



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 Between
2013 and 2016**

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

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 10 States that had concluded their participation in the Program by 2016 varied as to the degree to which they achieved implementation of Program requirements. Seven of these 10 States implemented all or most of the selected requirements. Three States did not have the necessary authority through State legislation and could not fully implement background check programs.

Of the background checks that 8 of the 10 States conducted, nearly 80,000 resulted in determinations of ineligibility for prospective employees. The number of determinations of ineligibility and rates of ineligibility varied among the States (i.e., from less than 1 percent to 8 percent). None of the States reported a reduction in available workforce for long-term-care facilities or providers as a result of the Program.

What OIG Recommends

To better protect beneficiaries from potential harm, CMS should take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements. CMS concurred with our recommendation.

Key Takeaway

Seven out of 10 States implemented all or most of the background check requirements fundamental to protecting beneficiaries from long-term-care providers with disqualifying histories. Three States did not have legislative authority to meet Program requirements. CMS should expand its assistance to States that struggle to fully implement the National Background Check Program.

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 States that concluded Program participation prior to 2017, and it also provides information for CMS to assist States that continue to participate in the Program.

How OIG Did This Review

We reviewed grant-monitoring documents and financial reports to determine the extent to which the 10 States that concluded participation between 2013 and 2016 had implemented selected Program requirements. Additionally, we surveyed the 10 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 between 2013 and 2016.

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 trust in these providers for dependable, safe 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 (Program) provides grants to States to develop systems to conduct background checks of State and Federal criminal history records.⁷ 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 10 States concluding participation between 2013 and 2016, and 19 States continuing participation past 2016. (See Appendix B for grant beginning and end dates.) In 2016, OIG published a report on State implementation of the Program.⁸ This 2019 report is the second in a series of reports designed to assist CMS—and States continuing in the Program—in promoting Program improvements and increasing protections for the vulnerable population of beneficiaries receiving long-term-care services.

Background

Congress established the Program to identify “efficient, effective, and economical procedures” for conducting State and national background checks on prospective employees who would have direct access to patients.^{9, 10} (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.^{11,12} The Program expands on a pilot version, the 2005–2007 Background Check Pilot Program.¹³

The Program provides Federal grant funds to participating States. Specifically, it requires States to contribute \$1 for every \$3 of Federal funds received. To ensure that States meet Program objectives, Federal funds that States receive are subject to withdrawal restrictions.¹⁴ 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 2018.¹⁵ See Appendix C for information related to Federal grant awards and State matching funds for States that concluded grant participation in 2016.

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. Some States already had laws that facilitated implementation of these requirements; other States pursued legislation to implement some Program requirements.

Types of background checks required. In their processes, States must include several types of background checks and other monitoring activities.¹⁶ 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;¹⁷ (2) a check of State criminal history records; (3) a fingerprint-based check of Federal Bureau of Investigation (FBI) criminal history records;^{18,19} and (4) a search of the records of any proceedings in the State that may contain disqualifying information about the prospective employee.^{20,21} 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.^{22,23} 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.²⁴

Types of offenses that constitute disqualifying offenses. As part of the Program, States must ensure that background checks examine any databases that may contain information on an applicant's history that could disqualify the 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.²⁵ Additionally, States may specify other types of offenses that constitute disqualifying information.²⁶ For example, some States have specified child abuse, forgery, sexual abuse, terrorist threats, 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.²⁷ CMS must complete all grant closeout actions no later than 1 year after receipt of all required reports.²⁸ At the time of our review, OIG notified CMS that grants for two States that had ended their Program participation in September 2016 were still open for withdrawal of Federal funds.²⁹ Once we notified CMS, it reviewed the open grants and worked with States to complete the required closeout procedures.

CMS also requires States to report data on key elements of their grant activities. These elements include the following: (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 Report

In 2016, OIG conducted an evaluation that described the overall State implementation status during the first 4 years of the Program.³² The 25 States participating in the Program reported having achieved varying levels of implementation. We found that some States had not obtained legislation that would enable them to conduct background checks and others had not implemented processes to collect fingerprints and conduct continuous monitoring of criminal convictions. We recommended that CMS work with States to improve the quality of States' required data reporting and that CMS continue working with participating States to fully implement their background check programs. CMS concurred with both recommendations and implemented the first recommendation. CMS continues working to implement the second recommendation.

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

Methodology

Scope

We evaluated each of the Programs for the 10 States that concluded participation between 2013 and 2016: Alaska, Connecticut, the District of Columbia, Delaware, Florida, Illinois, Maryland, Missouri, New Mexico, and Rhode Island. See Appendix B for a listing of all participating States, including those States that continued to participate in the Program.

Congress directs OIG to analyze the most appropriate, efficient, and effective procedures for conducting background checks, as well as an assessment of 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 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.³³

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 and compared their progress in meeting the requirements. We surveyed officials from the 10 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 requires an evaluation of the Program's impact on reducing the number of incidents of abuse, neglect, and theft.³⁴ However, the data available do not permit this analysis.³⁵

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

Seven States implemented all or most selected Program requirements; three States did not have legislative authority to meet Program requirements

Background checks can provide protections from abuse, neglect, and theft for beneficiaries who rely on long-term-care services. The 10 States that concluded Program participation varied in their implementation of 13 selected Program requirements that identify prospective employees who are potentially determined to be ineligible for employment.

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

Five States implemented all selected Program requirements

Alaska, the District of Columbia, Florida, New Mexico, and Rhode Island implemented all 13 selected Program requirements. In addition, these States conducted background checks for more than the required nine types of facilities and providers. Specifically, these States established statutes requiring background checks for as many as 39 types of facilities and providers (e.g., ambulatory surgery centers, rural health clinics, respite care providers).

Two States implemented most of the selected Program requirements

Delaware and Connecticut implemented most of the selected Program requirements. The one program requirement that neither State fully implemented was to conduct background checks for all nine required types of facilities and providers in their respective State programs during the grant period. (See Exhibit 1 on the next page.)

Delaware conducted background checks for all provider types in its program except adult day care providers. At the conclusion of the grant in 2016, Connecticut had not implemented background checks for three of the nine provider types in its program—long-term-care hospitals (LTCHs); residential care providers that arrange for long-term-care services; and intermediate-care facilities for individuals with intellectual disabilities (ICF/IIDs). We note that in February 2018, Connecticut expanded its Program and implemented background checks for these provider types.

Additionally, Connecticut did not conduct continuous monitoring, and therefore did not notify facilities and providers of convictions identified through continuous monitoring. In States that fail to conduct continuous monitoring and fail to notify providers of new convictions, providers could continue to employ staff who had received a disqualifying conviction after being hired. These failures may put beneficiaries at risk of harm.

Three States did not have legislative authority to meet Program requirements

Illinois, Maryland, and Missouri did not have legislative authority to meet Program requirements. Illinois implemented a State-only program that did not include fingerprint-based checks of FBI criminal history records. Maryland State officials reported that the State was unable to pass enabling legislation and, as a result, discontinued Program implementation after June 2014. The State discontinued withdrawing funds after receiving \$55,154 of the Federal share of its grant. Missouri State officials reported that they used \$2,639,164 of Federal grant funds to develop a comprehensive background check system but were unable to implement the program in the absence of legislative authority. Though these States made some progress, they lacked legislative authority to fully implement Program requirements that may reduce beneficiaries' risk for theft, abuse, and neglect.

Exhibit 1: Two States implemented most Program requirements; three States did not have legislative authority to meet Program requirements

Selected Program Requirements	CT	DE	IL*	MD*	MO*
Determine which individuals are "direct access employees".	●	●	●	⊖	●
Require all direct access employees to undergo background checks.	●	●	⊖	⊖	⊖
Include nine types of facilities and providers defined by the Program.	⊖	⊖	⊖	⊖	⊖
Identify disqualifying offenses.	●	●	●	⊖	⊖
Establish a Statewide program.	●	●	●	⊖	●
Collect applicant fingerprints. (State & Federal)	●	●	⊖	⊖	⊖
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.	●	●	⊖	⊖	⊖

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

Source: OIG analysis of States' implementation of selected Program requirements, 2018

*Illinois and Missouri conducted State-only checks; however, many program requirements are contingent on States' conducting fingerprint-based checks of FBI criminal history records. Maryland did not pass enabling legislation, ended Program participation, and discontinued drawing down Federal grant funds.

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

State identification of prospective employees who are ineligible for employment in long-term-care providers and facilities is imperative to protecting beneficiaries receiving services in these settings. Collectively, 8 of 10 States conducted nearly 80,000 background checks that disqualified prospective employees.³⁶

The number and rate of determinations of ineligibility varied among the States. Alaska had the highest rate of determinations of ineligibility—8 percent. Florida conducted the greatest number of background checks, resulting in the greatest number of determinations of ineligibility—64,374. See Exhibit 2 on the next page for the numbers of background checks completed and rates of determinations of ineligibility for each State.

The individual characteristics of each State’s program may have contributed to the differences among States in their rates of determination of ineligibility. However, none of the States reported a reduction in available workforce for long-term-care facilities or providers as a result of the Program.

Exhibit 2: Background checks and determinations of ineligibility

State	Completed Checks	Checks with Determinations of Ineligibility	Percentage Ineligible
Alaska	49,115	3,965	8.07%
Florida	1,174,264	64,374	5.48%
Illinois*	210,656	7,533	3.58%
New Mexico	102,539	3,057	2.98%
District of Columbia	30,053	162	0.54%
Rhode Island	6,382	32	0.50%
Connecticut	14,453	53	0.37%
Delaware	4,521	2	0.04%
Maryland**	NA	NA	NA
Missouri***	NA	NA	NA
Total	1,591,983	79,178	NA

Source: OIG analysis of State background check data, 2018.

* Illinois conducts State-only checks and does not report determinations of ineligibility stemming from registry checks.

** Maryland discontinued implementation of the Program after June 2014 and did not report data.

*** Missouri conducts name-based checks of State criminal history records, but it does not report final determinations of eligibility for employment.

Four States had the greatest percentages of determinations of ineligibility

Florida, Illinois, Alaska, and New Mexico had the greatest percentages of determinations of ineligibility. Florida requires disqualification for arrests or charges for disqualifying offenses, rather than only for convictions for disqualifying offenses. We could not definitively determine why Illinois, Alaska, and New Mexico had some of the highest rates of determinations of ineligibility. Interestingly, Illinois was among the States with high rates of determinations of ineligibility, despite the fact that it checked only its own State records. If Illinois had conducted the required Federal background checks, it may have identified additional prospective employees as ineligible. It is also important to note that Illinois' rate may underrepresent its actual rate of determination of ineligibility. Illinois did not report checks with determinations of ineligibility that stemmed from review of State abuse registries.

Four States had less than 1 percent of background checks resulting in determinations of ineligibility

The background check programs in the District of Columbia, Connecticut, Rhode Island, and Delaware resulted in the lowest rates of determinations of ineligibility of prospective employees. Certain characteristics of their programs may have influenced these results. In the District of Columbia, a prospective employee who has committed a disqualifying offense may still be eligible for employment if there was only one offense, the offense does not involve abuse, and there are no pending charges at the time of hire. In Rhode Island, the State conducts criminal history checks, but employers are responsible for making the final disqualification determination rather than the State disqualifying applicants directly.

The State of Delaware offered an explanation for its rates of determinations of ineligibility. Delaware instituted mandatory background checks in 1998 and, for the first several years, these checks disqualified approximately 4 to 5 percent of the applicant pool. However, over the years, that rate declined to less than 1 percent. The State suggested that prospective employees with disqualifying backgrounds are now familiar with the background check program and no longer apply for these positions.

Two States did not report any determinations of ineligibility of prospective employees

Missouri and Maryland did not report determinations of ineligibility during the grant period. Although Missouri conducted name-based State checks, it did not report final determinations of eligibility for employment as required by the Program. Maryland discontinued its efforts to develop a background check program when it became apparent the needed legislation would not pass. As a result, Maryland did not make determinations of eligibility and had no data to report.

CONCLUSION AND RECOMMENDATION

Background checks can provide beneficiaries who rely on long-term-care services with protections from abuse, neglect, and theft by preventing prospective employees with disqualifying offenses from being employed by these care providers and facilities. However, three States did not have legislative authority to fully implement background check programs.

In 2016, CMS concurred with OIG's recommendation to work with participating States to fully implement their background check programs. We encourage CMS to continue its technical assistance to participating States that have challenges implementing aspects of the Program.

To better protect beneficiaries from harm, OIG recommends that:

CMS should take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements

CMS should take appropriate actions—such as scheduling future grant payments based on implementation of requirements, or issuing deficiency notices—to encourage participating States to obtain the necessary legislative authority to fully implement Program requirements.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

The Centers for Medicare & Medicaid services (CMS) concurred with our recommendation for it to take appropriate action to encourage participating States to obtain the necessary authorities to fully implement Program requirements. CMS agreed to look at ways to encourage grantee States to fully implement program requirements.

CMS reinforced its commitment to working with grantee States to successfully implement their national background check programs. CMS plans to monitor grant funds, require States to report data on key elements of their grant activities, and provide technical assistance to States in all aspects of implementation. Additionally, CMS is working to establish the National Forum for Background Checks to serve as a resource to support States with the sustainability of their programs.

The full text of CMS' comments can be found in Appendix H.

APPENDIX A: Mandate for National Background Check Program Evaluation and Report—P.L. No. 111-148, § 6201(a)(7)

(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 startup 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' National Background Check Programs

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
Kansas**	7/1/2015	6/30/2019	
Oregon	7/29/2013	7/28/2019	
Puerto Rico	12/17/2012	12/16/2019	
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 Contractor website. Dates reflect schedule as of January 1, 2019.

* Initially, the Centers for Medicare & Medicaid Services (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.

** Kansas, Idaho, Mississippi, and Wisconsin have not fully extended their grant periods. According to information we obtained from the CMS Contractor, Kansas may extend to 2021; Idaho, Mississippi, and Wisconsin may 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
Alaska*	\$1,501,844	\$499,731	\$ 2,001,575
Connecticut	\$2,664,344	\$1,242,812	\$3,907,156
Delaware	\$2,629,399	\$1,000,000	\$3,629,399
District of Columbia	\$2,931,308	\$981,508	\$3,912,816
Florida	\$2,990,438	\$4,104,765	\$7,095,203
Illinois*	\$1,152,415	\$673,032	\$1,825,447
Maryland	\$55,154	\$23,483	\$78,637
Missouri	\$2,639,164	\$1,000,000	\$3,639,164
New Mexico*	\$1,418,998	\$472,999	\$1,891,997
Rhode Island**	\$982,648	\$743,145	\$1,725,793
Total	\$ 18,965,712	\$10,741,475	\$29,707,187

Source: Final Federal Financial Reports (FFRs).

* Alaska, Illinois, and New Mexico participated in the 2005–2007 Background Check Pilot Program and were limited to \$1.5 million in Federal assistance for this grant.

** The Federal funding amount for Rhode Island is taken from the State’s final FFR, dated July 11, 2018. The State funding amount for Rhode Island is taken from the State’s quarterly FFR, dated September 30, 2016. We used this quarterly FFR because the State did not report State funding on the final FFR.

APPENDIX D: Related Reports

Ensuring a Qualified Long-Term Care Workforce: From Pre-Employment Screens to On-the-Job Monitoring

In 2006, the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation contracted for a study of the efficacy of various approaches to pre-employment screening and on-the-job monitoring of nurse aides to prevent resident abuse in nursing homes.³⁷ An examination of four States concluded that criminal background checks are a valuable tool for employers during the hiring process and that their use does not limit the pool of potential job applicants. Data from 1 State revealed that of the 710 individuals entered into the abuse registry with a substantiated finding of abuse, neglect, or exploitation, 21 percent also had a criminal conviction prior to employment.

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

In 2011, OIG conducted 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.³⁸ Overall, 5 percent of nursing facility employees had at least one criminal conviction. In this evaluation, a national survey of nursing home facility administrators found that almost all facilities conducted some form of background check.

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

In 2012, OIG conducted an evaluation of the nationwide Program for national and State background checks that surveyed long-term-care provider administrators.³⁹ We 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.

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

Also in 2012, OIG conducted 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.⁴⁰ 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).

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

In 2014, OIG conducted an evaluation of State requirements for conducting background checks on home health agency (HHA) employees and surveyed State officials about their respective background check programs.⁴¹ The evaluation found that 41 States required HHAs to conduct background checks on prospective employees. Of the 10 States that had no requirements for background checks, 4 States reported that they planned to implement such requirements in the future. Thirty-five States 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.

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

In 2015, OIG conducted an evaluation of the varying types of background checks conducted by HHAs; we reviewed selected employees whose convictions were likely to disqualify them from HHA employment.⁴² We found that 4 percent of HHA employees had at least one criminal conviction. 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.

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

In 2016, OIG conducted an evaluation of the National Background Check Program for Long-Term-Care Employees describing the overall State implementation status during the first 4 years of the Program.⁴³ The 25 States participating in the grant 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 data reporting to ensure that CMS can conduct effective oversight of the program. CMS concurred with both recommendations and implemented the first recommendation. CMS continues working to implement the second recommendation.

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 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 requirements that most directly related to identifying prospective long-term-care employees with histories that make them ineligible for employment. We also reviewed the reports to identify the overall Program costs, including startup cost, administrative cost, and total costs.

Survey of State Officials

As each of the 10 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: States' Implementation of 13 Selected Program Requirements

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

Selected Program Requirements	AK	CT	DC	DE	FL	IL*	MD*	MO*	NM	RI
Determine which individuals are "direct access employees".	●	●	●	●	●	●	⊖	●	●	●
Require all direct access employees to undergo background checks.	●	●	●	●	●	⊖	⊖	⊖	●	●
Include nine types of facilities and providers 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 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	●	●	●	●	●	⊖	⊖	⊖	●	●

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

Source: OIG analysis of States' implementation of selected Program requirements, 2018.

*Illinois and Missouri conducted State-only checks. Maryland did not pass enabling legislation, ended Program participation, and discontinued drawing down Federal grant funds.

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 provider and facility 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.).



Alaska

Grant Period: 9/30/2010-9/29/2016

Program Scorecard*

13/13	Requirements Implemented
9/9	Required Provider Types Implemented**
49,115	Number of Checks Completed
3,965	Total Determinations of Ineligibility
45,150	Total Determinations of Eligibility
8.07%	Percentage Ineligible
\$72	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 types of facilities and providers 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.

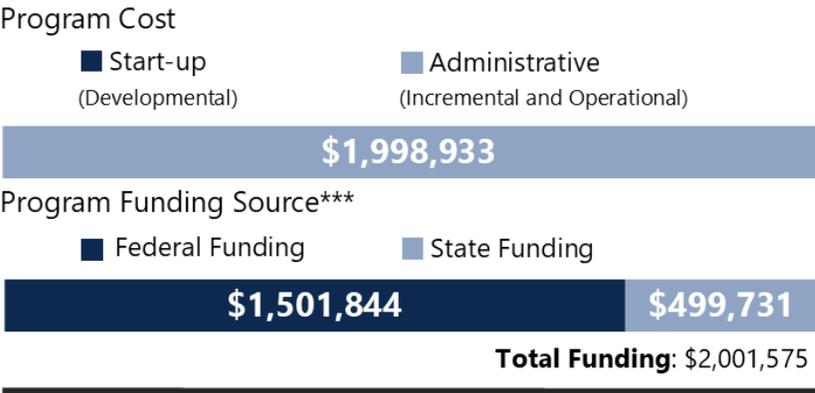
Inclusion of Required Types of Facilities or Providers

- Skilled Nursing Facilities
- Nursing Facilities
- Home Health Agencies
- Providers of Hospice Care
- Long-Term Care Hospital
- Providers of Personal Care Services (PCS)
- 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



*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.
 **Alaska also designated additional facility or provider types for background checks.
 ***States reported Program costs to CMS before submitting final Federal Financial Reports (FFRs). Therefore, Program costs and Program funding source amounts may not match for each State.



Program Scorecard*

11/13

Requirements Implemented

4/9

Required Provider Types Implemented**

14,453

Number of Checks Completed

53

Total Determinations of Ineligibility

14,400

Total Determinations of Eligibility

0.37%

Percentage Ineligible

\$77

Cost of an individual background check

Connecticut

Grant Period: 9/30/2010-9/29/2016

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 types of facilities and providers 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 (PCS)
- ** 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)

\$4,098,481

\$1,330,375

Program Funding Source***

- Federal Funding
- State Funding

\$2,664,344

\$1,242,812

Total Funding: \$3,907,156

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**PCS and Adult Day Care providers were certified under a different State agency in Connecticut and not applicable for this review.

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



Program Scorecard*

12/13

Requirements Implemented

8/9

Required Provider Types Implemented

4,521

Number of Checks Completed

2

Total Determinations of Ineligibility

4,519

Total Determinations of Eligibility

0.04%

Percentage Ineligible

\$87

Cost of an individual background check

Delaware

Grant Period: 9/30/2010-9/29/2013

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 types of facilities and providers 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 (PCS)
- ⊖ 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)

\$3,151,153

\$488,608

Program Funding Source**

- Federal Funding
- State Funding

\$2,629,399

\$1,000,000

Total Funding: \$3,629,399

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

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



Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented**

30,053

Number of Checks Completed

162

Total Determinations of Ineligibility

29,891

Total Determinations of Eligibility

0.54%

Percentage Ineligible

\$50

Cost of an individual background check

The District of Columbia

Grant Period: 12/31/2010-12/30/2016

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 types of facilities and providers 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 (PCS)
- 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)

\$269,520 **\$3,668,646**

Program Funding Source***

■ Federal Funding
 ■ State Funding

\$2,931,308 **\$981,508**

Total Funding: \$3,912,816

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**The District of Columbia also designated additional facility or provider types for background checks.

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



Program Scorecard*

13/13	Requirements Implemented
9/9	Required Provider Types Implemented**
1,174,264	Number of Checks Completed
64,374	Total Determinations of Ineligibility
1,109,890	Total Determinations of Eligibility
5.48%	Percentage Ineligible
\$60	Cost of an individual background check

Florida

Grant Period: 9/30/2010-9/29/2016

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 types of facilities and providers 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 (PCS)
- 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



Program Funding Source***



Total Funding: \$7,095,203

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**Florida also designated additional facility or provider types for background checks.

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



Program Scorecard*

7/13

Requirements Implemented

9/9

Required Provider Types Implemented**

210,656

Number of Checks Completed**

7,533

Total Determinations of Ineligibility

203,123

Total Determinations of Eligibility

3.58%

Percentage Ineligible

\$35-\$60

Cost of an individual background check

Illinois

Grant Period: 12/31/2010-12/30/2014

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 types of facilities and providers 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 (PCS)
- 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)

\$1,825,447

Program Funding Source***

- Federal Funding
- State Funding

\$1,152,415

\$673,032

Total Funding: \$1,825,447

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**Illinois conducted State-only checks for required provider types and designated additional facility or provider types for checks.

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



Maryland

Grant Period: 1/31/2013-1/30/2016

Program Scorecard*

0/13

Requirements Implemented

0/9

Required Provider Types Implemented

-

Number of Checks Completed

-

Total Determinations of Ineligibility

-

Total Determinations of Eligibility

-

Percentage Ineligible

-

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 types of facilities and providers 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 (PCS)
- ⊖ 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



\$ 105,031

Program Funding Source**



\$55,154

\$23,483

Total Funding: \$78,637

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

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



Program Scorecard*

4/13

Requirements Implemented

9/9

Required Provider Types Implemented**

-

Number of Checks Completed**

-

Total Determinations of Ineligibility

-

Total Determinations of Eligibility

-

Percentage Ineligible

-

Cost of an individual background check

Missouri

Grant Period: 9/30/2010-9/29/2016

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 types of facilities and providers 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 (PCS)
- ⊖ 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



Program Funding Source***



Total Funding: \$3,639,164

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**Missouri conducted State-only registry checks for required provider types, and makes no determination qualifications.

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



New Mexico

Grant Period: 12/31/2010-12/30/2016

Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented**

102,539

Number of Checks Completed

3,057

Total Determinations of Ineligibility

99,482

Total Determinations of Eligibility

2.98%

Percentage Ineligible

\$73

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 types of facilities and providers 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 (PCS)
- 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)

\$1,482,810

\$451,972

Program Funding Source***

- Federal Funding
- State Funding

\$1,418,998

\$472,999

Total Funding: \$1,891,997

*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**New Mexico also designated additional facility or provider types for background checks.

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



Rhode Island

Grant Period: 9/30/2010-9/29/2016

Program Scorecard*

13/13

Requirements Implemented

9/9

Required Provider Types Implemented**

6,382

Number of Checks Completed

32

Total Determinations of Ineligibility

6,350

Total Determinations of Eligibility

0.50%

Percentage Ineligible

\$35

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 types of facilities and providers 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 (PCS)
- 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

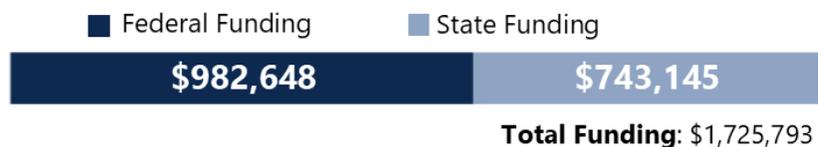
- Meets grant requirement
- ⊖ Meets grant requirement at State level
- ⊖ Does not meet grant requirement

Program Cost and Funding Source

Program Cost



Program Funding Source***



*Derived from States' reports to the Centers for Medicare & Medicaid Services (CMS) and States' survey responses.

**Rhode Island also designated additional facility or provider types for background checks.

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

APPENDIX H: Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAR 29 2019

TO: Daniel R. Levinson
Inspector General

FROM: Seema Verma
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: National Background Check Program (NBCP) for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016 (OEI-07-16-00160)

A handwritten signature in blue ink that reads "Seema Verma".

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to providing Medicare and Medicaid beneficiaries in long-term care facilities with high-quality care.

Since its implementation in 2010, the NBCP has awarded grants to 29 states and U.S. territories to identify efficient, effective, and economical procedures for long-term care facilities and providers to conduct background checks on prospective direct patient access employees on a statewide basis. The goal of the program is to prohibit the hiring of employees who have histories of abuse or relevant criminal violations from serving the vulnerable long-term care population. To date, CMS has awarded more than \$64 million so that states may design their comprehensive national background check programs. CMS is committed to working with grantee states to successfully implement their national background check programs, including monitoring of grant funds as well as requiring states to report data on key elements of their grant activities. The data collected helps CMS ensure that each state's program is meeting the background check requirements. As OIG notes, CMS also provides technical assistance to states in all aspects of implementation of their NBCP, such as writing proposals for necessary state law or administrative rule changes and working with states to improve their data reporting.

In addition, CMS has worked with states to establish the National Forum for Background Checks, represented by both current and graduated NBCP states, to serve as a resource to support states with sustainability of their background check programs. CMS' focus has been on providing a growing library of resources for both prospective and active grantee NBCP states to draw from as prospective states determine their readiness to become a grantee state and active grantee states work to meet the grant requirements for eventual graduation from the NBCP.

OIG's recommendation and CMS' response are below.

OIG Recommendation

CMS should take appropriate action to encourage participating States to obtain necessary authorities to fully implement Program requirements.

CMS Response

CMS concurs with the OIG's recommendation. CMS will look at ways to encourage grantee states to fully implement program requirements.

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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 (ICF/IIDs), and 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. The legislation formally describes the “Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers.” In this report, we refer to this program as the National Background Check Program, or Program.

⁸ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

⁹ P.L. No. 111-148 § 6201 (a).

¹⁰ 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).

¹¹ P.L. No. 111-148, § 6201 (a).

¹² In this report, we also use the term “Programs” to refer to individual States’ respective background check programs.

¹³ 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 for the full 3 years. The States in this 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.

¹⁴ CMS, *Third Announcement CFDA #93.506* (CMS-1A1-11-001), April 2011, p. 6.

¹⁵ States in the 2005–2007 Background Check Pilot Program were limited to \$1.5 million in Federal assistance for participation in the National Background Check Program.

¹⁶ P.L. No. 111-148, § 6201(a)(3)(A).

¹⁷ The grant solicitation document published by CMS defines “registries” as State-based databases, in addition to the nurse aide registry, which may include lists of physicians, nurses, psychologists, and other professionals who are considered direct patient access employees. Other registries may include the Medicare Exclusion Database, the Fraud Investigation Database, the Healthcare Integrity and Protection Data Bank, or the National Practitioner Data Bank.

¹⁸ 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.

¹⁹ 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, while 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.

²⁰ Participating States must ensure that background checks include checks of State criminal history records for relevant States and 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. P.L. No. 111-148, § 6201(a)(3)(A).

²¹ 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 individuals 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)(ii)). State laws vary with regard to the types of convictions that disqualify prospective employees from employment in long-term-care.

²² P.L. No. 111-148, § 6201(a)(4)(B)(viii).

²³ State law-enforcement inform State agencies of any criminal conviction that an employee receives subsequent to the pre-employment background check. The State agency in turn informs the facility or provider that has hired the employee with the conviction. Once a State has implemented this process of continuous monitoring of criminal convictions, there is no further need for employers to conduct future periodic criminal background checks on employees.

²⁴ P.L. No. 111-148, § 6201(a)(6)(E).

²⁵ Additional offenses are described in 42 U.S.C. § 1320a-7.

²⁶ P.L. No. 111-148, § 6201(a)(4)(B)(vii) and 6201(a)(6)(A)(ii).

²⁷ 2 CFR 200.343(a).

²⁸ 2 CFR 200.343(g).

²⁹ Grants for Alaska and Rhode Island remained open after the required time frame for closure, but neither State withdrew funds after the grant period.

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 Employees: Interim Report*, OEI-07-10-00420, January 2016.

³³ P.L. No. 111-148, § 6201(a).

³⁴ P.L. No. 111-148, § 6201(a)(7)(ii)(IV).

³⁵ 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 provider types, for these States (i.e., there are three data sources that each partially aggregate this information for some provider types. These are CMS's Automated Survey Processing Environment (ASPEN) Complaint Tracking System (ACTS), Administration for Community Living's (ACL) National Ombudsmen Reporting System (NORS), and OIG's Medicaid Fraud Control Unit (MFCU) Annual Statistical Reports. These sources represent several of the nine provider types served by the Program but are not exhaustive. ACTS, NORS, and MFCU function in unique populations and collect data based on different parameters. Therefore, analysis of each data source produces disparate results which 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 that may be deterred from applying for employment because of background check requirements.

³⁶ Two States did not report sufficient data to be included in this calculation. Maryland discontinued implementation of the Program after June 2014 and did not report data. Missouri conducted name-based State checks, however, the State did not report final determinations of eligibility for employment.

³⁷ The Lewin Group, *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.

³⁸ OIG, *Nursing Facilities' Employment of Individuals with Criminal Convictions*, OEI-07-09-00110, February 2011.

³⁹ 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.

⁴⁰ OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

⁴¹ OIG, *State Requirements for Conducting Background Checks on Home Health Agency Employees*, OEI-07-14-00131, May 2014.

⁴² OIG, *Home Health Agencies Conducted Background Checks of Varying Types*, OEI-07-14-00130, May 2015.

⁴³ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.