



U.S. Department of Health and Human Services
Office of Inspector General

**National Background
Check Program for
Long-Term-Care
Providers: Assessment
of State Programs
Concluded in
2017 and 2018**

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National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018

The National Background Check Program (Program) provides grants to States to develop systems to conduct background checks of State and Federal criminal history records for prospective long-term-care employees.

What OIG Found

The 11 States that concluded their participation in the Program in 2017 and 2018 varied as to the degree to which they were able to implement Program requirements. Two States implemented all selected Program requirements. Nine States did not implement all the selected Program requirements, primarily because of a lack of legislative authority for certain Program requirements. Five of these nine States implemented most of the selected Program requirements; four of the nine States implemented only some of the selected Program requirements.

Of the background checks that States conducted, over 25,000 resulted in determinations of ineligibility for prospective employees. The number of determinations of ineligibility varied among the States, as did the rates of determinations of ineligibility (from 0 percent to 3 percent). None of the States provided evidence of unintended consequences associated with conducting background checks, such as a reduction in the available workforce for long-term-care facilities or providers.

What OIG Concludes

The findings of this report are consistent with our previous assessments of the Program and provide further support for one open OIG recommendation. We strongly encourage the Centers for Medicare & Medicaid Services (CMS) to implement this open recommendation: take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. We are not offering any new recommendations at this time.

Key Takeaway

Nine of the 11 States that concluded their participation in the National Background Check Program in 2017 and 2018 did not implement all of the selected Program requirements, primarily because of a lack of legislative authority for certain Program requirements.

Why OIG Did This Review

Background checks are an important safety measure that can help protect the 9 million beneficiaries who rely on long-term-care services each year for safe, dependable care. These checks can prevent individuals with disqualifying histories (e.g., convictions for patient abuse, patient neglect, and theft from patients) from being hired to care for beneficiaries.

Congress mandates that OIG evaluate various aspects of Program implementation. This report provides an assessment of 11 of the 12 States that concluded Program participation in 2017 and 2018. (The 12th State did not submit closeout documents in time to be included in this study.) This report also provides information for CMS to assist other States that continue to participate in the Program. Seven States had ongoing grants after the reviewed closeout period. In future work, we will assess these States and the overall Program.

How OIG Did This Review

We reviewed grant-monitoring documents and financial reports to determine the extent to which 11 States that concluded participation between 2017 and 2018 had implemented 13 selected Program requirements. Additionally, we surveyed the 11 States to collect information on their experiences with their respective background check programs.

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BACKGROUND

Objective

To assess the implementation and impact of States' National Background Check Programs for Long-Term-Care Providers concluded in 2017 and 2018.

Over 9 million beneficiaries in the United States rely on long-term-care services in nursing homes and through other providers such as home health, hospice, and personal care services agencies.^{1, 2} Beneficiaries and their family members rely on long-term-care services each year for safe, dependable care.

The Office of Inspector General (OIG) and the Centers for Medicare & Medicaid Services (CMS) have identified patient abuse, patient neglect, and misappropriation of property (i.e., theft) as widespread problems that cause harm to beneficiaries receiving long-term-care services.^{3, 4} Studies have shown that some nurse aides who were convicted of abuse, neglect, or theft had previous criminal convictions that could have been detected through background checks.^{5, 6} This suggests that background checks are a safety measure that can provide protections for beneficiaries who rely on long-term-care services.

Enacted by legislation in 2010, the National Background Check Program for Long-Term-Care Providers provides grants to States to develop systems to conduct background checks of State and Federal criminal history records.⁷ (The full formal name of the program is "Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers." In this report, we generally refer to it as "the Program," with a few references to it as "the National Background Check Program.")

Congress mandated that OIG produce an evaluation of the Program within 180 days of Program completion, which could occur as late as 2024. (See Appendix A for the evaluation mandate.) The beginning and end dates of the grants are staggered, with 12 States concluding participation between 2017 and 2018, and 7 States continuing participation past 2018.⁸ (See Appendix B for grant beginning and end dates.) In January 2016 and April 2019, OIG published reports on State implementation of the Program.^{9, 10} This report is the third in a series designed to assist CMS—and States that are continuing in the Program—in promoting Program improvements and increasing protections for the vulnerable population of beneficiaries who receive long-term-care services. OIG will release subsequent reports as additional States complete the Program.

Background

Congress established the Program to identify “efficient, effective, and economical procedures” for conducting national and State background checks on prospective employees who would have direct access to patients.^{11, 12} (We refer to employees who have such access as “direct patient access employees,” and to applicants for such positions as “prospective employees.”) Participating States received grants to develop systems to conduct fingerprint-based Federal and State criminal records checks and to search registries that contain disqualifying information.¹³ The Program expands on a pilot version, the 2005–2007 Background Check Pilot Program.¹⁴

The Program provides Federal grant funds to participating States. It requires States to contribute \$1 for every \$3 of Federal funds they receive.¹⁵ The Program awarded grants of up to \$3 million to each of 29 States that applied for Program participation in fiscal years (FYs) 2010 through 2018.¹⁶ See Appendix C for information related to Federal grant awards and State matching funds for the 11 States in this evaluation, all of which concluded grant participation in 2017 or 2018.

Requirements for Participating States

States must meet broad statutory and grant requirements (which this report describes as “Program requirements”), but they have some flexibility in how they meet each requirement. For example, States must *define* direct patient access employees, but they have flexibility in determining which types of prospective employees they include in their respective Programs. Additionally, States must require all prospective long-term-care employees to undergo background checks; however, the statute does not designate which entity—a State government agency or the prospective employer—should be responsible for making the final determination of ineligibility. States may need to enact legislation to be able to implement Program requirements if they do not have the necessary legislative authority prior to Program participation.

Types of background checks required. In their processes, States must include several types of background checks and other monitoring activities.¹⁷ The required checks include the following: (1) a search of any databases and the abuse registries of all known States in which the prospective employee lived;¹⁸ (2) a check of State criminal history records; (3) a fingerprint-based check of Federal Bureau of Investigation (FBI) criminal history records;^{19, 20} and (4) a search of the records of any proceedings in the State that may contain disqualifying information about the prospective employee.^{21, 22} Additionally, States must describe and test methods to reduce duplication of fingerprinting, including the development of “rap back” capability—a process whereby a State receives automatic notification of any criminal convictions that prospective employees receive *after* their initial background checks have been conducted.^{23, 24} In this

report, we refer to this process as “continuous monitoring.” States are required to report to CMS their quarterly data on Program outcomes, such as the numbers of background checks they conducted and the numbers of checks that resulted in determinations of ineligibility.

Participating States must implement all required background checks for prospective employees among the following nine types of long-term-care facilities or providers:

- skilled nursing facilities;
- nursing facilities;
- home health agencies;
- providers of hospice care;
- long-term-care hospitals;
- providers of personal care services;
- providers of adult day care;
- residential care providers that arrange for long-term-care services or provide long-term-care services; and
- intermediate-care facilities for individuals with intellectual disabilities.²⁵

Types of offenses that constitute disqualifying offenses. As part of the Program, States must ensure that background checks use databases that contain information that could disqualify an applicant from employment. The Program defines “disqualifying information” as certain Federal and State convictions or findings related to patient abuse or neglect; health care fraud; theft; offenses involving controlled substances; obstruction of an investigation; and other related offenses.²⁶ Additionally, States may specify other types of offenses that constitute disqualifying information.²⁷ For example, some States have specified child abuse, forgery, sexual abuse, kidnapping, and drug trafficking as disqualifying offenses. States also have flexibility to determine which State databases and abuse registries they will search for disqualifying information.

CMS Program Oversight

CMS is required to perform essential grant oversight activities in its administration of the Program. These activities include monitoring of required State matching funds and instructing States to submit Federal financial reports (FFRs), progress reports, and related documentation during Program participation. States are required to submit these reports no later than 90 calendar days after the end of the grant period.²⁸ CMS must complete all grant closeout actions no later than 1 year after receipt of all required reports.²⁹

CMS also requires States to report data on key elements of their grant activities. These elements include (1) detailed information on the number of background checks that various providers requested; (2) information gathered during background checks, and employment decisions that are made on the basis of this information; (3) whether prospective employees challenged the results of adverse decisions; and (4) the outcomes of any challenges.³⁰

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

CMS Authorities. Instructions for the Program inform States that Federal funds could be subject to withdrawal restrictions if States do not implement Program requirements.³¹

Related Reports

In April 2019, OIG published an evaluation of the 10 States that concluded Program participation by 2016.³² These 10 States varied as to the degree to which they achieved implementation of Program requirements. Most States implemented all or most of the selected requirements. Several States did not have the necessary legislative authority to fully implement background check programs. We recommended that CMS take appropriate action to encourage participating States to obtain the necessary authorities to fully implement Program requirements. CMS concurred with this recommendation and—per OIG's standard response schedule for recommendations—will provide a plan in October 2019 to implement the recommendation.

In 2016, OIG published an evaluation that described the overall State implementation status during the first 4 years of the Program.³³ In this evaluation, we recommended that CMS work with States to improve the quality of States' required reporting of data and that CMS continue working with participating States to fully implement their background check programs. CMS concurred with and implemented the first recommendation by providing States with individual technical assistance, data review, and data validation. CMS concurred with and implemented the second recommendation by developing the National Background Check Program Interim Progress Report to track States' progress towards implementing program requirements.

See Appendix D for previous OIG work related to the Program.

Methodology

Scope

We evaluated each of the programs for 11 of the 12 States that concluded Program participation between 2017 and 2018: California, Georgia, Kentucky, Maine, Michigan, Minnesota, Nevada, North Carolina, Oklahoma, Utah, and West Virginia. Hawaii also concluded participation in December 2018; however, it had not submitted closeout documents at the time of this evaluation and therefore is not included in this report. An assessment of Hawaii's program will be included in a subsequent report. See Appendix B for a listing of all States that have participated in the Program or are currently participating in the Program.

Congress directed OIG to analyze the most appropriate, efficient, and effective procedures for conducting background checks, as well as to assess the Program cost. We will reserve these analyses for the final rollup report once all States have completed the Program, which could occur as late as 2024. See Appendix A for the reporting mandate.

Data Sources and Analysis

We analyzed 13 Program requirements that are directly related to States' identifying prospective long-term-care employees with histories that may result in a determination of ineligibility for employment:

- Determine which individuals are direct patient access employees.
- Require all prospective direct patient access employees to undergo background checks.
- Include the nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints for Federal/State checks.
- Conduct checks of Federal criminal history.
- Conduct checks of State criminal history.
- Conduct checks of State abuse/neglect registry for applicants' current States of residence.
- Conduct checks of State abuse/neglect registry for applicants' prior States of residence.
- Conduct search of records of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.³⁴

We evaluated each State on its implementation of the 13 Program requirements during its grant period. We obtained data from several sources to conduct our analysis. From CMS, we collected monitoring documents (e.g., financial and progress reports) submitted by States related to their implementation of Program requirements. We compared their progress in meeting the requirements. We surveyed officials from the 11 States regarding Program outcomes and effectiveness. We then confirmed with State officials that the data we obtained from these sources were consistent with State records.

Data Limitations

Congress required an evaluation of the Program's impact on reducing the number of incidents of abuse, neglect, and theft.³⁵ However, the data available do not permit this analysis.³⁶

See Appendix E for a detailed methodology.

Standards

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

FINDINGS

Two States implemented all selected Program requirements; nine States did not meet all requirements, primarily because of a lack of legislative authority

Background checks can provide protections from abuse, neglect, and theft for beneficiaries who rely on long-term-care services. The 11 States in this evaluation varied in their implementation of selected Program requirements. As we had found in our previous report on States' respective Programs, we found in this evaluation that some States were unable to implement all selected Program requirements, primarily because of a lack of legislative authority.

Appendix F includes information on each State's implementation status for each of the 13 selected Program requirements. Appendix G provides additional details in State "scorecards."

Two States implemented all selected Program requirements

Minnesota and West Virginia implemented all 13 selected Program requirements. Minnesota established a background check program prior to participation in the Program. During its Program participation, Minnesota spent over \$30 million in combined Federal and State funds, with a Federal share of \$3 million, on enhancing its established program. West Virginia received legislative authority to participate in the Program with the enactment of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES). WV CARES is West Virginia's comprehensive approach to screening direct patient access employees as outlined in the State's updated public health and public safety codes.

Nine States did not implement all the selected Program requirements, primarily because of a lack of legislative authority to implement certain Program requirements

Five States implemented most of the selected Program requirements and four States implemented only some of the selected Program requirements. Though these States made some progress, most lacked legislative authority to fully implement Program requirements that may reduce beneficiaries' risk for abuse, neglect, and misappropriation of property. See Exhibit 1 on the next page.

Exhibit 1: Nine States did not fully implement Program requirements

Fundamental Program Requirements	CA	GA	KY	ME	MI	NV	NC	OK	UT
Determine which individuals are direct patient access employees.	●	●	●	●	●	●	●	●	●
Require all direct access employees to undergo background checks.	◐	◐	◐	◐	●	●	◐	●	●
Include nine facility and provider types defined by the Program.	◐	◐	◐	◐	◐	●	◐	◐	●
Identify disqualifying offenses.	●	●	●	●	●	●	◐	●	●
Establish a Statewide program.	●	●	●	●	●	●	◐	●	●
Collect applicant fingerprints (for State and Federal checks).	◐	●	◐	◐	●	●	◐	●	●
Conduct checks of:									
State criminal history	●	●	◐	●	●	●	◐	●	●
Federal criminal history	◐	●	◐	◐	●	●	◐	●	●
Conduct checks of State abuse/neglect registry for:									
Applicant's State of residence	◐	●	◐	●	●	●	◐	●	●
Applicant's prior State(s) of residence	◐	●	◐	●	◐	●	◐	●	●
Conduct search of records of any proceedings in the State that may contain disqualifying information.	●	●	◐	●	●	●	◐	●	●
Notify facilities and providers of convictions identified through continuous monitoring.	◐	●	◐	◐	●	◐	◐	●	●
Report convictions to required databases.	◐	●	◐	◐	●	●	◐	●	◐

● Meets grant requirement ◐ Meets grant requirement at State level ◐ Does not meet grant requirement

Source: OIG analysis of States' implementation of selected Program requirements, 2019.

Five States implemented most requirements. Four States—Georgia, Oklahoma, Michigan, and Utah—implemented most of the selected Program requirements but—during our review period—lacked the necessary legislative authority to implement a few of the 13 requirements. One State—Nevada—implemented most of the selected Program requirements but was unable to implement all requirements due to technical difficulties.

- Three States—Georgia, Michigan, and Oklahoma—lacked legislative authority to conduct background checks of all nine types of facilities and providers. Georgia lacked the legislative authority to conduct checks on five of the nine types, and Michigan and Oklahoma lacked the legislative authority to conduct checks on one of the nine types. Additionally, Georgia lacked the legislative authority to require all direct patient access employees to undergo background checks.

We note that after its grant ended, Georgia obtained legislation to expand its program to include all types of facilities and providers except for long-term-care hospitals. Georgia's expansion also required all direct patient access employees to undergo background checks.

- One State—Utah—is a “closed record” State that does not distribute the results of background checks to the public and was therefore unable to implement the reporting of convictions to required databases.³⁷

Nevada was not able to complete 1 of the 13 selected Program requirements; the State encountered technical difficulties and was unable to implement continuous monitoring for new disqualifications after individuals begin employment. However, Nevada continued working on this requirement after the grant ended and plans to begin continuous monitoring by the end of calendar year 2019.

Four States implemented only some requirements. Four States—California, Kentucky, Maine, and North Carolina—implemented only some Program requirements because of a lack of legislative authority.

- Two States—Maine and California—implemented State-only programs that did not include fingerprint-based checks of Federal criminal history records for all types of facilities and providers. Maine lacked legislative authority to conduct checks of Federal criminal history records for all nine types. California lacked legislative authority to include checks of Federal criminal histories for six of the nine types. Additionally, California did not have legislative authority to conduct checks of abuse and neglect registries for three of the nine types.
- One State—Kentucky—lacked legislative authority to require direct patient access employees to undergo background checks, making its program voluntary for providers. Because Kentucky's program is voluntary, the State could not fully implement other Program requirements.
- One State—North Carolina—developed a voluntary pilot program that was implemented after the grant period closed; however, the State continues to lack legislation to make the program mandatory for providers. During its Program participation, North Carolina was able to complete one Program requirement—determining which individuals are direct patient access employees.

States varied in the number and rate of background checks that resulted in determinations of ineligibility

To protect beneficiaries who receive services from long-term-care providers and facilities, States must identify prospective employees who are ineligible for employment in these settings. Collectively, 10 of 11 States conducted over 25,000 background checks that disqualified prospective employees.³⁸

The number and rate of determinations of ineligibility varied among the States. Michigan had the highest rate of determinations of ineligibility (3.4 percent, or 13,520 checks) and conducted the greatest number of background checks (399,665 checks). Maine had the lowest rate of determinations of ineligibility (0 percent). Georgia conducted the lowest number of background checks (3,201 checks). See Exhibit 2 below for the numbers of background checks completed and rates of determinations of ineligibility.

The individual characteristics of each State's program may have contributed to the differences in their respective rates of determination of ineligibility. However, none of the States provided evidence of unintended consequences associated with conducting background checks, such as a reduction in the available workforce for long-term-care facilities or providers.

Exhibit 2: Background checks and determinations of ineligibility

State	Completed Checks	Checks With Determinations of Ineligibility	Percentage Determined Ineligible
Michigan	399,665	13,520	3.38%
Minnesota	281,652	7,748	2.75%
Utah	41,008	1,088	2.65%
Kentucky	23,468	546	2.33%
Nevada	57,289	969	1.69%
Georgia	3,201	52	1.62%
West Virginia	57,317	900	1.57%
Oklahoma	86,780	928	1.07%
California*	14,617	113	0.77%
Maine*	6,042	0	0.00%
North Carolina**	N/A	N/A	N/A
Total	971,039	25,864	N/A***

Source: OIG analysis of State background check data, 2019.³⁹

* California and Maine conduct State-only checks.

** North Carolina was unable to implement most Program requirements during the grant period and did not report data.

*** The total percentage ineligible is represented as N/A since the data that the States report are not comparable.

Four States had the greatest percentages of determinations of ineligibility

Michigan, Minnesota, Utah, and Kentucky had the greatest percentages of determinations of ineligibility. Michigan and Minnesota conduct checks of criminal history records, in some cases going back 15 years following the completion of a sentence for a disqualifying offense. Utah is part of an automated regional system for fingerprint identification that shares criminal history records among nine Western States.⁴⁰ Kentucky has an extensive list of offenses that disqualify prospective employees, including conviction for a misdemeanor relating to abuse, neglect, or exploitation.

Two States had the lowest percentages of determinations of ineligibility

The background check programs in California and Maine resulted in the lowest rates of determinations of ineligibility of prospective employees. Certain characteristics of their programs may have influenced these results.

California and Maine conducted only name-based State checks, which may have contributed to their having lower determinations of ineligibility. Additionally, California did not conduct checks of abuse and neglect registries for all types of facilities and providers.

One State did not complete any checks and did not report any determinations of ineligibility of prospective employees

North Carolina did not report determinations of ineligibility during the grant period. North Carolina developed a voluntary pilot program during its Program participation that was implemented after the conclusion of the State's grant. As a result, North Carolina did not make determinations of eligibility and had no data to report.

CONCLUSION

Background checks are an important safety measure that can help protect the 9 million beneficiaries who rely on long-term-care services each year for safe, dependable care. These checks can prevent individuals with disqualifying histories (e.g., convictions for patient abuse, patient neglect, and theft from patients) from being hired to care for beneficiaries. This report found that 8 of the 11 States we reviewed lacked legislative authority to implement certain requirements of the program. The findings of this report are consistent with our previous assessments of the Program and provide further support for one open OIG recommendation. We strongly encourage CMS to implement this open recommendation: take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. We are not offering any new recommendations at this time.

APPENDIX A: Mandate for National Background Check Program Evaluation and Report

P.L. No. 111-148, § 6201(a)(7)

§ 6201(a)(7) EVALUATION AND REPORT.—

(A) EVALUATION.—

(i) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct an evaluation of the nationwide program.

(ii) INCLUSION OF SPECIFIC TOPICS.—The evaluation conducted under clause (i) shall include the following:

(I) A review of the various procedures implemented by participating States for long-term care facilities or providers, including staffing agencies, to conduct background checks of direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks.

(II) An assessment of the costs of conducting such background checks (including start up and administrative costs).

(III) A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term care facilities or providers.

(IV) An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

(V) An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.

(B) REPORT.—Not later than 180 days after the completion of the nationwide program, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the results of the evaluation conducted under subparagraph (A).

APPENDIX B: Beginning and Ending Dates of States' Respective Programs

White cells indicate States in this report. Gray cells indicate States in previous or future reports.

State	Grant Award Date	Scheduled Grant End Date*	Actual Grant End Date
Delaware	9/30/2010		9/29/2013
Illinois	12/31/2010		12/30/2014
Maryland	1/31/2013		1/30/2016
Alaska	9/30/2010		9/29/2016
Connecticut	9/30/2010		9/29/2016
Florida	9/30/2010		9/29/2016
Missouri	9/30/2010		9/29/2016
Rhode Island	9/30/2010		9/29/2016
District of Columbia	12/31/2010		12/30/2016
New Mexico	12/31/2010		12/30/2016
California	2/1/2011		1/31/2017
Oklahoma	4/5/2011		4/4/2017
Kentucky	5/20/2011		5/19/2017
Michigan	5/20/2013		5/19/2017
Utah	7/11/2011		7/10/2017
North Carolina	7/13/2011		7/12/2017
Maine	10/1/2011		9/30/2017
Nevada	10/1/2011		9/30/2017
West Virginia	10/1/2011		9/30/2017
Georgia	7/25/2012		7/24/2018
Minnesota	8/30/2012		7/31/2018
Hawaii**	12/17/2012		12/16/2018
Ohio	4/22/2013		4/21/2019
Oregon	7/29/2013		7/28/2019
Puerto Rico	12/17/2012	12/16/2019	
Kansas***	7/1/2015	6/30/2020	
Idaho***	6/1/2018	5/31/2021	
Mississippi***	6/1/2018	5/31/2021	
Wisconsin***	6/1/2018	5/31/2021	

Source: CMS Notice of Award and the website for the CMS technical assistance contractor (Contractor).

* Initially, CMS awarded grants for 2 years with a maximum of four 1-year extensions. Later, CMS allowed States 3-year initial grants with a maximum of three 1-year extensions. Puerto Rico was awarded an additional 1-year extension.

** As of May 24, 2019, Hawaii had not submitted closeout documentation for the National Background Check Program and is therefore not included in this report.

*** Kansas, Idaho, Mississippi, and Wisconsin have the option of extending their grant periods. According to information we obtained from the Contractor, Kansas has the option to extend to 2021, and Idaho, Mississippi, and Wisconsin have the option to extend to 2024. CMS may issue extensions closer to States' respective grant end dates.

APPENDIX C: Expenditures for the National Background Check Program

State	Federal Funds	State Funds	Total
California	\$2,353,530	\$784,510	\$3,138,040
Georgia	\$1,863,718	\$662,956	\$2,526,674
Kentucky	\$2,697,202	\$899,065	\$3,596,266
Maine	\$2,821,875	\$981,629	\$3,803,504
Michigan*	\$1,281,031	\$500,000	\$1,781,031
Minnesota	\$3,000,000	\$28,582,117	\$31,582,117
Nevada*	\$1,054,775	\$374,042	\$1,428,817
North Carolina	\$1,836,154	\$992,397	\$2,828,551
Oklahoma	\$3,000,000	\$1,000,000	\$4,000,000
Utah	\$2,767,931	\$1,000,000	\$3,767,931
West Virginia	\$2,706,547	\$2,019,353	\$4,725,899
Total**	\$25,382,763	\$37,796,069	\$63,178,830

Source: Final Federal Financial Reports (FFRs) as of July 24, 2019.

* Michigan and Nevada participated in the 2005–2007 Background Check Pilot Program and were limited to \$1.5 million in Federal assistance for this grant.

** Results are rounded.

APPENDIX D: Related OIG Reports

NOTE: This current report, our April 2019 report, our 2016 report (OEI-07-10-00420), and our 2012 report (OEI-07-10-00421) all examine the same grant program. (The 2016 and 2012 reports refer to it by slightly different names.)

National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016,
OEI-07-16-00160

In April 2019, OIG published an evaluation of the National Background Check Program for Long-Term-Care Providers for the 10 States that concluded their participation by 2016.⁴¹ These 10 States varied as to the degree to which they achieved implementation of the 13 selected Program requirements. Seven of the States implemented all or most of the selected Program requirements. Three States did not have the necessary authority through State legislation and could not fully implement background check programs.

In this evaluation, OIG recommended that CMS take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements. CMS concurred with this recommendation and—per OIG’s standard response schedule for recommendations—will provide a plan in October 2019 to implement the recommendation.

National Background Check Program for Long-Term-Care Employees: Interim Report, OEI-07-10-00420

In 2016, OIG published an evaluation of the National Background Check Program for Long-Term-Care Employees, describing the overall status of State implementation during the first 4 years of the Program.⁴² The 25 States participating in the Program reported having achieved varying levels of implementation. Fifteen States did not conduct continuous monitoring of criminal convictions. Thirteen States did not obtain legislation that would enable them to conduct background checks. Ten States had not implemented processes to collect fingerprints. The study provided CMS with information to assist in its ongoing administration of the Program.

In this evaluation, OIG recommended that CMS continue working with States to fully implement their background check programs. Additionally, OIG recommended that CMS continue working with participating States to improve the quality of their required reporting of data to ensure that CMS can conduct effective oversight of the program. CMS concurred with and implemented the first recommendation by providing States with individual technical assistance, data review, and data validation. CMS concurred with

and implemented the second recommendation by developing the National Background Check Program Interim Progress Report to track States' progress towards implementing program requirements.

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

In 2015, OIG published an evaluation of the varying types of background checks conducted by home health agencies (HHAs) and reviewed selected employees whose convictions were likely to disqualify them from HHA employment.⁴³ OIG found that 4 percent of HHA employees had at least one criminal conviction. FBI criminal history records were not detailed enough to enable OIG to definitively determine whether employees with criminal convictions should have been disqualified from HHA employment.

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

In 2014, OIG published an evaluation of State requirements for conducting background checks on HHA employees and surveyed State officials about their respective background check programs.⁴⁴ OIG 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 specified convictions that disqualified individuals from employment, and 16 States allowed an individual who had been disqualified from employment to apply to have his/her conviction(s) waived.

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

In 2012, OIG published an evaluation that found nurse aides with substantiated findings of abuse, neglect, and/or misappropriation of property also had previous criminal convictions that could have been detected through background checks.⁴⁵ 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).

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

In 2012, OIG published an evaluation of the nationwide Program for national and State background checks that surveyed long-term-care provider administrators.⁴⁶ OIG found that 94 percent of administrators conducted background checks on prospective employees. Twenty-three percent of surveyed administrators believed that their organizations' background check procedures reduced the pool of prospective employees.

Nursing Facilities' Employment of Individuals with Criminal Convictions,
OEI-07-09-00110

In 2011, OIG published an evaluation of individuals with criminal convictions employed in nursing home facilities that found 92 percent of nursing facilities employed at least one individual with at least one criminal conviction.⁴⁷ Overall, 5 percent of nursing facility employees had at least one criminal conviction. All but 2 percent of nursing facilities reported conducting some type of background check.

The full reports can be found at www.oig.hhs.gov.

APPENDIX E: Detailed Methodology

CMS Reports and Grant Documents

We obtained from CMS the reports and documents submitted by States related to their implementation of the National Background Check Program (Program). We collected from CMS and the technical assistance contractor (Contractor) the financial and progress reports that they received from each State that concluded its Program participation. We obtained Program funding source amounts from the Federal Financial Reports (FFRs) and we obtained Program costs from the Contractor.

We reviewed these reports and documents and compared them to the Program requirements. We reviewed the reports for implemented requirements and Program activities including the number of background checks that States conducted and the rates of determinations of ineligibility for prospective employees. As part of this analysis, we selected 13 Program requirements that most directly related to identifying prospective long-term-care employees with histories that make them ineligible for employment. We evaluated States on their implementation of the 13 selected Program requirements during their respective grant periods. We also reviewed the financial reports to identify the overall Program costs, including startup cost, administrative cost, and total costs.

Survey of State Officials

As each of the 11 State Programs concluded, we conducted a survey with State Program officials to gather information about the overall operation of their respective State programs; the sustainability of the program after grant funding ends; and whether any unintended consequences resulted from the State's participation in the Program. We reviewed the surveys to identify the costs of conducting individual background checks. We also asked State officials to provide recommendations with regard to improving technical assistance and Program oversight that CMS provides. Finally, we provided each State with a checklist regarding its implementation of Program requirements for verification.

APPENDIX F: Summary of States' Implementation of 13 Selected Program Requirements

This appendix summarizes States' implementation of the 13 selected Program requirements.

Fundamental Program Requirements	CA	GA	KY	ME	MI	MN	NV	NC	OK	UT	WV
Determine which individuals are direct access employees.	●	●	●	●	●	●	●	●	●	●	●
Require all direct patient access employees to undergo background checks.	◐	◐	◐	◐	●	●	●	◐	●	●	●
Include of nine facility and provider types defined by the Program.	◐	◐	◐	◐	◐	●	●	◐	◐	●	●
Identify disqualifying offenses.	●	●	●	●	●	●	●	◐	●	●	●
Establish a Statewide program.	●	●	●	●	●	●	●	◐	●	●	●
Collect applicant fingerprints (for State and Federal checks).	◐	●	◐	◐	●	●	●	◐	●	●	●
Conduct checks of:											
State criminal history	●	●	◐	●	●	●	●	◐	●	●	●
Federal criminal history	◐	●	◐	◐	●	●	●	◐	●	●	●
Conduct checks of State abuse/neglect registry for:											
Applicant's State of residence	◐	●	◐	●	●	●	●	◐	●	●	●
Applicant's prior State(s) of residence	◐	●	◐	●	◐	●	●	◐	●	●	●
Conduct search of records of any proceedings in the State that may contain disqualifying information.	●	●	◐	●	●	●	●	◐	●	●	●
Notify facilities and providers of convictions identified through continuous monitoring.	◐	●	◐	◐	●	●	◐	◐	●	●	●
Report convictions to required databases.	◐	●	◐	◐	●	●	●	◐	●	◐	●

● Meets grant requirement

◐ Meets grant requirement at State level

◐ Does not meet grant requirement

Source: OIG analysis of States' implementation of selected Program requirements, 2019.

APPENDIX G: State-by-State Implementation of Selected Program Requirements

This appendix summarizes State-by-State implementation of selected Program requirements, as drawn from CMS documents (e.g., financial and progress reports) submitted by States. We also highlight information specific to individual State programs, such as facility and provider types included in the background check programs; State and Federal funding for the Program; numbers of checks; and rates of determinations of ineligibility. Additionally, we note the cost of individual checks in each State, which varies in many cases as a result of States' flexibility in program setup (e.g., screening vendors can set their fees, and States can set administrative fees).

This appendix also lists State-reported Program costs as defined by CMS. Startup (developmental) costs are expenses associated with developing a program or system—generally, one-time or setup costs. Administrative (operational and incremental) costs are ongoing expenses necessary to operate a program (e.g., staff and maintenance) and recurring expenses to process background checks (e.g., fees for State police, vendor fees, etc.).



California

Grant Period: 02/01/2011–01/31/2017

Program Scorecard*

5/13

Requirements Implemented

9/9[†]

Required Provider Types Implemented

14,617

Number of Checks Completed

113

Total Determinations of Ineligibility

14,504

Total Determinations of Eligibility

0.77%

Percentage Ineligible

\$47

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.

Conduct checks of:

- State criminal history
- Federal criminal history

Conduct checks of State abuse/neglect registries for:

- Applicant's State of residence
- Applicant's prior State(s) of residence

- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Meets grant requirement at State level
- Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$534,609

\$2,403,628

Program funding source

- Federal funding
- State funding

\$2,353,530

\$784,510

Total Funding: \$3,138,040

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† California lacked legislative authority to include checks of Federal criminal history records for six of the nine required types of facilities and providers, conducting State-only checks.



Georgia

Grant Period: 07/25/2012–07/24/2018

Program Scorecard*

11/13 Requirements Implemented

4/9 Required Provider Types Implemented

3,201 Number of Checks Completed

52 Total Determinations of Ineligibility

3,149 Total Determinations of Eligibility

1.62% Percentage Ineligible

\$48.25 Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- ⊖ Skilled nursing facilities
- ⊖ Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- ⊖ Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$1,462,944

\$1,063,730

Program funding source

- Federal funding
- State funding

\$1,863,718

\$662,956

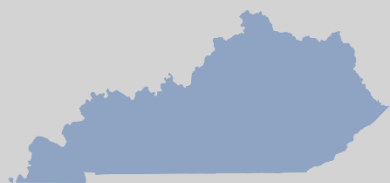
Total Funding: \$2,526,674

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

Kentucky

Grant Period: 05/20/2011–05/19/2017



Program Scorecard*

3/13⁺

Requirements Implemented

0/9⁺

Required Provider Types Implemented

23,468⁺

Number of Checks Completed

546

Total Determinations of Ineligibility

22,922

Total Determinations of Eligibility

2.33%

Percentage Ineligible

\$62

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- ⊖ Collect applicants' fingerprints.
- Conduct checks of:
 - ⊖ State criminal history
 - ⊖ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - ⊖ Applicant's State of residence
 - ⊖ Applicant's prior State(s) of residence
- ⊖ Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- ⊖ Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- ⊖ Skilled nursing facilities
- ⊖ Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- ⊖ Long-term-care hospital
- ⊖ Providers of personal care services
- ⊖ Providers of adult day care
- ⊖ Residential care providers that arrange for long-term-care services or provide long-term-care services
- ⊖ Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$3,510,380

Program funding source

- Federal funding
- State funding

\$2,697,202

\$899,065

Total Funding: \$3,596,266

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† Kentucky lacked legislative authority to require direct patient access employees to undergo background checks, making its program voluntary for providers.



Program Scorecard*

7/13

Requirements Implemented

8/9+

Required Provider Types Implemented

6,042+

Number of Checks Completed

0

Total Determinations of Ineligibility

6,042

Total Determinations of Eligibility

0%

Percentage Ineligible

\$56

Cost of an Individual Background Check

Maine

Grant Period: 10/01/2011–09/30/2017

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- ⊖ Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - ⊖ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- ⊖ Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- ⊖ Skilled nursing facilities
- ⊖ Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- † Long-term-care hospital
- ⊖ Providers of personal care services
- ⊖ Providers of adult day care
- ⊖ Residential care providers that arrange for long-term-care services or provide long-term-care services
- ⊖ Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$3,193,032

\$503,115

Program funding source

- Federal funding
- State funding

\$2,821,875

\$981,629

Total Funding: \$3,803,504

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† Maine lacked legislative authority to include checks of Federal criminal history records, conducting State-only checks for required provider types. Additionally, Maine does not have long-term-care hospital providers.



Program Scorecard*

11/13

Requirements Implemented

6/9+

Required Provider Types Implemented

399,665

Number of Checks Completed

13,520

Total Determinations of Ineligibility

386,145

Total Determinations of Eligibility

3.38%

Percentage Ineligible

\$50.25

Cost of an Individual Background Check

Michigan

Grant Period: 05/20/2013–05/19/2017

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - ⊖ Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- ⊖ Providers of personal care services
- Providers of adult day care
- + Residential care providers that arrange for long-term-care services or provide long-term-care services
- + Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$142,536

\$1,638,494

Program funding source

- Federal funding
- State funding

\$1,281,031

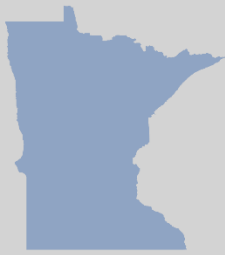
\$500,000

Total Funding: \$1,781,031

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

+ In Michigan, two facility/provider types—residential care providers and intermediate-care facility for individuals with intellectual disabilities providers—were certified under a different State agency and are not eligible for this review.



Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented

281,652

Number of Checks Completed

7,748

Total Determinations of Ineligibility

273,904

Total Determinations of Eligibility

2.75%

Percentage Ineligible

\$20[†]

Cost of an Individual Background Check

Minnesota

Grant Period: 08/30/2012–07/31/2018

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.

Conduct checks of:

- State criminal history
- Federal criminal history

Conduct checks of State abuse/neglect registries for:

- Applicant's State of residence
- Applicant's prior State(s) of residence

- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$3,000,000

\$28,582,117

Program funding source

- Federal funding
- State funding

\$3,000,000

\$28,582,117

Total Funding: \$31,582,117

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† Minnesota separates the background check fee and fingerprinting fee. For most background checks, the amount is \$20.

Nevada

Grant Period: 10/01/2011–09/30/2017

Program Scorecard*

12/13

Requirements Implemented

9/9

Required Provider Types Implemented

57,289

Number of Checks Completed

969

Total Determinations of Ineligibility

56,320

Total Determinations of Eligibility

1.69%

Percentage Ineligible

**\$36.25 +
Fingerprinting
Fee**

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.

Conduct checks of:

- State criminal history
- Federal criminal history

Conduct checks of State abuse/neglect registries for:

- Applicant's State of residence
- Applicant's prior State(s) of residence

- Conduct records search of any proceedings in the State that may contain disqualifying information.

⊖ Notify facilities and providers of convictions identified through continuous monitoring.

- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$1,433,000

Program funding source

- Federal funding
- State funding

\$1,054,775

\$374,042

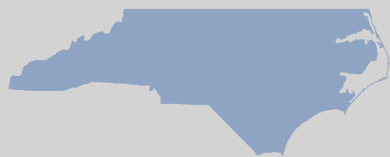
Total Funding: \$1,428,817

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

North Carolina

Grant Period: 07/13/2011–07/12/2017[†]



Program Scorecard*

1/13

Requirements Implemented

0/9

Required Provider Types Implemented

(No Data)

Number of Checks Completed

(No Data)

Total Determinations of Ineligibility

(No Data)

Total Determinations of Eligibility

(No Data)

Percentage Ineligible

\$38

Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- ⊖ Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- ⊖ Identify disqualifying offenses.
- ⊖ Establish a Statewide program.
- ⊖ Collect applicants' fingerprints.
- Conduct checks of:
 - ⊖ State criminal history
 - ⊖ Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - ⊖ Applicant's State of residence
 - ⊖ Applicant's prior State(s) of residence
- ⊖ Conduct records search of any proceedings in the State that may contain disqualifying information.
- ⊖ Notify facilities and providers of convictions identified through continuous monitoring.
- ⊖ Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- ⊖ Skilled nursing facilities
- ⊖ Nursing facilities
- ⊖ Home health agencies
- ⊖ Providers of hospice care
- ⊖ Long-term-care hospital
- ⊖ Providers of personal care services
- ⊖ Providers of adult day care
- ⊖ Residential care providers that arrange for long-term-care services or provide long-term-care services
- ⊖ Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$2,828,551

Program funding source

- Federal funding
- State funding

\$1,836,154

\$992,397

Total Funding: \$2,828,551

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† North Carolina developed a pilot program that was scheduled to start after the grant period closed. However, the State lacks legislative authority to make the program mandatory for providers.

Oklahoma

Grant Period: 04/05/2011–04/04/2017

Program Scorecard*

12/13 Requirements Implemented

8/9 Required Provider Types Implemented

86,780 Number of Checks Completed

928 Total Determinations of Ineligibility

85,852 Total Determinations of Eligibility

1.07% Percentage Ineligible

\$53⁺ Cost of an Individual Background Check

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- ⊖ Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.
- Conduct checks of:
 - State criminal history
 - Federal criminal history
- Conduct checks of State abuse/neglect registries for:
 - Applicant's State of residence
 - Applicant's prior State(s) of residence
- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- ⊖ Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$306,679

\$5,797,780

Program funding source

- Federal funding
- State funding

\$3,000,000

\$1,000,000

Total Funding: \$4,000,000

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

⁺ Oklahoma charges \$53 for first-time prospective employees and \$19 for prospective employees who have already been fingerprinted.



Program Scorecard*

12/13

Requirements Implemented

8/9

Required Provider Types Implemented

41,008

Number of Checks Completed

1,088

Total Determinations of Ineligibility

39,920

Total Determinations of Eligibility

2.65%

Percentage Ineligible

\$145-200

Cost of an Individual Background Check

Utah

Grant Period: 07/11/2011–07/10/2017

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.

Conduct checks of:

- State criminal history
- Federal criminal history

Conduct checks of State abuse/neglect registries for:

- Applicant's State of residence
- Applicant's prior State(s) of residence

- Conduct records search of any proceedings in the State that may contain disqualifying information.

- Notify facilities and providers of convictions identified through continuous monitoring.

⊖ Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- † Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$2,086,207

\$2,611,023

Program funding source

- Federal funding
- State funding

\$2,767,931

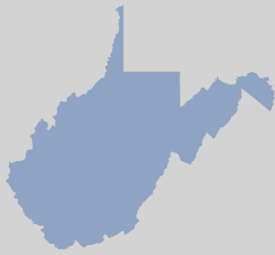
\$1,000,000

Total Funding: \$3,767,931

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

† In Utah, providers of adult day care were certified under a different agency and are not eligible for this review.



Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented

57,317

Number of Checks Completed

900

Total Determinations of Ineligibility

56,417

Total Determinations of Eligibility

1.57%

Percentage Ineligible

\$54.50

Cost of an Individual Background Check

West Virginia

Grant Period: 10/01/2011–09/30/2017

Implementation of Selected Program Requirements

- Determine which individuals are direct patient access employees.
- Require all direct patient access employees to undergo background checks.
- Include nine facility and provider types defined by the Program.
- Identify disqualifying offenses.
- Establish a Statewide program.
- Collect applicants' fingerprints.

Conduct checks of:

- State criminal history
- Federal criminal history

Conduct checks of State abuse/neglect registries for:

- Applicant's State of residence
- Applicant's prior State(s) of residence

- Conduct records search of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.
- Report convictions to required databases.

Inclusion of Required Types of Facilities or Providers

- Skilled nursing facilities
- Nursing facilities
- Home health agencies
- Providers of hospice care
- Long-term-care hospital
- Providers of personal care services
- Providers of adult day care
- Residential care providers that arrange for long-term-care services or provide long-term-care services
- Intermediate-care facility for individuals with intellectual disabilities

Legend

- Meets grant requirement
- Meets grant requirement at State level
- Does not meet grant requirement

Program Cost and Funding Source**

Program cost

- Start-up (Developmental)
- Administrative (Incremental and operational)

\$934,574

\$3,795,393

Program funding source

- Federal funding
- State funding

\$2,706,547

\$2,019,353

Total Funding: \$4,725,899

* Derived from States' reports to CMS and States' survey responses.

** States reported Program costs to CMS before submitting final Federal Financial Reports. Therefore, Program costs and Program funding source amounts may not match for each State. Results are rounded.

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ENDNOTES

¹ A CMS statistical report notes that in 2014, approximately 6.76 million Medicare beneficiaries were served by skilled nursing facilities, home health agencies, and hospice providers. CMS, *2015 CMS Statistics*, December 2015. Accessed at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/CMS-Statistics-Reference-Booklet/Downloads/2015CMSStatistics.pdf> on December 4, 2018.

² A CMS statistical report notes that in 2014, approximately 2.5 million Medicaid beneficiaries were served by nursing facilities, intermediate care facilities for individuals with intellectual disabilities, and providers of personal care services. CMS, *CMS Fast Facts*, August 2018. Accessed at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/CMS-Fast-Facts/index.html> on December 4, 2018.

³ CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 5.

⁴ OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

⁵ Ibid.

⁶ Office of Disability, Aging, and Long-Term Care Policy, *Ensuring A Qualified Long-Term Care Workforce: From Pre-Employment Screens to On-the-Job Monitoring*, May 2006. Accessed at <https://aspe.hhs.gov/system/files/pdf/74676/LTCWqual.pdf> on September 14, 2006.

⁷ P.L. No. 111-148 § 6201.

⁸ Hawaii had not submitted closeout documents at the time of this evaluation and is therefore not included in this report. An evaluation of Hawaii's Program will be included in a subsequent report.

⁹ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

¹⁰ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016*, OEI-07-16-00160, April 2019.

¹¹ P.L. No. 111-148 § 6201 (a).

¹² The term "direct patient access employee" means 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 the purposes of the nationwide Program. This term does not include volunteers, unless the volunteer has duties that are equivalent to those of a direct patient access employee. P.L. No. 111-148, § 6201(a)(6)(D).

¹³ P.L. No. 111-148, § 6201 (a).

¹⁴ Seven States participated in the 2005–2007 Background Check Pilot Program: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. Not all States participated in the pilot program for the full 3 years. The States in the pilot program conducted 204,339 background checks, of which 7,463 resulted in the disqualification of prospective employees from long-term-care facilities. Abt Associates Inc. and University of Colorado at Denver and Health Sciences Center, *Evaluation of the Background Check Pilot Program*, August 2008. Accessed at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/White8-2008.pdf> on October 2, 2008.

¹⁵ CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 6.

¹⁶ States that had participated in the 2005–2007 Background Check Pilot Program were each limited to \$1.5 million in Federal assistance for participation in the National Background Check Program.

¹⁷ P.L. No. 111-148, § 6201(a)(3)(A).

¹⁸ The grant solicitation document that CMS published defines "registries" as any State-based databases and nurse aide registries that identify "those who have been approved by state requirements to provide care to residents of patients in long-term-care facilities or by providers of long-term-care services. These registries may include—but are not limited to—registries that list physicians, nurses, psychologists, and other professionals who are considered direct patient access employees. In addition, other registries or databases may include the Medicare Exclusion Database, the Fraud Investigation Database, the Healthcare Integrity and Protection Data Bank, and/or the National Practitioner Data Bank."

¹⁹ CMS established regulations that prohibit long-term-care facilities and providers from employing individuals found guilty of abuse, neglect, or misappropriation of patient funds. "In 1998, Congress enacted [P.L. No.] 105-277, which allows long term care facilities to request the [FBI] search its fingerprint database for criminal history matches." CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 5.

²⁰ 42 U.S.C. § 1320a-7. This statute prevents facilities that receive Federal health care dollars from hiring individuals who have been excluded by the Secretary. Some of these convictions lead to mandatory exclusion. Others are “permissive”—allowing the Secretary discretion as to whether to exclude the person even if he or she has a conviction. These apply to both Federal and State law convictions.

²¹ P.L. No. 111-148, § 6201(a)(3)(A). Participating States must ensure that background checks include checks of (1) State criminal history records for relevant States and (2) the records of any proceedings that may contain disqualifying information, such as the proceedings of licensing and disciplinary boards and State Medicaid Fraud Control Units.

²² Criteria for disqualification are based on Federal and State laws. Federal regulation prohibits Medicare and Medicaid nursing facilities from employing individuals who have been found guilty by a court of law of abusing, neglecting, or mistreating residents, or who have had a finding entered into the State nurse aide registry concerning abuse, neglect, or mistreatment of residents or misappropriation of residents’ property (42 CFR § 483.13(c)(1)(iii)). State laws vary with regard to the types of convictions that disqualify prospective employees from employment in long-term-care.

²³ P.L. No. 111-148, § 6201(a)(4)(B)(viii).

²⁴ Continuous monitoring means that if an employee receives a criminal conviction subsequent to the pre-employment background check, the State’s law enforcement informs the State agency. In turn, the State agency informs the facility or provider that has hired the employee with the conviction. Once a State has implemented continuous monitoring of criminal convictions, there is no further need for employers to conduct future periodic criminal background checks on employees.

²⁵ P.L. No. 111-148, § 6201(a)(6)(E).

²⁶ Additional offenses are described in 42 U.S.C. § 1320a-7.

²⁷ P.L. No. 111-148, § 6201(a)(4)(B)(vii) and 6201(a)(6)(A)(ii).

²⁸ 2 CFR 200.343(a).

²⁹ 2 CFR 200.343(g).

³⁰ CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 20.

³¹ CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 7.

³² OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016*, OEI-07-16-00160, April 2019.

³³ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

³⁴ P.L. No. 111-148, § 6201(a).

³⁵ P.L. No. 111-148, § 6201(a)(7)(ii)(IV).

³⁶ States are not required to collect data on any reduction in incidents of neglect, abuse, and theft as a result of the Program. Additionally, no single data source tracks these incidents across the nine types of facilities and providers for these States. Three data sources aggregate this information for *some* types of facilities and providers: (1) CMS’s Automated Survey Processing Environment (ASPEN) Complaint Tracking System (ACTS); (2) the Administration for Community Living’s (ACL) National Ombudsman Reporting System (NORS); and (3) the Annual Statistical Reports of OIG’s Medicaid Fraud Control Unit (MFCU). These sources represent several of the nine types of facilities and providers served by the Program, but they are not exhaustive. ACTS, NORS, and each State’s MFCU function in unique populations and collect data based on different parameters. Therefore, analysis of each source of data produces disparate results that are not comparable to one another. Further, factors outside the Program may affect the number of these incidents (e.g., changes in State laws, enhanced or reduced enforcement actions, CMS and State education and outreach campaigns, differences in reporting practices, etc.). Finally, we are unable to measure the number of prospective employees with criminal histories or records of abuse who may be deterred from applying for employment because of background check requirements.

³⁷ Some form of criminal history information is open to the public in “open records” States. In “closed records” States, access to criminal history information is not generally available to the public but is available to authorized entities. Accessed at https://www.nationalservice.gov/sites/default/files/documents/Utah_508.pdf on May 20, 2019.

³⁸ North Carolina did not report data to be included in this calculation.

³⁹ Data for Exhibit 2 is taken from the Grantee Data Files that States reported to the Contractor following States’ respective final quarters of Program participation. Numbers and rates of ineligibility determinations represent the reported “Final Fitness Determination” for each completed background check, which can be based on different criteria for each State. The amount of time that each State reported these figures vary (e.g., Michigan reported data for the full duration of their program, while Maine reported only for the final few quarters).

⁴⁰ The Western Identification Network (WIN) automated fingerprint identification system includes criminal history records from nine Western States.

⁴¹ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016*, OEI-07-16-00160, April 2019.

⁴² OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

⁴³ OIG, *Home Health Agencies Conducted Background Checks of Varying Types*, OEI-07-14-00130, May 2015.

⁴⁴ OIG, *State Requirements for Conducting Background Checks on Home Health Agency Employees*, OEI-07-14-00131, May 2014.

⁴⁵ OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

⁴⁶ OIG, *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.

⁴⁷ OIG, *Nursing Facilities' Employment of Individuals with Criminal Convictions*, OEI-07-09-00110, February 2011.