under the Federal regulation and the periods for which each conviction bars the individual from employment. CMS agreed with this recommendation. CMS convened a workgroup that produced a report listing options for CMS to consider in defining “direct patient access” employee classifications and developing a list of disqualifying convictions.<sup>11</sup>

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<sup>7</sup> OIG, *State Requirements for Conducting Background Checks on Home Health Agency Employees*, OEI-07-14-00131, May 2014.

<sup>8</sup> OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

<sup>9</sup> OIG, *Nursing Facilities’ Employment of Individuals with Criminal Convictions*, OEI-07-09-00110, March 2011.

<sup>10</sup> 42 CFR § 483.13(c)(1)(ii)(A)

<sup>11</sup> CNA Corporation, *CMS, National Background Check Program, Long Term Care Criminal Convictions Workgroup Report*, IRM-2012-U-003468, December 2012.

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## METHODOLOGY

*Sample Selection.* We selected a random sample of 105 HHAs from the national population of 12,626 Medicare-certified HHAs that were in operation on January 1, 2014. Six of the sampled HHAs were ineligible to be in our sample, reducing the size of the usable sample 99 HHAs.<sup>12</sup>

*Data Collection and Analysis.* From the 99 sampled HHAs, we collected responses to a survey about background check procedures and information on all employees as of January 1, 2014. The 99 HHAs reported a total of 4,680 employees. See Appendix B for a profile of characteristics of employees of the sampled HHAs.

To gain access to information on criminal history records, we entered into an Information Transfer Agreement with FBI.<sup>13</sup> We sent identifying information on all 4,680 HHA employees to the FBI. We used only convictions for which we could conclusively match individual identifiers of the employees to those in the FBI database. For individuals with criminal convictions, we grouped the convictions into six broad categories: crimes against persons, crimes against property, drug-related crimes, driving under the influence of drugs or alcohol (DUI), non-DUI driving-related crimes, and other crimes.<sup>14</sup> We estimated the percentage of employees with each type of conviction. See Appendix C for a detailed description of our methodology.

*Identification of Employees with Convictions That Appear to be Disqualifying.* For three reasons, we could not definitively determine whether all of the sampled HHA employees who had criminal conviction(s) should have been disqualified from HHA employment. First, not all States specify which convictions disqualify individuals from HHA employment. Second, FBI criminal history information is not always detailed enough to determine whether a specific conviction would result in disqualification in the employee's State. Third, we are prohibited by the terms of the Information Transfer Agreement from contacting outside parties regarding the individuals associated with this evaluation; therefore, we could not collect further information to determine whether a specific conviction was disqualifying.

Because we could not definitively determine whether all HHA employees with criminal convictions should have been disqualified from HHA employment, we

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<sup>12</sup> Although we selected only HHAs that were listed in CMS's Certification and Survey Provider Enhanced Reports system as having been in operation on January 1, 2014, the six ineligible HHAs had actually closed before that date.

<sup>13</sup> An Information Transfer Agreement governs the terms of OIG's access to FBI criminal history records for research purposes.

<sup>14</sup> Convictions categorized as "other crimes" did not fit into any of the other five categories. Examples of convictions categorized as "other crimes" include disturbing the peace, immigration violations, and providing false information to a police officer.

purposely selected (1) employees whose convictions were for crimes against persons occurring within 5 years of their beginning employment dates, and (2) employees who were registered sex offenders, regardless of the dates of registration. These criteria are consistent with the disqualifying convictions established by numerous States.

Applying the criteria described above yielded six employees who had convictions for crimes against persons in the last 5 years and/or were registered sex offenders. To determine which of the six employees had convictions that appeared, on the basis of available data, to disqualify them from employment in HHAs, we compared their convictions to the relevant State laws regarding background check requirements, disqualifying convictions, and waivers. We were prohibited by the terms of the Information Transfer Agreement from contacting States to gather further information about whether the employees' convictions were disqualifying; making such requests would have required us to disclose the employees' identities and criminal histories.

### **Limitations**

Our estimate of the number of HHA employees with criminal convictions relies entirely upon the accuracy of the information contained in the FBI's criminal history record information. Because the FBI relies on local, State, and Federal law enforcement agencies to report criminal records, it is possible that not all criminal history record information was accurate and up to date.

Our estimates are conservative because we did not include criminal convictions if we could not conclusively match the individual (e.g., if the identifiers were similar but did not exactly match) to a conviction record. Also, we could not confirm that the employee information that HHAs provided us was accurate or that the information the employees provided to the HHAs was accurate.

### **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.



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## FINDINGS

### **All HHAs conducted background checks of varying types on prospective employees; approximately half also conducted periodic checks after the date of hire**

All HHAs reported conducting either a statewide or Federal criminal background check, or both. Eighty-three percent of HHAs conducted background checks on all prospective employees, and an additional 9 percent conducted background checks only on direct-care employees.<sup>15</sup> The remaining 8 percent conducted background checks on a specific group of individuals, such as unlicensed direct-care staff.

Seventy-two percent of HHAs did not allow employees to begin work prior to completion of the background check. Of the 28 sampled HHAs that allowed employees to begin work pending the completion of the background check, 9 stipulated that direct-care employees were not allowed to begin patient care until their background checks were complete.<sup>16</sup>

### ***HHAs use many different sources of information for background checks***

Under the National Background Check Program, prospective HHA employees undergo three types of background checks: checks of State databases, such as abuse and neglect registries; checks of statewide criminal history records; and checks of FBI criminal history records.<sup>17</sup> Twenty percent of HHAs reported conducting these three types of checks, regardless of their respective States' participation in the National Background Check Program. In addition to statewide and FBI criminal history checks, HHAs reported checking other sources of information, such as the OIG List of Excluded Individuals and Entities, State registries of nurse aides, and State registries of sex offenders. As one HHA administrator explained, "Most of the background checks are very easy to do. For us, the small amount of time required is well worth the peace of mind."

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<sup>15</sup> Section 6201 of the Patient Protection and Affordable Care Act uses the term "direct patient access" employees; however, the more common term used in the HHA industry is "direct-care employees." Therefore, we used the term "direct-care employees" in our survey of HHAs and throughout the findings of this report. The term "direct-care employee" encompasses many job classifications (e.g., home health aides, nurses, physical therapists). Sampled HHAs differed as to what job classifications they considered to be direct-care jobs.

<sup>16</sup> Because of the relatively low number of such HHAs in the sample, we were unable to estimate the percentage of all HHAs that allowed employees to begin work pending the completion of a background check, but did not allow employees to begin providing patient care until their background checks were complete.

<sup>17</sup> Only "direct patient access" employees are required to undergo these checks.

### **Over half of HHAs conducted periodic checks after the date of hire**

Fifty-eight percent of HHAs conducted periodic background checks after the date of hire. Of the HHAs that conducted periodic background checks, 44 percent conducted annual checks, and a quarter of HHAs conducted checks more frequently than annually. Eleven percent of the HHAs that conducted periodic checks had terminated at least one employee based on the results of a periodic check. Table 1 shows how frequently HHAs reported conducting the periodic checks.

**Table 1: Frequency of Periodic Background Checks Among HHAs That Conducted Periodic Background Checks**

Frequency	Percentage of HHAs
Annually	43.9%
More frequent than annually (e.g., monthly, quarterly)	24.6%
Less frequent than annually	15.8%
As needed	12.3%

Source: OIG analysis of HHA survey responses, 2014.  
Percentages do not total 100 percent because two HHAs that reported conducting periodic background checks did not answer the question regarding frequency.

### **Four percent of HHA employees had at least one criminal conviction; such convictions may or may not have disqualified them from employment**

As of January 1, 2014, 4 percent of HHA employees had at least one conviction in FBI-maintained criminal history records. Employees with at least one conviction in their criminal history records averaged two convictions per employee. The number of criminal convictions per employee in our sample ranged from 1 to 13.

The percentage of HHA employees who had at least one criminal conviction ranged by job classification from 1 percent to nearly 6 percent. Less than 2 percent of employees classified as either social workers/case managers or therapists had criminal convictions. Table 2 shows the percentages of HHA employees who had a criminal conviction, by job classification.

**Table 2: Percentage of HHA Employees Who Had a Criminal Conviction, by Job Classification**

Job Classification	Percentage of Employees With Criminal Convictions
Home Health Aide, Certified Nurse Assistant, or other Home Care Assistant	5.9%
Administration	4.2%
Nurse	4.1%
Social Worker or Case Manager	1.6%
Occupational, Physical, or Other Therapist	1.4%

Note: One HHA employee with a conviction was listed in the category "Other Clinician." The sample did not include enough HHA employees in this category to estimate the percentage of "Other Clinicians" with criminal convictions in the population.

Source: OIG analysis of FBI criminal history records and HHA employee data, 2014.

Of employees with convictions, 72 percent were identified as direct-care employees. The term "direct-care employee" encompasses many job classifications (e.g., home health aides, nurses, physical therapists). Sampled HHAs differed as to what job classifications they considered to be direct-care jobs. For example, some HHAs considered all job classifications (i.e., every employee) to be direct care. Other HHAs considered certain job classifications, such as nurse manager and scheduler, not to be direct care.

***Among employees with convictions, 36 percent had at least one conviction for crimes against property and 12 percent had at least one conviction for crimes against persons***

HHA employees had convictions of many types. Among HHA employees with convictions, 36 percent had at least one conviction for crimes against property. Crimes against property include credit card fraud, identity theft, and stealing. Twelve percent of HHA employees with convictions had at least one conviction for crimes against persons. Crimes against persons include assault and domestic violence. Table 3 shows the categories of crimes for which HHA employees were convicted.

**Table 3: Categories of Crimes for Which HHA Employees Were Convicted**

Category of Crime	Percentage Among HHA Employees With Criminal Convictions
Crimes against property	35.8%
Other*	26.8%
DUI	21.1%
Drug-related crimes	18.9%
Driving-related crimes other than DUI	17.4%
Crimes against persons	11.6%

\*Examples of crimes in the category "Other" include disturbing the peace, immigration violations, and providing false information to a police officer.

Note: Percentages do not sum to 100 percent because some employees had criminal convictions in more than one category.

Source: OIG analysis of FBI criminal history records and HHA employee data, 2014.

***Most convictions occurred at least 5 years prior to employment***

Although HHA employees had convictions that occurred both before and after their beginning dates of employment, 66 percent of employees with criminal convictions had received their most recent conviction at least 5 years prior to employment. For example, an individual employed since 2009 had 13 convictions for crimes against property, the most recent of which was in June 1991. Nine percent of HHA employees had convictions only after beginning employment. Table 4 shows the elapsed time between an employee's most recent conviction and his or her beginning date of employment.

**Table 4: Elapsed Time Between Employee’s Conviction and Beginning Date of Employment**

Category of Crime	Percentage Among Employees With Criminal Convictions
<b>Convictions before date of hire</b>	
10 years or more before hire	43.2%
5 years to less than 10 years before hire	22.6%
1 year to less than 5 years before hire	19.5%
Less than 1 year before hire	5.3%
Subtotal	90.5%
<b>Convictions after date of hire</b>	
Less than 6 months after hire	2.1%
6 months to 1 year after hire	1.1%
1 year to less than 2 years after hire	2.6%
2 years to less than 5 years after hire	0.5%
5 years to less than 10 years after hire	2.1%
10 years or more after hire	1.1%
Subtotal	9.5%
<b>Total</b>	<b>100%</b>

Note: Percentages do not sum to 100 percent due to rounding.  
Source: OIG analysis of FBI criminal history records and HHA employee data, 2014.

***About half of HHAs employed one or more individuals with at least one criminal conviction***

The highest number of employees with convictions at any sampled HHA was 23; the total number of employees at this HHA was 280. Table 5 shows the percentages of HHAs that employed various percentages of employees with criminal convictions.

**Table 5: Percentage of HHAs That Employed Various Percentages of Employees With Criminal Convictions**

Percentage of Employees with Conviction(s)	Percentage of HHAs
None	51.5%
Up to 5.0%	23.2%
Between 5.0% and 10.0%	16.2%
Between 10.0% and 15.0%	5.1%
Between 15.0% and 20.0%	2.0%
Between 20.0% and 25.0%	0.0%
Between 25.0% and 30.0%	0.0%
Between 30.0% and 35.0%	2.0%
<b>Total</b>	<b>100%</b>

Source: OIG analysis of FBI criminal history records and HHA employee data, 2014.

**A review of six HHA employees with convictions for crimes against persons found that three have convictions that appear, on the basis of available data, to disqualify them from employment in HHAs**

A 2014 OIG report found that, as of January 1, 2014, 41 States required HHAs to conduct background checks on prospective employees. Thirty-five States specified convictions that disqualify employment; however, States differed in regard to the types of convictions that disqualify individuals from employment and how recently the convictions must have occurred to be disqualifying. Sixteen States allowed an individual who has been disqualified from employment to submit an application to have his or her disqualification waived. In reviewing the convictions of the six employees described below, we applied the information collected for the 2014 report about States’ background check requirements, disqualifying convictions, and waivers.

***Three individuals who had convictions for crimes against persons appear—on the basis of available data—to be disqualified from employment in HHAs; however, circumstances may have allowed their employment***

Three individuals who had convictions for crimes against persons appear—on the basis of available data—to have been disqualified from HHA employment. The first individual was a home health aide in California and was subject to California’s requirement for criminal background checks for home health aides. This individual—who began employment in 2007—had one conviction for

domestic violence in November 2012.<sup>18</sup> This employee should not have continued to be employed after November 2012 because she had a mandatory disqualifying conviction.<sup>19</sup> The California State agency that registers home health aides receives notification from the State Department of Justice if individuals who are registered as home health aides are convicted of crimes subsequent to their initial registrations. California does not allow disqualifying convictions to be waived.<sup>20</sup> The only ways that her employment may have been appropriate is if she obtained a certificate of rehabilitation and/or a dismissal from the court of conviction, or if the criminal history record was determined to be inaccurate.<sup>21</sup>

The second individual was a licensed vocational nurse in Texas who began employment in May 2013. In Texas, a person convicted of certain offenses cannot be employed in “direct patient access” positions in long-term-care facilities until 5 years after the conviction.<sup>22</sup> The individual had one conviction for domestic violence—which is among Texas’s disqualifying offenses—in April 2012. This individual should not have been employed, since he had a disqualifying conviction less than 5 years before his employment began. Texas does not allow disqualifying convictions to be waived. The only way that this individual’s employment may have been appropriate is if his criminal history record was determined to be inaccurate. The Texas Department of Public Safety offers disqualified individuals the opportunity to be heard if they believe that their criminal history records are inaccurate.<sup>23</sup> If inaccurate information is discovered, the Department of Public Safety notifies the employer.

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<sup>18</sup> The individual was convicted under California Penal Code § 273.5(a), willful infliction of corporal injury upon a spouse or cohabitant. In accordance with California Health and Safety Code § 1736.5(a), a conviction under California Penal Code § 273.5(a) is a mandatory disqualifying conviction.

<sup>19</sup> California Health and Safety Code § 1736.5(a).

<sup>20</sup> California has both mandatory and discretionary disqualifying convictions. Mandatory convictions require the State to prohibit employment under California Health and Safety Code § 1736.5(a). Discretionary convictions may disqualify a home health aide from employment. California Health and Safety Code § 1736.5(c) allows the State agency to determine whether certain convictions and acts listed in § 1736.5(c)(1) may prohibit an individual from being employed as a home health aide. California Health and Safety Code § 1736.5(c)(2) establishes several factors that the State agency may consider when making a determination related to discretionary convictions.

<sup>21</sup> The FBI Information Transfer Agreement prohibits us from contacting State licensing and certification agencies to inquire whether individuals with disqualifying convictions met State requirements to remain employed.

<sup>22</sup> The individual was convicted under Texas Penal Code § 22.01(A(1) for assault causing bodily injury to a family member. The Texas Health and Safety Code states that a person convicted of an offense under Texas Penal Code § 22.01 that is punishable as a Class A misdemeanor or felony cannot be employed “in a position the duties of which involve direct contact with a consumer in a [long-term-care] facility ...before the fifth anniversary of the date the person is convicted.” Texas Health and Safety Code § 250.006.

<sup>23</sup> Texas Health and Safety Code § 250.005.

The third individual had worked in administration at an Oklahoma HHA since December 2007. He was registered as a sex offender in Oklahoma in November 2006. Under Oklahoma law, a registered sex offender cannot be employed in jobs requiring direct patient access. In Oklahoma, direct patient access is defined as including access to “a service recipient’s property, medical information, or financial information.”<sup>24</sup> If this employee’s duties included access to patients’ property, medical information, or financial information, the employee should have been disqualified from HHA employment. However, we cannot definitively conclude that this person did have such access; it is possible that his specific duties did not qualify him as a direct patient access employee.<sup>25</sup>

### ***Three individuals’ convictions did not disqualify them from HHA employment in their States***

Of the six individuals in our purposive sample, three had convictions for crimes against persons, but their convictions did not disqualify them from employment in their States.

Two individuals were employed in States in which background-check requirements did not apply. The first individual had been employed as a phlebotomist in a California HHA since October 2011 and had one conviction for domestic violence in 2012.<sup>26</sup> In California, there is no State requirement for phlebotomists working in home health agencies to undergo criminal background checks.<sup>27</sup> The second individual began employment as a certified nurse assistant/home health aide in Tennessee in March 2013 and was convicted of domestic violence that same month. Tennessee requires that long-term-care employers check registry records for nurse aides, but does not require them to conduct statewide or FBI criminal background checks.

The third individual was not disqualified from employment on the basis of State law. The individual, employed as a certified nurse assistant in Pennsylvania since March 2013, had two convictions for assault and two convictions for possessing an instrument of crime in February 2010. In Pennsylvania, neither assault nor possessing an instrument of crime are among the offenses that disqualify an individual from HHA employment.

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<sup>24</sup> 63 Oklahoma Statutes 1-1945 through 1950.

<sup>25</sup> The HHA that employed this individual reported that he was not a direct-care employee. However, we believe it is likely that his job duties included access to patients’ medical and financial information.

<sup>26</sup> A phlebotomist is a nurse or other health worker trained in drawing blood.

<sup>27</sup> Phlebotomy training programs may require a background check. California requires individuals to obtain a certificate of completion from a phlebotomy training program in order to be certified as a phlebotomist.



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## CONCLUSION AND RECOMMENDATION

Currently, there are no Federal laws or regulations that require HHAs to conduct background checks prior to hiring individuals, or to periodically conduct background checks after individuals have been hired. Instead, individual State laws vary as to the types of employees that are required to undergo background checks and the frequency of periodic checks on individuals who are already employed. As a result, the background checks conducted by HHAs varied as to which sources of information they checked.

Because HHA employees provide care—usually unsupervised—to patients in their homes, ensuring that HHA employees have undergone a minimum level of screening would help protect the safety of Medicare beneficiaries. Overall, 4 percent of HHA employees had at least one criminal conviction; such convictions may or may not have disqualified them from employment. Our review of six HHA employees with convictions for crimes against persons found that three have convictions that appear, on the basis of available data, to disqualify them from employment in HHAs. However, certain circumstances may have allowed employment. The remaining three individuals' convictions did not disqualify them from employment in their States.

We recommend that CMS:

### **Promote minimum standards in background check procedures**

The lack of Federal laws requiring background checks and the variation in State requirements for background checks have resulted in a lack of such checks for some HHA employees who provide direct, unsupervised care in patients' homes. Ensuring a minimum level of background screening in all States would help ensure the safety of the HHA patient population. CMS could promote minimum standards for HHA employee background checks by encouraging more States to participate in the National Background Check Program. As of April 2015, CMS had awarded grants to 25 States, totaling more than \$50 million. This program requires all direct patient access employees to undergo fingerprint-based statewide and FBI background checks, as well as checks of State-based registries of abuse and neglect. In addition, the program requires States to test methods for employers to automatically receive notifications of any convictions their employees receive following initial background checks.

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## AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

CMS concurred with the recommendation. CMS stated that it encourages States to participate in the National Background Check Program, and noted that it has extended the deadline for responding to the ninth solicitation for grant proposals from States and U.S. Territories. Grant proposals will be accepted as they are received, and acted on every 30 days.

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

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## APPENDIX A

**Table A-1: States That Received Grants From the National Background Check Program**

Number	State
1	Alaska
2	California
3	Connecticut
4	Delaware
5	District of Columbia
6	Florida
7	Georgia
8	Hawaii
9	Illinois
10	Kentucky
11	Maine
12	Maryland
13	Michigan
14	Minnesota
15	Missouri
16	Nevada
17	New Mexico
18	North Carolina
19	Ohio
20	Oklahoma
21	Oregon
22	Puerto Rico
23	Rhode Island
24	Utah
25	West Virginia

Source: CNA Analysis & Solutions, *BGCheckInfo*. Accessed at <http://bgcheckinfo.cna.org/> on May 5, 2015.

## APPENDIX B

**Table B-1: Profile of Characteristics of Employees of Sampled Home Health Agencies**

Characteristic	Subgroup	Number of Employees (n=4,680)	Percentage of Employees
Job Classification	Nurse (e.g., registered and licensed practical nurses)	1,793	38.3%
	Administration	1,076	23.0%
	Home health aide, certified nurse assistant, or other home care assistant	1,048	22.4%
	Occupational, physical, or other therapist	438	9.4%
	Pharmacy-related classification	151	3.2%
	Social worker or case manager	128	2.7%
	Other clinicians	29	0.6%
	Other	17	0.4%
Gender	Female	3,932	84.0%
	Male	652	13.9%
	Not specified	96	2.1%
Age on January 1, 2014	30 or under	703	15.0%
	31–40	1,108	23.7%
	41–50	1,259	26.9%
	51–60	1,088	23.2%
	Over 60	522	11.2%
Race	White	2,292	49.0%
	Black or African American	660	14.1%
	Hispanic or Latino	317	6.8%
	Asian	235	5.0%
	Other	19	0.4%
	Not specified	1,157	24.7%
Direct-Care Employee	Yes	3,540	75.6%
	No	1,140	24.4%
Length of Employment on January 1, 2014	0 to 2 years	2,092	44.7%
	Greater than 2 years up to 5 years	1,133	24.2%
	Greater than 5 years up to 10 years	800	17.1%
	Greater than 10 years up to 15 years	352	7.5%
	Greater than 15 years	294	6.3%
	Not specified	9	0.2%

Source: OIG analysis of HHA employee data, 2014.

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## APPENDIX C

### Detailed Methodology

#### Data Collection

*HHA Sampling.* We selected a “simple cluster” sample of 105 Medicare-certified HHAs from the 12,626 listed in CMS’s Certification and Survey Provider Enhanced Reports system as being in operation on January 1, 2014. When we contacted nonresponding HHAs by mail and telephone, we found that 6 of these 105 HHAs had closed before January 1, 2014. As a result, the number of eligible HHAs in our sample was reduced from 105 to 99. To project the number of eligible HHAs in the entire population, we used the proportion of eligible HHAs in our sample. This resulted in a reduction of our eligible population from 12,626 to an estimated 11,905 HHAs. Our estimates of the percentages of all HHAs with certain characteristics apply to the estimated population of 11,905 HHAs open on January 1, 2014.

*Employee Data.* From each of the 99 sampled HHAs, we requested information for all noncontract individuals who were employed on January 1, 2014.<sup>28</sup> We requested each employee’s full name, Social Security number (SSN), date of birth, race, gender, beginning date of employment, and job classification. We also asked whether each employee was considered a direct-care employee.<sup>29</sup> All of the 99 sampled HHAs responded to our data request, providing information on 4,680 employees. See Appendix B for a profile of characteristics of the employees of the sampled HHAs.

*Survey.* We sent the administrator of each of the sampled HHAs a survey about background-check procedures. The survey included questions about the types of background checks the HHA conducted, the job classifications that it considered to be direct care, whether it allowed employees to begin working before it received their background-check results, and whether it conducted background checks on current employees. We received completed surveys from all 99 HHAs.

*Criminal History Records.* To gain access to criminal history record information, we entered into an Information Transfer Agreement with FBI.<sup>30</sup> We provided the FBI with the employee data we obtained from HHAs. The FBI performed a match based on an algorithm that considers the name, date of birth, and SSN for each individual. The FBI database contains information only on individuals with

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<sup>28</sup> HHAs may contract for employees (e.g., therapists, nurses) through staffing agencies. Background checks on contracted employees may be conducted by staffing agencies, or they may be conducted by HHAs. To ensure that the sampled HHAs—rather than staffing agencies—would be the entities responsible for conducting background checks on the employees we reviewed, we limited the population of employees to noncontracted employees.

<sup>29</sup> Sampled HHAs differed as to what job classifications they considered to be direct care.

<sup>30</sup> An Information Transfer Agreement governs the terms of OIG’s access to FBI criminal history records for research purposes.

criminal history records. This information includes charges, convictions, and case dispositions.

We provided 4,680 names to the FBI, we received at least one match for 974 individuals.<sup>31</sup> We determined that 579 of these 974 individuals conclusively matched the identifiers of the individuals employed by the sampled HHAs. The identifiers of the other 395 individuals did not match the identifiers of the sampled HHA employees (e.g., different name, different SSN).

The Information Transfer Agreement that we entered into with the FBI stipulates that identifying information contained in FBI records shall be used only for research and statistical purposes. Therefore, we were prohibited from releasing information that may be used to identify individuals or HHAs associated with this evaluation. As a result, we could not contact HHAs to further inquire about the background checks they conducted on the identified individuals. Similarly, we could not contact State licensing and certification agencies to inquire whether individuals with disqualifying convictions met State requirements to remain employed despite those convictions.

### **Analysis**

We reviewed the FBI criminal history information to identify which of the 579 conclusively matched individuals had criminal convictions. Of the 579 conclusively matched individuals, 389 did not have convictions recorded in their criminal histories.

Using six broad categories of offenses, we recorded the convictions in the criminal history of each conclusively matched individual. We created these six categories after consulting FBI definitions of crimes.<sup>32</sup> Following are examples of specific offenses included in each of the six broad categories. (These lists do not encompass every specific offense we included in each of the six categories.)

- Crimes against persons: assault, battery, elder abuse
- Crimes against property: burglary, forgery, possession of stolen property, theft, welfare fraud, writing bad checks
- Driving under the influence of drugs or alcohol
- Driving-related crimes (other than DUI): careless driving, driving with a suspended license, failure to provide insurance
- Drug-related crimes: distribution of drugs, manufacturing of drugs, possession of drugs or paraphernalia

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<sup>31</sup> FBI did not provide any matches for 3,706 individuals; therefore, we did not perform further analysis on these individuals.

<sup>32</sup> FBI, *Crimes Against Persons, Property, and Society*. Accessed at <http://www.fbi.gov/about-us/cjis/ucr/nibrs/2011/resources/crimes-against-persons-property-and-society> on August 1, 2014.

- Other: disturbing the peace, immigration violations, providing false information to a police officer

We estimated the percentages of HHA employees who had each type of conviction. Appendix D contains the confidence intervals for all point estimates in the report.

### **Scope**

We did not measure any effects that States' participation in the National Background Check Program might have had on background-check requirements or on the number of employees with convictions.

We did not determine whether differing State background check requirements had an effect on the number of individuals with convictions employed in HHAs.

We did not collect information from HHAs on the number of prospective employees whom they did not hire because of disqualifying criminal convictions. HHAs are not required to collect or maintain this type of information.

## APPENDIX D

**Table D-1: Point Estimates and Confidence Intervals**

Estimate Characteristic	Number of Observations	Point Estimate	95-Percent Confidence Interval
<b>Estimates of HHAs conducting background checks on employees</b>			
Percentage of HHAs that conducted background checks	99	100%	87.8%–100%
Percentage of HHAs that conducted background checks on all prospective employees	99	82.8%	74.0%–89.1%
Percentage of HHAs that conducted background checks only on direct-care employees	99	9.1%	4.8%–16.7%
Percentage of HHAs that conducted background checks only on a specific group of individuals	99	8.1%	4.1%–15.5%
<b>Estimates of HHAs allowing employees to work prior to completion of background check</b>			
Percentage of HHAs that did not allow employees to work prior to completion of background check	99	71.7%	62.0%–79.8%
Percentage of HHAs that allowed employees to work prior to completion of background check	99	28.3%	20.2%–38.0%
<b>Estimates of HHAs conducting State database checks, statewide criminal history checks, and FBI criminal history checks</b>			
Percentage of HHAs that conducted State database checks, statewide criminal history checks, and FBI criminal history checks	99	20.2%	13.3%–29.4%
<b>Estimates of HHAs conducting periodic background checks at various frequencies</b>			
Percentage of HHAs that conducted periodic background checks	99	57.6%	47.5%–67.0%
Percentage of HHAs that terminated employees on the basis of periodic background checks	57	10.5%	4.8%–21.7%
Percentage of HHAs that conducted periodic background checks annually	57	43.9%	31.5%–57.0%
Percentage of HHAs that conducted periodic background checks more frequently than annually	57	24.6%	15.0%–37.5%
Percentage of HHAs that conducted periodic background checks less frequently than annually	57	15.8%	8.4%–27.8%
Percentage of HHAs that conducted periodic background checks “as needed”	57	12.3%	5.9%–23.8%
<b>Estimates of HHA employees with one or more convictions*</b>			
Percentage of HHA employees with at least one conviction	4,680	4.1%	3.1%–5.4%
Average number of convictions per HHA employees with at least one conviction	4,680	2.0%	1.7%–2.2%
Percentage of home health aides, certified nurse assistants, or other home care assistants with convictions	1,048	5.9%	4.1%–8.5%
Percentage of administrative staff with convictions	1,076	4.2%	2.8%–6.2%
Percentage of nurses with convictions	1,793	4.1%	2.8%–5.9%
Percentage of social workers or case managers with convictions	128	1.6%	0.3%–8.2%
Percentage of occupational, physical, or other therapists with convictions	438	1.4%	0.6%–3.0%

\*One HHA employee with a conviction was listed in the category “Other Clinician.” The sample did not have enough HHA employees in this category to estimate the percentage of “Other Clinicians” with criminal convictions in the population.

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**Table D-1: Point Estimates and Confidence Intervals (continued)**

Estimate Characteristic	Number of Observations	Point Estimate	95-Percent Confidence Interval
<b>Estimates of HHA employees with one or more convictions (continued)</b>			
Percentage of direct-care staff with convictions	190	72.1%	56.3%–83.9%
<b>Estimates of HHA employees with various types of convictions</b>			
Percentage of HHA employees with convictions for crimes against property	190	35.8%	29.7%–42.3%
Percentage of HHA employees with convictions for "other crimes" (e.g., disturbing the peace, immigration violations, providing false information to a police officer)	190	26.8%	21.5%–33.0%
Percentage of HHA employees with convictions for DUI	190	21.1%	15.1%–28.5%
Percentage of HHA employees with convictions for drug-related crimes	190	18.9%	12.7%–27.3%
Percentage of HHA employees with convictions for driving-related crimes other than DUI	190	17.4%	12.2%–24.2%
Percentage of HHA employees with convictions for crimes against persons	190	11.6%	8.4%–15.8%
<b>Estimates of elapsed time between HHA employees' dates of conviction and beginning dates of employment</b>			
Percentage of HHA employees with convictions who had convictions only after their beginning dates of employment	190	9.5%	6.0%–14.7%
<b>Estimates of employees who had convictions before their dates of hire</b>			
Percentage of HHA employees whose most recent conviction was more than 10 years before their dates of hire	190	43.2%	34.4%–52.4%
Percentage of HHA employees whose most recent conviction was more than 5 years but less than 10 years before their dates of hire	190	22.6%	16.2%–30.7%
Percentage of HHA employees whose most recent conviction was more than 1 year but less than 5 years before their dates of hire	190	19.5%	13.8%–26.8%
Percentage of HHA employees whose most recent conviction was less than 1 year before their dates of hire	190	5.3%	2.6%–10.4%
Percentage of HHA employees with convictions who had convictions before their dates of hire	190	90.5%	85.3%–94.0%
<b>Estimates of employees who had convictions after their dates of hire</b>			
Percentage of HHA employees whose most recent conviction was less than 6 months after their dates of hire	190	2.1%	0.9%–4.7%
Percentage of HHA employees whose most recent conviction was more than 6 months but less than 1 year after their dates of hire	190	1.1%	0.3%–4.0%
Percentage of HHA employees whose most recent conviction was more than 1 year but less than 2 years after their dates of hire	190	2.6%	1.1%–6.4%
Percentage of HHA employees whose most recent conviction was more than 2 years but less than 5 years after their dates of hire	190	0.5%	0.1%–3.6%
Percentage of HHA employees whose most recent conviction was more than 5 years but less than 10 years after their dates of hire	190	2.1%	0.8%–5.2%
Percentage of HHA employees whose most recent conviction was more than 10 years after their dates of hire	190	1.1%	0.3%–4.2%

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**Table D-1: Point Estimates and Confidence Intervals (continued)**

Estimate Characteristic	Number of Observations	Point Estimate	95-Percent Confidence Interval
<b>Estimates of HHAs at which certain percentages of employees have convictions</b>			
Percentage of HHAs at which no employees have convictions	99	51.5%	41.6%–61.3%
Percentage of HHAs at which up to 5 percent of employees have convictions	99	23.2%	15.9%–32.7%
Percentage of HHAs at which more than 5 and up to 10 percent of employees have convictions	99	16.2%	10.1%–24.9%
Percentage of HHAs at which more than 10 and up to 15 percent of employees have convictions	99	5.1%	2.1%–11.7%
Percentage of HHAs at which more than 15 and up to 20 percent of employees have convictions	99	2.0%	0.5%–7.8%
Percentage of HHAs at which more than 20 and up to 25 percent of employees have convictions	99	0.0%	0.0%–3.7%
Percentage of HHAs at which more than 25 and up to 30 percent of employees have convictions	99	0.0%	0.0%–3.7%
Percentage of HHAs at which more than 30 and up to 35 percent of employees have convictions	99	2.0%	0.5%–7.8%

Source: OIG analysis of FBI criminal history records, HHA employee data, and HHA survey responses, 2014.

## APPENDIX E

### Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

APR 30 2015

200 Independence Avenue SW  
Washington, DC 20201

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

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

**Subject:** Home Health Agencies' Employment of Individuals with Criminal Convictions  
(OEI-07-14-00130)

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 \$57 million to 25 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 promote minimum standards in background check procedures.

#### CMS Response

The 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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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 Michael Brown, Consuelia McCourt, and Michala Walker. Central office staff who provided support include Clarence Arnold, Heather Barton, Berivan Demir Neubert, Scott Manley, and Christine Moritz.

# Office of Inspector General

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