

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



National Background Check Program for Long-Term-Care Providers: An Interim Assessment

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Why OIG Did This Review

Background checks for employees of long-term-care facilities are an important safety measure that can help protect some of the facilities' most vulnerable populations. More than 13 million beneficiaries are served by long-term-care facilities each year, including the elderly, individuals in hospice care, and individuals with intellectual disabilities.

The National Background Check Program (Program), enacted by legislation in 2010, assists States and territories (States) in developing and improving systems to conduct Federal and State background checks. Included in this legislation is a mandate that the Office of Inspector General (OIG) produce an evaluation of the Program within 180 days of Program completion. This report—the fifth in a series to supplement the mandated evaluation—reviews the last two States that are participating in the Program. The interim review allows CMS to assist the States in fully implementing Program requirements during participation. In future work, we will assess the Program overall.

How OIG Did This Review

We reviewed grant monitoring documents and financial reports to determine the extent to which Idaho and Mississippi are working towards meeting Program requirements. Specifically, we evaluated the States' ability to obtain legislative authority and to coordinate between State-level agencies. Additionally, we evaluated States' monitoring documents.

National Background Check Program for Long-Term-Care Providers: An Interim Assessment

Key Takeaway

During the first years of Program participation, both Idaho and Mississippi were unable to implement some requirements and did not consistently report Federal and State funds. Additionally, one State did not report data to accurately assess Program outcomes.

The National Background Check Program (Program) provides grants to States to develop programs for conducting background checks of prospective long-term-care employees via State and Federal criminal history records. Twenty-seven States have completed their participation in the Program. Two States continue their participation in the Program: Idaho and Mississippi.

What OIG Found

OIG found that Idaho and Mississippi lacked State legislative authority to implement some Program requirements. Further, both States encountered challenges with coordination between State-level departments responsible for seeking legislative authority.

OIG found additional concerns with Mississippi. First, Mississippi was unable to submit required data to the Centers for Medicare & Medicaid Services (CMS) to calculate determinations of ineligibility. This is despite the fact that Mississippi conducted background checks during the first years of Program participation. Additionally, Mississippi and Idaho did not consistently report Federal and State funds on required quarterly financial reports; this made it difficult for CMS to determine the ongoing cost of Program implementation.

What OIG Recommends and How the Agency Responded

These report findings are consistent with findings in previous OIG reports about challenges that States experienced during Program participation. Therefore, we recommend that CMS continue to implement OIG's prior recommendations for it to take appropriate actions to (1) encourage States to obtain the necessary legislative authority from the State to fully implement Program requirements; and (2) require participating States to consistently submit data that allow CMS and each State to calculate determinations of ineligibility. In addition, with this report, we further recommend that CMS ensure that participating States submit accurate quarterly reports. CMS concurred with this recommendation.

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BACKGROUND

OBJECTIVES

To provide an interim assessment of implementation of the National Background Check Programs for Long-Term-Care Providers in Idaho and Mississippi.

The beneficiaries served by long-term-care providers include some of the most vulnerable populations.¹ Among these beneficiaries are the elderly, individuals in hospice care, and individuals with intellectual disabilities.² Over 13 million of these beneficiaries are served through long-term-care services in nursing homes and by other providers such as home health, hospice, and personal care service agencies.³

Patient abuse, patient neglect, and misappropriation of property (i.e., theft) have been identified as widespread problems that cause harm to vulnerable beneficiaries receiving long-term-care services.^{4, 5, 6} 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.^{7, 8} The development of thorough background checks can provide protections for beneficiaries who rely on long-term-care services.

National Background Check Program

The National Background Check Program (Program) is a voluntary grant program that was enacted by legislation in 2010 to assist State agencies that receive the grant (referred to as State or by the name of the specific State) in developing and improving systems to conduct Federal and State background checks.^{9, 10, 11} This legislation included the mandate for OIG to produce an evaluation of the Program within 180 days of Program completion.¹² As groups of States concluded the Program, OIG has published reports assessing their implementation of it. These reports—four in total—serve as supplements to the mandated evaluation.^{13, 14, 15, 16} They are designed to provide recommendations and support to the Centers for Medicare & Medicaid Services (CMS) as it assists States that are continuing in the Program. This report is the fifth in a series of six reports; the sixth report will be a comprehensive review of the program per the mandate. See Appendix A for the reporting mandate for OIG.

The Program provides States with funding for 3 years to identify efficient, effective, and economical procedures for conducting background checks of prospective employees who will provide care to vulnerable beneficiaries in their State.¹⁷ States are eligible to receive up to \$3 million in Federal funding. States are required to match the Federal funding by spending \$1 of their own funds for every \$3 of Federal funds

spent and report these expenditures in Federal Financial Reports (FFRs) for CMS to review.¹⁸ States can request up to 3 1-year extensions for the Program if needed. These extensions do not come with Federal funding unless the State has not used the \$3 million allotted during the initial grant period. See Appendix B for information related to Federal grant awards and State matching funds for the States in this evaluation.

In addition to providing funding, CMS provides technical assistance and an assessment of States' progress. CMS provides these services through its technical assistance contractor (Contractor).¹⁹ The CMS Contractor works directly with States to develop their respective programs by offering support in all aspects of Program implementation. Additionally, the CMS Contractor monitors States' progress towards Program implementation by reviewing what are collectively known as "monitoring documents" (i.e., project narratives, FFRs, cost expenditures, and grantee data files) and related documentation during Program participation.

Selected requirements for participating States

States participating in the Program must meet a variety of broad statutory and Program requirements (collectively referred to as "Program requirements") that guide them in developing systems for conducting background checks. States have some flexibility in how they implement Program requirements. For example, States must define "direct patient access employees," but each State has flexibility in determining which types of prospective employees to include in its Program. The requirements evaluated in this report identify the types of prospective employees who should receive background checks, the sources that are used for conducting background checks, and the continuous monitoring of employees' criminal histories. See below for the list of 13 selected Program requirements.²⁰

- 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 searches of records of any proceedings in the State that may contain disqualifying information.
- Notify facilities and providers of convictions identified through continuous monitoring.²¹
- Report convictions to required databases.²²

Required types of background checks

To conduct thorough background checks, States must include several types of background checks in their Program implementation.²³ The required checks include the following: (1) a search of any databases and abuse registries of all known States in which the prospective employee has lived;²⁴ (2) a check of State criminal history records; (3) a fingerprint-based check of Federal Bureau of Investigation (FBI) criminal history records;^{25, 26} and (4) a search of the records of any proceedings in the State that may contain disqualifying information about the prospective employee.^{27, 28}

Another type of background check is continuous monitoring. Continuous monitoring occurs after an employee has been hired. If an employee receives a criminal conviction after being hired, the State's law enforcement agency informs the State agency and the State agency informs the facilities or providers of the conviction.

To conduct the required types of background checks and continuous monitoring, States may need to coordinate with the State's law enforcement department.

Care settings that require background checks

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.²⁹

State legislative authority

States are required to take the necessary steps towards obtaining any needed State legislative authority to implement requirements of the Program.³⁰ States may require

new or amended State legislation to implement Program requirements regardless of the level of pre-existing infrastructure that States have when they enter the Program.³¹ States in the developmental stage may need to obtain legislative authority to build Program infrastructure, while States in the operational stage may need to seek updated legislative authority to improve existing infrastructure. To obtain full legislative authority to implement all Program requirements, States may need to coordinate efforts among departments within their State. Some State criminal justice authorities have the responsibility to seek legislation for Program requirements, such as the collection of applicant fingerprints and continuous monitoring.

A State has flexibility in determining the appropriate order of seeking legislation and developing its program. One State might begin building program infrastructure (e.g., information systems) while working with its legislature to obtain the authority to conduct background checks. Another State might decide to obtain legislative authority before building any program infrastructure.

Required quarterly reporting

States are required to submit quarterly reports to CMS's Contractor that include data to track the types and outcomes of background checks that are conducted.³² The data file that each State submits to the CMS Contractor should contain cumulative data from registry checks, State criminal history records, and FBI criminal history records (e.g., provider type, fingerprint collection date, employment eligibility determination, and employment eligibility determination date). The CMS Contractor provides States in the Program with guidance and technical assistance regarding the data elements that should be contained in the file and, as needed, technical assistance for submitting their data. Additionally, in collaboration with the Contractor, CMS fully developed a Background Check System (BCS) that States can use to collect and report data that meet reporting requirements. Some States enter the Program with an existing system for collecting and reporting data, while other States enter the Program without an established system. States with existing systems may need to modify their system to meet Program reporting requirements or may choose to implement the BCS.

In addition to the quarterly reporting of data, States are required to submit quarterly financial reports to CMS. The quarterly financial reports include FFRs and quarterly cost summaries that detail State spending of Federal and State funds.^{33, 34} CMS's Office of Acquisition and Grants Management (OAGM) reviews and validates the FFRs. CMS's contractor, under the direction of OAGM, reviews and validates the quarterly cost expenditure reports. Both the FFRs and the quarterly cost expenditure report forms include line items for documenting cumulative expenditures of the Program. The States report the cumulative amounts expended from Federal funding and State matching funds.

Related Reports

OIG has published several evaluations and issued multiple recommendations to CMS regarding the importance of background checks. OIG released its first report specific to the Program in 2016 with two recommendations for CMS to (1) continue to work with participating States to fully implement their background check programs, and (2) improve required reporting by States to ensure that CMS can conduct effective oversight.³⁵ CMS implemented these recommendations by doing the following: (1) providing States with individual technical assistance, data review, and data validation, and developing the National Background Check Program Interim Progress Report; and (2) providing States with assigned project officers, a technical assistance contractor, teleconferences, and a website. In 2019, OIG released its second and third Program-specific reports with a recommendation that CMS take appropriate action to encourage participating States to obtain necessary authority to fully implement Program requirements.^{36, 37} CMS continues to work with States to implement this recommendation by encouraging States to take advantage of technical assistance available from the Contractor. In 2020, OIG released its fourth Program-specific report with two recommendations that CMS should (1) assist participating States to address the challenge of coordinating between State-level departments; and (2) require participating States to consistently submit data that allow for CMS and each State to calculate determinations of ineligibility.³⁸ CMS concurred with both recommendations and has implemented the first recommendation. See Appendix C for additional detail and descriptions of related work.

Methodology

For Idaho and Mississippi, we conducted an interim assessment. Both States entered the Program in June 2018 and extended participation in the Program until May 2022. The interim review allows CMS to assist the States in fully implementing Program requirements during participation. Both States have the option to extend participation in the Program until 2024. We reviewed documentation from the start of the Program in June 2018 through September 30, 2021.

For Idaho and Mississippi, we evaluated the States' ability to obtain legislative authority and coordinate between State-level departments. Additionally, we evaluated State-submitted documents that CMS uses to monitor the Program. COVID-19 may have delayed each State's ability to implement Program requirements.

Data Collection. We obtained data from CMS to conduct our analysis. We collected monitoring documents (i.e., project narratives, FFRs, cost expenditures, quarterly reports, assessments, and grantee data files) submitted by States related to their implementation of Program requirements. We verified with CMS Program officials that the data we obtained from these sources were consistent with CMS records.

Data Analysis. We used CMS's monitoring documents to assess States' progress in meeting the requirements. We evaluated the number and rate of background checks

that resulted in determinations of ineligibility for employment during the States' grant participation. Additionally, we evaluated each State's expenditures for the Program.

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

Three years into the Program, Idaho and Mississippi lack State legislative authority to implement some Program requirements

Both Idaho and Mississippi encountered challenges with implementing all selected Program requirements. Idaho encountered challenges with making changes to current legislation and with efforts between two State-level departments to obtain new legislative authority to implement specific requirements. Mississippi encountered challenges with the coordination between two State-level departments in obtaining the legislative authority to implement one requirement.

At the time of our review, Idaho has not yet amended legislation that would allow it to implement select Program requirements. Specifically, Idaho reported that under current State law, long-term-care applicants are not required to disclose prior residencies. This limits Idaho's ability to implement the Program requirement to conduct checks of State abuse and neglect registries for applicants' prior States of residence. During Program participation, Idaho reported to CMS that the State has been considering the addition of the needed amended legislation.

Further, according to documents submitted by the State to CMS, Idaho does not yet have the legislative authority to conduct continuous monitoring despite efforts to coordinate between State-level departments. The Idaho Department of Health and Welfare is the State agency that is participating in the Program, and it is unable to implement continuous monitoring without the needed legislation. However, the Idaho State Police are responsible for seeking the appropriate legal authority needed for the State to conduct continuous monitoring. At this time, the Idaho State Police have not secured the needed legislative authority.

Like Idaho, according to documents submitted by the State to CMS, Mississippi attempted but does not yet have the legislative authority to conduct continuous monitoring.³⁹ Specifically, the Mississippi State Department of Health is the State agency that is participating in the Program; however, the Mississippi Department of Public Safety lacks the legislative authority to retain fingerprints for all long-term-care applicants. Retaining fingerprints is a necessary step to enact continuous monitoring, a Program requirement. The State and the Mississippi Department of Public Safety have received technical assistance from the CMS Contractor and continue working towards obtaining the needed legislation.

Mississippi has not reported data to assess Program outcomes as required; Idaho reported sufficient data

Although both States entered the Program with existing systems for conducting Federal, State, and registry background checks, only Idaho began reporting data on these checks as required.

Mississippi has not yet provided CMS with any data to assess Program outcomes. Mississippi entered the Program with an existing system for conducting Federal, State, and registry background checks. Although the State was conducting background checks during Program participation, its existing system was not configured to report the data elements required by the Program. Despite some delays due to the COVID-19 pandemic, the State is still working with the CMS Contractor to implement a new system that would allow the collection of data elements required by the Program. This system was scheduled to be active in 2022. See Exhibit 1 for an analysis of data submitted by States to CMS.

Idaho reported the required data elements after receiving technical assistance from the CMS Contractor. Although Idaho conducted Federal, State, and some registry background checks, the system Idaho was using was not configured to report the data elements required by the Program. The CMS Contractor worked with Idaho to ensure that the State reported the required data elements. These data elements include background checks and determinations of ineligibility for the entirety of Program participation. The State is replacing its existing system and will continue to report the required data elements in the future.

Exhibit 1: Only Idaho provided the numbers of background checks conducted and determinations of ineligibility made during the first years of Program participation.

State	Completed Checks	Checks with Determinations of Ineligibility	Percentage Determined Ineligible
Idaho	32,214	4,922	15.28
Mississippi*	Unknown	Unknown	Unknown

Source: OIG analysis of State background-check data, 2022.

*Mississippi did not have a system that allowed reporting of required data elements.

Mississippi's and Idaho's inconsistent reporting of Federal and State funds on required quarterly financial reports makes it difficult for CMS to determine the ongoing cost of Program implementation

Although both States submitted quarterly financial reports, the reports included inconsistent details related to Federal and State contributions. States are required to submit quarterly the cumulative amounts contributed by Federal funding and State matching funds. When State reporting does not match, it can impact CMS's ability to determine the ongoing cost of Program implementation.

The September 2021 FFR and quarterly cost expenditure report submitted by Mississippi reflected Federal expenditures that differed by more than \$15,000. The September 2021 FFR reported that Mississippi spent roughly \$339,000 in Federal funds. The quarterly cost expenditure report for the same quarter reported that Mississippi spent roughly \$354,000 in Federal funds.

Additionally, Mississippi did not consistently report contributing required State matching funds for every \$3 of Federal funds spent. Mississippi reported spending \$339,017 in Federal funds in its FFR and \$354,399 in Federal funds in its quarterly cost expenditure report. On the basis of these amounts, Mississippi is required to match a minimum of \$113,006 on the implementation of the Program. Prior to June 2021, Mississippi had not reported contributing State matching funds on either of the required financial reports. The FFR that Mississippi submitted for September 2021 reflected that Mississippi had contributed State funds of \$135,000 towards implementation of the Program. For that same quarter, Mississippi did not report contributing any State funds towards the implementation of the Program in its CMS quarterly cost expenditure report.

Exhibit 2: Mississippi's State expenditures as reported in the quarterly cost expenditure report and FFR did not match for September 2021.

Quarterly Report	Federal Funds	State Matching Funds
FFR	\$339,017	\$135,000
Quarterly Cost Expenditures	\$354,399	\$0
Difference in Reporting	\$15,382	\$135,000

Source: OIG analysis of September 2021 FFRs and quarterly cost expenditure reports, 2022.

Idaho's September 2021 quarterly cost expenditure report and FFR also did not match. The CMS quarterly cost expenditure report that Idaho submitted for September 2021 reported spending \$497,219 in Federal funds and \$165,740 in State matching funds. The FFR that Idaho submitted for the same quarter reflected that Idaho spent \$472,282 in Federal funds and \$126,110 in State matching funds; this

State match differed by more than \$39,000 between the two reports. Further, the FFR State match figure did not meet the State matching funds requirement for every \$3 of Federal funds spent. See Appendix B for States' Program expenditures.

Exhibit 3: Idaho's State expenditures as reported in the quarterly cost expenditure report and FFR did not match for September 2021.

Quarterly Report	Federal Funds	State Matching Funds
FFR	\$472,282	\$126,110
Quarterly Cost Expenditures	\$497,219	\$165,740
Difference in Reporting	\$24,937	\$39,630

Source: OIG analysis of September 2021 FFRs and quarterly cost expenditure reports, 2022.

CONCLUSION AND RECOMMENDATION

By preventing prospective employees with disqualifying offenses from being employed by long-term-care facilities and providers, State background check programs can help protect beneficiaries who rely on long-term-care services from abuse, neglect, and theft. By implementing the Program requirements, States are better able to ensure that the prospective employees who need background checks are being screened, that multiple sources are used to conduct checks, and that criminal records are being continuously monitored.

The findings of this report are consistent with our previous assessments of the Program. Like other States that have participated in the Program, Mississippi and Idaho encountered challenges in the implementation of some Program requirements because they lacked the State legislative authority required for implementation. For Mississippi, these challenges included coordination between State-level departments to seek the necessary changes. In addition, Mississippi and Idaho failed to report data required to assess Program outcomes. A State's failure to report could impact CMS's ability to determine the number of determinations of ineligibility made and the actual cost of Program implementation.

CMS has made efforts to assist States with their unique needs in implementing Program requirements and reporting of required data based on past OIG findings and recommendations. CMS's efforts included identifying potential barriers; providing States with targeted technical assistance; and sharing examples of lessons learned and best practices. CMS developed the "National Background Check Program Interim Progress Report" tool to evaluate States' progress towards implementation of Program requirements and began reviewing and validating quarterly data submitted by States. Additionally, to address previous issues such as coordination between State-level departments, CMS developed a resource library and conducted yearly in-person training meetings. CMS continues to provide this assistance to States through its Contractor.

Despite CMS's efforts in these areas, both Idaho and Mississippi lack needed legislative authority and Mississippi has not reported data required to assess Program outcomes. To address these issues, CMS should continue to work towards implementing the recommendations that OIG made in prior reports for CMS to (1) take appropriate actions to encourage States to obtain the necessary authority to fully implement Program requirements; and (2) require participating States to consistently submit data that allow CMS and each State to calculate determinations of ineligibility.^{40, 41} On the basis of this report's findings, we make a new recommendation.

We recommend that CMS:

Ensure that participating States submit accurate quarterly reports

CMS should ensure that the cost expenditure reports and FFRs submitted quarterly by States accurately reflect Federal and State funds spent. CMS should do this by developing a practice for reviewing quarterly documents submitted by the States and by aiding Mississippi and Idaho, as needed, in ensuring compliance with the Federal and State matching funds requirement and expenditure reporting. In the future, CMS should take immediate action to work with States when a State's quarterly cost expenditure report and FFR do not match Federal and State expenditures for that quarter.

AGENCY COMMENTS AND OIG RESPONSE

CMS concurred with OIG's recommendation to ensure that participating States submit accurate cost expenditure reports and FFRs. CMS stated that it will continue to work closely with participating States to implement procedures for States to submit accurate quarterly reports. CMS stated that it will also continue to offer resources and a system for States to submit National Background Check Program compliant data. For the two States that continue participation, CMS will establish an additional layer of validation review to support them in submitting quarterly reports that accurately reflect Federal and State funds spent.

OIG appreciates CMS's continued efforts and the proposed additional review to address the submission of accurate quarterly reports.

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

DETAILED METHODOLOGY

Scope

We evaluated two States that continue participation in the National Background Check Program (Program): Idaho and Mississippi. Both States entered the Program in June 2018 and extended participation in the Program until May 2022. The interim review allows CMS to assist the States in fully implementing Program requirements during participation. Both States have the option to extend participation in the Program until 2024. We reviewed documentation from the start of the Program in June 2018 through March 31, 2021. See Appendix D for a listing of all States that have participated 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 Collection

CMS grant monitoring documents. We obtained from CMS the reports and documents submitted by States related to their implementation of the Program. We collected from CMS and the technical assistance contractor (Contractor) the monitoring documents that they received from each State. We obtained the source amounts for Program funding from the Federal Financial Reports (FFRs), and we obtained Program costs from the quarterly cost expenditure reports. We followed up with CMS, the Contractor, and Mississippi Program officials to verify our assessment of the documents received.

Data Analysis

We reviewed the documents that we obtained from CMS and the Contractor to evaluate States' progress in the Program during the first 3 years of grant participation. We also reviewed the number of background checks that States conducted and analyzed the rates of determinations of ineligibility for prospective employees. Additionally, we reviewed the financial reports, including FFRs and quarterly cost expenditure reports, to identify the overall Program costs, including startup cost, administrative cost, and total costs.

APPENDICES

Appendix A: Mandate for National Background Check Program Evaluation and Reports

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: Idaho and Mississippi Expenditures for the National Background Check Program as of September 2021

State Quarterly Cost Expenditure Reports

State Quarterly Cost Expenditure Reports	Federal Funds	State Funds	Total
Idaho	\$497,219	\$165,740	\$662,959
Mississippi	\$354,399	\$0	\$354,399

Source: CMS Quarterly Cost Expenditure Reports—September 2021.
Results are rounded.

State Federal Financial Reports

State Federal Financial Reports	Federal Funds	State Funds	Total
Idaho	\$472,282	\$126,110	\$598,392
Mississippi	\$339,017	\$135,000	\$474,017

Source: CMS Federal Financial Reports—September 2021.
Results are rounded.

Appendix C: Related OIG Reports

NOTE: This current report and five of the nine reports listed below—i.e., our September 2020 report (OEI-07-20-00180), our August 2019 report (OEI-07-18-00290), our April 2019 report (OEI-07-16-00160), our 2016 report (OEI-07-10-00420), and one of our 2012 reports (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 in 2019 (OEI-07-20-00180)

In September 2020, OIG published an evaluation of the four States that concluded Program participation in 2019. These four States varied as to the degree to which they were able to implement Program requirements. One State had existing legislative authority and implemented all 13 selected Program requirements. Three States did not fully implement Program requirements. These States had varying degrees of State-level legal requirements and practical infrastructure for conducting background checks that affected their ability to implement select Program requirements. Primarily, these States lacked legislative authority and encountered challenges in coordinating between State-level departments.

In this evaluation, OIG recommended that CMS continue to implement OIG's prior recommendation that CMS take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. Given this report's findings, CMS should assist participating States to address the challenge of coordinating between State-level departments and require participating States to consistently submit data that allow for CMS and each State to calculate determinations of ineligibility. CMS concurred with both recommendations and has implemented the first recommendation.

National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018 (OEI-07-18-00290)

In August 2019, OIG published an evaluation of the 11 States that concluded Program participation in 2017 and 2018. These 11 States 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. We encouraged CMS to implement an open recommendation from the April 2019 report—namely, to take appropriate actions to encourage States to obtain the necessary legislative authority to fully implement Program requirements. We did not offer any new recommendations.

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. These 10 States varied as to the degree to which they implemented Program requirements. Seven of the 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.

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 continues working to implement this recommendation by providing supporting pre-legislative research and assisting States in developing revised legislative language, and has provided technical assistance to develop and promote effective legislation.

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 that described the overall State implementation status during the first 4 years of the Program. 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 by providing States with individual technical assistance, data review, and data validation. CMS implemented the second recommendation by providing States with assigned project officers, a technical assistance contractor, teleconferences, and a website.

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); we reviewed selected employees whose convictions were likely to disqualify them from HHA employment. 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.

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. 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.

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 that 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. 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 conducted an evaluation of the nationwide Program for national and State background checks that surveyed long-term-care provider administrators. 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.

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 that 92 percent of nursing facilities employed at least one individual with at least one criminal conviction. Overall, 5 percent of nursing facility employees had at least one criminal conviction. In this evaluation, a national survey of nursing home facility administrators found that almost all facilities conducted some form of background check.

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

Appendix D: Beginning and Ending Dates of States' Respective 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
Oregon	7/29/2013	—	7/28/2019
Puerto Rico*	12/17/2012	—	12/16/2019
Wisconsin**	6/1/2018	—	6/26/2020
Kansas	7/1/2015	—	6/30/2021
Idaho***	6/1/2018	5/31/2022	
Mississippi***	6/1/2018	5/31/2022	

Source: CMS Notice of Award and the CMS technical assistance contractor (Contractor) website. Dates reflect the schedule as of March 2022.

*Puerto Rico was awarded a 1-year extension in 2018 because of natural disasters experienced by the State.

**Wisconsin withdrew from the Program early.

***Idaho and Mississippi have the option of extending their grant periods to 2024. Extensions may be granted closer to States' respective grant end dates.

Appendix E: Agency Comments

Following this page are the official comments from CMS.



DATE: April 25, 2022

TO: Suzanne Murrin
Deputy Inspector General for Evaluation and Inspections
Office of the Inspector General

FROM: Chiquita Brooks-LaSure *Chiquita LaS*
Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Office of Inspector General (OIG) Draft Report - National Background Check Program for Long-Term-Care Providers: An Interim Assessment (OEI-07-20-00181)

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 ensuring Medicare and Medicaid beneficiaries in long term care (LTC) facilities receive high-quality care.

Since its implementation in 2010, the National Background Check Program (NBCP) has awarded grants to 29 states and U.S. territories to identify efficient, effective, and economical procedures for LTC facilities and providers to conduct background checks on a statewide basis for all potential direct patient access employees. The goal of the program is to prohibit the hiring of employees who have histories of abuse or certain criminal violations from serving the vulnerable LTC population. To date, CMS has awarded approximately \$70 million to states to design their comprehensive national background check programs.

In addition to providing funding, CMS continues to support active grantee states in addressing state-specific challenges and barriers to implementing the NBCP requirements by providing technical assistance in all aspects of the program's implementation, including developing strategies to address challenges of coordination between state-level departments. Since the inception of the NBCP, CMS has been aware of challenges related to the coordination between State Departments of Health and their State criminal justice departments, as well as Governors' offices and State legislative branches. In an effort to address these challenges, CMS has shared lessons learned and best practices among the states and developed tools and resources for targeted technical assistance. For example, CMS utilized industry consulting experts who provided grantee states with analysis of coordination challenges between state-level agencies and departments and strategies to help overcome barriers. States continue to be encouraged to join the National Forum for Background Checks, a state-run collaborative aimed at improving public health and safety by supporting the adoption of background screening for care workers, to learn from tenured graduated NBCP states and to share resources that support states with sustainability of their background check programs.

Lastly, with the understanding that data collected from states helps CMS ensure that each state's program is meeting the background check requirements, CMS developed the Background Check System (BCS) for states to submit data that meet the NBCP data reporting requirements. BCS

has streamlined the process for states to submit their required quarterly reports that include data to track the types and outcomes of background checks that are conducted, including cumulative data from registry checks, state criminal history records, and FBI criminal history records. CMS also requires grantee states to submit quarterly financial reports that contain Federal Financial Reports (FFR) and quarterly cost summaries that detail spending of Federal and state funds. CMS's state-specific Project Officer and CMS's Technical Assistance contractor review and validate the accuracy of all quarterly reports, which includes review and approval of the Cost Expenditures report and the FFR. CMS's focus continues to be on equipping grantee states with the tools and resources that they can voluntarily utilize as they work to meet the grant requirements for graduation from the NBCP.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

Ensure that participating States submit accurate reports. CMS should ensure that the cost expenditure reports and FFRs submitted quarterly by States accurately reflect Federal and State funds spent. CMS should do this by developing a practice for reviewing quarterly documents reported by the States and by aiding Mississippi and Idaho, as needed, to ensure compliance with the Federal and State-matching funds requirement and expenditure reporting. In the future, CMS should take immediate action to work with States when a State's quarterly cost expenditure reports and FFRs do not match Federal and State expenditures for that quarter.

CMS Response

CMS concurs with the OIG's recommendation. CMS has worked closely with participating states to implement procedures for states to submit accurate quarterly reports, through the review and approval by the Project Officer, Federal technical assistance contractor, and CMS's Office of Acquisition and Grants Management. CMS remains committed to offering resources and systems such as the CMS-developed Background Check System for states to submit NBCP-compliant data. For the two states that continue participation in the NBCP, CMS will establish an additional layer of validation review to support them in submitting quarterly reports that accurately reflect Federal and state funds spent.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

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This report was prepared under the direction of Brian Whitley, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office, and Dana Squires and Abbi Warmker, Deputy Regional Inspectors General.

Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

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ENDNOTES

¹ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

² Ibid.

³ Summation by OIG's Division of Data Analytics regarding unique beneficiaries receiving services in 2019 from each of the care settings covered by the Program.

⁴ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

⁵ OIG, *Criminal Convictions for Nurse Aides with Substantiated Findings of Abuse, Neglect, and Misappropriation*, OEI-07-10-00422, October 2012.

⁶ OIG, *Vulnerabilities in Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio*, OEI-02-16-00570, July 2018.

⁷ Ibid.

⁸ 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.

⁹ The National Background Check Program was named in legislation as the Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term Care Facilities and Providers. In this report, we refer to it as the "National Background Check Program" or "Program."

¹⁰ P.L. No. 111-148, § 6201.

¹¹ For the purpose of this report, "State" refers to the State department that is participating in the Program.

¹² P.L. No. 111-148, § 6201(a)(7).

¹³ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

¹⁴ 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.

¹⁵ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018*, OEI-07-18-00290, August 2019.

¹⁶ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019*, OEI-07-20-00180, September 2020.

¹⁷ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 6.

¹⁸ P.L. No. 111-148, § 6201(a)(5). CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 19.

¹⁹ CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

²⁰ P.L. No. 111-148, § 6201(a).

²¹ P.L. No. 111-148, § 6201(a)(4)(B)(viii). Continuous monitoring, or “rap back” capability, 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.

²² P.L. No. 111-148, § 6201(a)(4)(B)(v)(IV). A prospective employee who is determined ineligible shall be reported to the appropriate State or local agency.

²³ P.L. No. 111-148, § 6201(a)(3)(A).

²⁴ 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 under State requirements to provide care to residents or 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, or the National Practitioner Data Bank. CMS, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 50.

²⁵ 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.] 105-277, which allows long term care facilities to request the [FBI] search its fingerprint database for criminal history matches.” CMS, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, p. 5.

²⁶ 42 U.S.C., § 1320a-7. Under this statute, individuals may be excluded from participation in Federal health care programs on the basis of convictions of program-related crimes; patient abuse; and felony convictions related to health care fraud and controlled substances. Other convictions may lead to “permissive” exclusion—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 convictions. Under 42 U.S.C., § 1320a-7a, civil monetary penalties may be imposed on facilities that receive Federal health care dollars and that employ or contract with individuals whom the facilities know or should have known are excluded by the Secretary.

²⁷ 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.

²⁸ 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, exploiting, or mistreating residents or misappropriating residents’ property; who have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, or mistreatment of residents or misappropriation of residents’ property; or who have had a disciplinary action in effect against their professional license as a result of a finding of abuse, neglect, exploitation, or mistreatment of residents or misappropriation of residents’ property (42 CFR, § 483.12(a)(3)). State laws vary with regard to the types of convictions that disqualify prospective employees from employment in long-term care.

²⁹ P.L. No. 111-148, § 6201(a)(6)(E).

³⁰ P.L. No. 111-148 § 6201(a)(4). CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Idaho*, May 2018, p. 41. CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Mississippi*, May 2018, p. 41.

³¹ CMS, *Availability of Technical Assistance for Grantee States*. Accessed at <https://www.bgcheckinfo.org/about-nbcp/technical-assistance-overview> on April 6, 2020.

³² CMS, *Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long Term Care Facilities and Providers*, Ninth Announcement CFDA #93.506 (CMS-1A1-13-002), May 2013, pp. 19-20. National Background Check Technical Assistance, *Quarterly Report Forms*. Accessed on October 26, 2021. CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Idaho*, May 2018, p. 42. CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Mississippi*, May 2018, p. 42.

³³ Per the Terms and Conditions of the grant, CMS will specify the format and content of the quarterly reports (including the SF-425 and Federal Financial Report (FFR) forms). On the technical assistance website for the Program, CMS has indicated

that the four sections of the quarterly reports include the FFR, cost expenditure report, grantee data file, and project narrative (new as of October 5, 2021). The quarterly reports, FFRs, and grantee data files were accessed at <https://www.bgcheckinfo.org/resources/useful-references-and-templates/quarterly-reports-forms> on February 20, 2022.

³⁴ CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Idaho*, May 2018, p. 46. CMS, *Notice of Award Patient Protection and Affordable Care Act Sec. 6201 – Mississippi*, May 2018, p. 46.

³⁵ OIG, *National Background Check Program for Long-Term-Care Employees: Interim Report*, OEI-07-10-00420, January 2016.

³⁶ 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.

³⁷ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018*, OEI-07-18-00290, August 2019.

³⁸ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019*, OEI-07-20-00180, September 2020.

³⁹ Mississippi drafted legislation in 2018 that was sent to the FBI for review and approval. The Federal government shutdown between December 22, 2018, and January 25, 2019, halted the process. The COVID-19 pandemic beginning in March 2020 may have further contributed to delays.

⁴⁰ 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.

⁴¹ OIG, *National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019*, OEI-07-20-00180, September 2020.