U.S. Department of Health and Human Services

Office of Inspector General

Problems Remain for Ensuring That All High-Risk Medicaid Providers Undergo Criminal Background Checks

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Report in Brief
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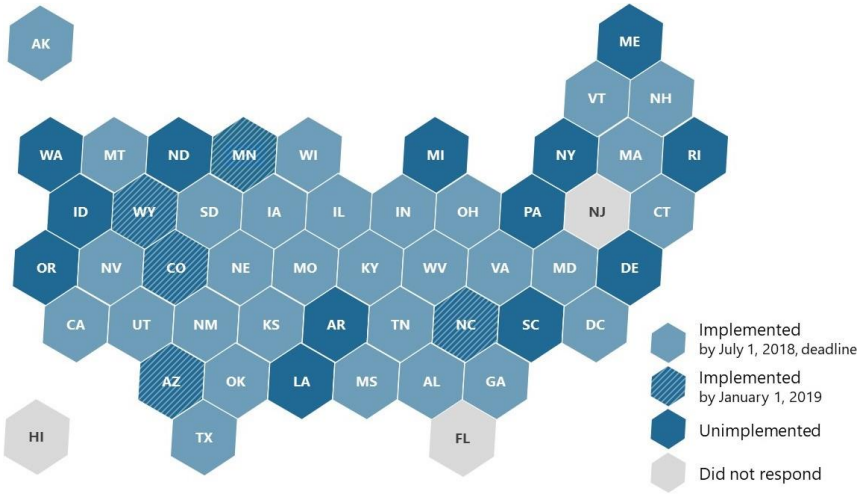
What OIG Found

Key Takeaway
Medicaid is still vulnerable to being defrauded by high-risk providers that were not properly screened.

We found flaws with States' implementation of fingerprint-based criminal background checks for high-risk Medicaid providers. Eighteen States missed the implementation deadline that the Centers for Medicare & Medicaid Services (CMS) had set, and 13 of those 18 States had not implemented these checks as of January 1, 2019. Unscrupulous providers could exploit two loopholes in the provider enrollment process to enroll in Medicaid without undergoing these checks. The first loophole involves CMS's allowing States to—in certain circumstances—forgo conducting these checks for high-risk providers that Medicare has already enrolled, even though Medicare has not conducted checks on some providers. The second loophole involves States' reliance on providers to accurately report their ownership information.

Thirteen States had not implemented criminal background checks.



Source: OIG analysis of State survey and interview responses, 2019.

What OIG Recommends and How the Agency Responded

We recommend that CMS (1) ensure that all States fully implement fingerprint-based criminal background checks for high-risk Medicaid providers, (2) amend its guidance so that States cannot forgo conducting criminal background checks on high-risk providers applying for Medicaid that have already enrolled in Medicare unless Medicare has conducted the checks, and (3) compare high-risk Medicaid providers' self-reported ownership information to Medicare's provider ownership information to help States identify discrepancies. CMS concurred with the first recommendation. CMS did not concur with the second and third recommendations.

Full report can be found at oig.hhs.gov/oei/reports/oei-05-18-00070.asp

Why OIG Did This Review

An effective provider enrollment screening process is an important tool for preventing Medicaid fraud. It plays a vital role in identifying unscrupulous providers and preventing them from enrolling in Medicaid. The Federal Government requires States to conduct risk-based screening activities as part of their processes for enrolling providers in Medicaid. The Office of Inspector General's (OIG) evaluation of the Medicaid provider enrollment screening process in 2016 found that States were struggling to implement the required screening activities. Many States had yet to implement fingerprint-based criminal background checks—a screening activity required for providers that the Federal Government deems to be at high risk for fraud, waste, and abuse.

If not all high-risk providers undergo criminal background checks, the Federal and State Governments are vulnerable to unscrupulous providers intent on defrauding the Medicaid program.

How OIG Did This Review

We based this study on data from three sources: (1) a survey of 50 States and the District of Columbia (States) requesting information on their implementation of criminal background checks and the challenges they faced; (2) interviews with officials from 14 of the 18 States that had not implemented criminal background checks by CMS's July 2018 deadline for implementing this requirement; and (3) an interview with officials from CMS.

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BACKGROUND

Objectives

1. To determine the extent to which States have implemented fingerprint-based criminal background checks for high-risk providers in Medicaid, and
2. To describe the remaining challenges to the implementation of criminal background checks in Medicaid.

An effective provider enrollment screening process is an important tool for preventing Medicaid fraud. To protect Medicaid against fraudulent and abusive providers, Federal laws require that States screen Medicaid providers according to the risk that the providers pose of committing fraud, waste, or abuse.[1, 2] State Medicaid agencies conduct risk-based screening activities for all providers at the time of enrollment and periodically throughout providers' enrollment in Medicaid.[3] If States do not fully implement provider enrollment screening activities, Medicaid is at increased risk of enrolling fraudulent or abusive providers.

In 2016, the Office of Inspector General (OIG) found that many States struggled to implement the screening activities that the Federal Government requires them to perform as part of the Medicaid provider enrollment process. Specifically, OIG found that 37 of the 47 States surveyed had not yet implemented fingerprint-based criminal background checks, a screening activity that Federal rules require for all providers deemed to be high-risk.[4] Because criminal background checks are required for screening only the riskiest providers, full implementation of these checks is vital to safeguarding the Medicaid program. This report provides information on the progress that States have made in implementing criminal background checks since OIG's 2016 review.

Screening requirements for Medicaid provider enrollment

For the purposes of Medicaid provider enrollment, States must assign providers to one of three risk categories: high-risk, moderate-risk, or limited-risk. The screening activities that States must conduct vary according to the risk category to which a provider is assigned. For all providers, States must verify licenses and any provider-specific requirements as well as conduct checks of numerous databases. States also must conduct a site visit for any high-risk or moderate-risk provider, and a criminal background check for any high-risk provider.[5] Federal rules require that States conduct fingerprint-based criminal background checks because fingerprints—as uniquely personal identifying information—are

necessary for complete access to criminal history records held by State criminal history repositories and the Federal Bureau of Investigation.[6, 7]

CMS guidance on implementing criminal background checks

The Centers for Medicare & Medicaid Services (CMS) has provided guidance to States as to which provider types States must consider high-risk, although States may classify additional provider types as high-risk at their discretion. For provider types that exist both in Medicare and Medicaid, CMS requires States to use either the same risk level that Medicare assigns, or a higher level.[8, 9] Accordingly, State Medicaid agencies must classify as high-risk (1) newly enrolling home health agencies (HHAs) and (2) newly enrolling suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), because CMS considers these provider types as susceptible to engaging in fraud, waste, and abuse.[10]

In addition to screening newly enrolling HHAs and newly enrolling DMEPOS suppliers as high-risk, States must also screen as high-risk some providers that are already enrolled in Medicaid. States must retroactively screen as high-risk any HHAs and DMEPOS suppliers that they enrolled between August 2015—when CMS required States to begin implementing criminal background checks—and when their respective State processes for criminal background checks became operational.[11] For the purposes of this report, OIG refers to providers that States must retroactively screen as "lookback providers." States must also screen as high-risk any providers with existing overpayments or payment suspensions.[12] All of these providers must undergo criminal background checks.

Finally, CMS has provided guidance to States as to which individuals associated with high-risk providers must undergo criminal background checks. Any person with 5 percent or more direct or indirect ownership interest in a high-risk provider must undergo a criminal background check.[13] Providers must disclose all individuals with an "ownership or control interest" when submitting their applications for Medicaid enrollment.[14] They must also report any changes in ownership that occur after Medicaid enrolls them.[15]

According to CMS guidance, "implementation" of criminal background checks for high-risk providers means that a State has conducted criminal background checks on each high-risk provider and owner. Specifically, CMS stated the following: "Implementation means that the State Medicaid agency has conducted [a fingerprint-based criminal background check] with respect to each provider that the agency has designated as 'high' risk."[16]

CMS monitoring of States' implementation of criminal background checks

CMS ultimately required States to implement criminal background checks for high-risk providers in 2018. CMS's initial deadline for implementation was June 2016, but—because of feedback from States to CMS on their

difficulties in implementing this requirement—CMS delayed the deadline until July 2017 and then again until July 1, 2018.[17] When CMS extended the deadline the second time in 2017, as many as 40 States had yet to implement criminal background checks.[18]

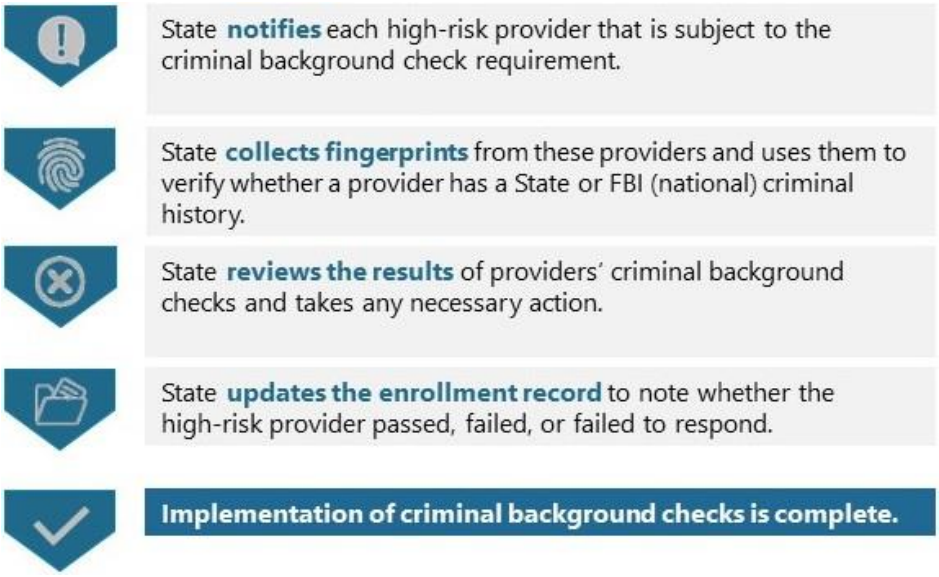
One tool that CMS uses to monitor State compliance with the Medicaid provider enrollment requirements is the Payment Error Rate Measurement (PERM) program. CMS uses the PERM program to measure improper payments on a sample of Medicaid claims for 17 different States every year, with CMS reviewing each State once every 3 years.[19, 20] The PERM program may identify as improper any sampled claims that States paid in error and any sampled claims that did not meet all requirements, including the requirements for Medicaid provider enrollment.[21] Importantly, within a single year, the PERM program identifies only improper payments that 17 States made to providers that are within the sample of claims.

After July 1, 2018, the PERM program began reviewing whether providers within the sample of claims had undergone criminal background checks.[22] The PERM program may identify as overpayments any payments within the sample that States made to providers that had not undergone criminal background checks.[23] States must return to CMS the Federal portion of overpayments.[24] The first PERM review that could include findings on States' implementation of criminal background checks would be in 2020.[25]

Steps for implementing criminal background checks

To implement criminal background checks at the State level, States should complete the steps in Exhibit 1, below.[26]

Exhibit 1: States should complete these steps to implement criminal background checks.



Source: OIG review of CMS, *2016 Sub Regulatory Guidance on Fingerprint-based Criminal Background Checks* and the *Medicaid Provider Enrollment Compendium*, 2018.[27]

Implementing criminal background checks at the State level entails some preliminary work by States. States may need to do some or all of the following:

- pass State legislation,
- determine the criminal convictions and histories that will disqualify a provider from enrolling in Medicaid,[28, 29] and
- develop a system for submitting fingerprints to State law enforcement and obtaining the results of criminal background checks.

Criminal background checks on providers enrolled in Medicare

To help States achieve implementation and to reduce the administrative burden on States and on providers, CMS permits States to simplify the enrollment process for high-risk providers that Medicare has already enrolled.[30, 31] For providers enrolled in Medicare, CMS permits States to rely on Medicare's enrollment screening results instead of duplicating the criminal background check at the State level. However, in certain circumstances, CMS permits States to forgo conducting the criminal background check on high-risk providers enrolled in Medicare, regardless of whether Medicare's enrollment records show a result for the background check.[32, 33] This means that States can forgo conducting a criminal background check for a high-risk provider that is already enrolled in Medicare, even when Medicare has not yet conducted a background check for that provider.[34]

Related OIG work

This report builds on OIG's extensive body of work on provider enrollment. Although enhancements to the provider enrollment screening process have strengthened Medicaid program integrity, OIG has found that outstanding vulnerabilities have persisted.

- In 2013, OIG found that CMS's system for Medicare enrollment data was incomplete and often inaccurate.[35]
- In 2016, OIG found that implementation of enhanced screening activities for provider enrollment in Medicaid and Medicare—including site visits and criminal background checks—was incomplete.[36, 37]
- In 2016, OIG found that CMS's data and State Medicaid agencies' data on provider ownership—recorded for provider enrollment—often did not match.[38, 39]
- In 2016, OIG found that 43 State Medicaid agencies did not collect all ownership information and 33 States did not verify the accuracy of ownership information.[40]

Since OIG's 2016 work on provider enrollment, CMS has taken several steps to assist States in implementing criminal background checks in Medicaid. Specifically, CMS has provided updated guidance, technical assistance, and

training, and has offered onsite visits to review procedures. However, CMS has not fully implemented any of OIG's recommendations from the 2016 report on Medicaid provider enrollment.[41] Further, CMS has not implemented one recommendation from OIG's 2016 report on provider ownership information: the recommendation for it to require State Medicaid programs to verify the completeness and accuracy of the ownership information that providers self-report.[42]

Methodology

For this status update, we collected and analyzed information from CMS, all 50 States, and the District of Columbia. We included all States and the District of Columbia in our study to ensure that we had the most current status on States' implementation of criminal background checks and the most up-to-date information about States' challenges with implementation. The data for this study came from three sources: a survey to which 48 States responded; followup emails to the subset of States that had not implemented the checks at the time of our survey (May 2018), and structured interviews with 14 of the 18 States that had not implemented the checks by the deadline for them to do so (July 2018). We conducted one final round of followup in December 2018 to update States' implementation status as of January 1, 2019. We also conducted a structured interview with CMS in July 2018.

Appendix A provides 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.

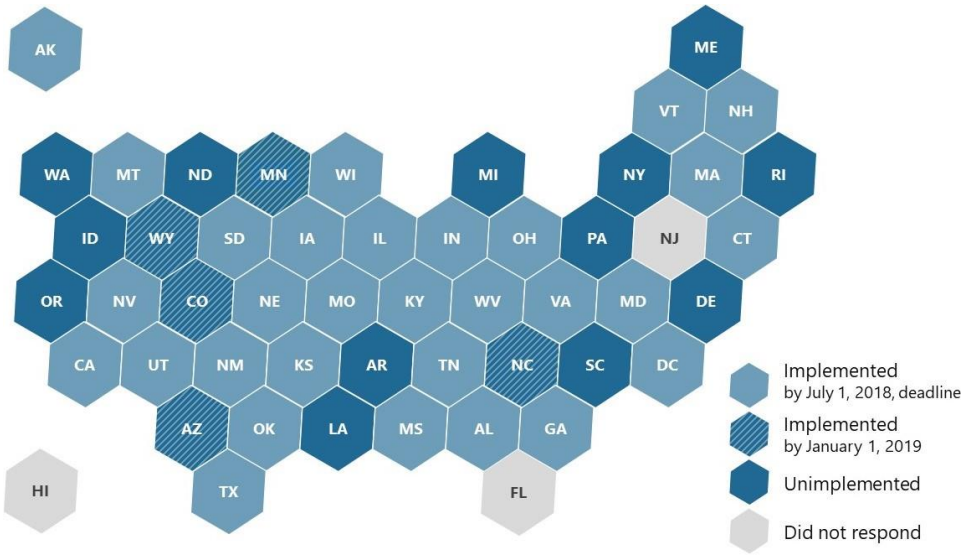
FINDINGS

Thirteen States had not implemented fingerprint-based criminal background checks for high-risk Medicaid providers as of January 2019

Not all States have implemented fingerprint-based criminal background checks for high-risk providers in Medicaid. As of July 1, 2018—CMS's ultimate deadline for implementation—18 States reported that they had not implemented these checks. By January 1, 2019, 5 of those 18 States had implemented criminal background checks, but the other 13 States had not.[43] Further, three States did not report their implementation status to OIG despite several OIG attempts to obtain this information, and their implementation status is unknown.[44]

After the July 2018 deadline for States to implement the required background checks, CMS could consider as overpayments any payments that States have made to high-risk providers that had not undergone a criminal background check.[45, 46] States must return to CMS the Federal share of overpayments related to noncompliance with provider enrollment requirements, including the requirements related to criminal background checks.[47] For each State's specific status, see Exhibit 2, below.

Exhibit 2: Thirteen States had yet to fully implement criminal background checks as of January 1, 2019



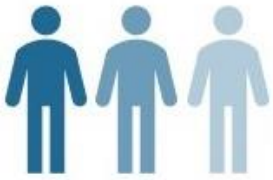
Source: OIG analysis of State survey and interview responses, 2019.

The 13 States that had not implemented criminal background checks by January 1, 2019, varied as to when they anticipated implementing them. Nine States reported that they anticipated doing so by the end of 2019, one State reported that it anticipated doing so in 2020, and three States reported that they did not know when they would implement the checks.

The 13 States that had not implemented the checks by January 1, 2019, also varied as to the progress they had made toward full implementation. Five of the 13 States had not collected fingerprints from any of their providers. The remaining eight States had conducted criminal background checks for at least some of their high-risk providers. For more details regarding States' progress toward implementation, see Exhibit 3, below.

Exhibit 3: Five States had not collected fingerprints, and eight States had not completed all required steps for implementation.

5 States had not collected fingerprints.
ID, ME, MI, RI, and SC had not collected fingerprints for any high-risk providers.



8 States had conducted criminal background checks for some providers but not all of them.
AR was waiting on criminal background check results for some of its providers.
DE relied on Medicare enrollment for all providers but did not update enrollment records with background check results.
LA and ND had not conducted criminal background checks for all lookback providers.
NY had begun collecting fingerprints for its providers but had not finished.
OR and WA relied on Medicare's enrollment results for nearly all providers and were waiting for background check results on some providers.
PA had not conducted criminal background checks for all providers with overpayments.

Source: OIG analysis of State survey and interview responses, 2018.

Startup challenges had prevented five States from collecting fingerprints

The five States that had not collected fingerprints reported that they had not done so because they faced startup challenges. The most common challenges that these five States reported included lack of authority; lack of resources; and delays in determining which criminal convictions and histories should disqualify providers from enrolling in Medicaid. These startup challenges prevented States from collecting fingerprints from their high-risk providers.

Challenge 1: Lack of authority at the State level. Three of the five States reported that they needed executive or legislative authority before they could collect fingerprints. In one case, the State's Governor would not grant the necessary authority, preventing the State Medicaid agency from collecting fingerprints from providers. In another case, the State was unable to proceed because State law enforcement could not collect and process fingerprints for Medicaid providers without State legislation.

Lack of authority also hindered these States in obtaining money for fingerprint collection and processing. These States reported that to achieve implementation, they needed to hire new staff or contractors, and to make those hires, they needed legislation. For example, one State's staff reported that CMS had authorized funding for the State to implement criminal background checks, but the funding had been intended as matching funding and the State contribution did not yet exist because it required legislation.

Challenge 2: Lack of resources. One of the five States indicated that a lack of resources delayed or stopped it from developing a State process to collect fingerprints. This State reported that it did not have enough staff to implement criminal background checks.

Challenge 3: Delays in determining disqualifying criminal histories. One of the five States had not collected fingerprints because of delays in determining which criminal convictions and histories should disqualify providers from enrolling in the State's Medicaid program. Before States can evaluate the results of providers' criminal background checks and make enrollment determinations, they must first establish criteria for disqualifying criminal convictions and histories.[48] According to staff in this State, provider concerns about beneficiary access to care forced the State to revise its criteria, causing this delay.

The eight remaining States had moved beyond the startup phase, but they had not completed all required steps for implementing criminal background checks

Eight States had completed the required steps for implementing criminal background checks for some providers, but not all providers. In general, these States varied in the extent of their implementation. Some States had providers that still needed to submit fingerprints, while others had nearly finished implementing criminal background checks but did not have results for some providers.

Two of the eight States faced residual delays resulting from lack of resources and lack of authority. One State—initially delayed because it lacked the necessary authority—had collected fingerprints from its providers but had not received criminal background check results from the Federal Bureau of Investigation for some providers. Another State reported that it had notified providers and had begun collecting fingerprints, but it faced delays because it is one of the largest Medicaid programs in the country and had approximately 600 providers that required criminal background checks.

Three of the eight States had collected fingerprints for all high-risk providers that were newly enrolled in their respective Medicaid programs, but not for existing enrolled providers that needed a criminal background check. Two of these three States had not conducted criminal background checks for

"lookback providers," while one State had not conducted criminal background checks for providers with overpayments. These three States reported that they were in the process of obtaining the resources needed to conduct criminal background checks for these providers.

Three of the eight States reported relying on Medicare enrollment results for all or most of their providers but also reported that they had not implemented background checks. One State reported that it had high-risk providers that were not enrolled in Medicare and that it needed to conduct criminal background checks on these providers. Another State reported that it was waiting for the Medicare enrollment results for seven providers and that it had not implemented background checks. The third State reported that it had nearly completed all steps but had not documented the results of criminal background checks in its provider enrollment records—a step that is necessary for demonstrating to Federal authorities, such as CMS, that a provider has undergone a criminal background check.[49]

Loopholes enable high-risk providers to enroll in Medicaid without undergoing criminal background checks

States reported that even when they have fully implemented fingerprint-based criminal background checks, high-risk providers can enroll in Medicaid without undergoing the required criminal background checks. This results from two loopholes in the provider enrollment process: (1) CMS's permitting States to forgo conducting criminal background checks, in certain circumstances, for high-risk providers applying to Medicaid that Medicare has already enrolled, regardless of whether Medicare has conducted a fingerprint-based criminal background check; and (2) the ease with which high-risk providers can conceal owners who must undergo fingerprint-based criminal background checks. For the provider enrollment screening process to function as a fully effective program integrity safeguard, all high-risk providers should submit fingerprints and undergo criminal background checks. Unscrupulous providers could exploit these enrollment loopholes to enroll in Medicaid without undergoing criminal background checks and defraud the program.

CMS permits States to forgo conducting criminal background checks on high-risk providers applying to Medicaid that Medicare has already enrolled, regardless of whether Medicare has conducted a background check

In its guidance to States, CMS permits States to forgo conducting criminal background checks on providers that Medicare has already enrolled. As this report has previously mentioned, this is meant to reduce the administrative burden on States and on providers. However, CMS permits States to do this for providers that Medicare has enrolled as high-risk, even when Medicare has not conducted a criminal background check on the provider as part of its enrollment screening.[50, 51] CMS staff reported that Medicare has yet to conduct criminal background checks on approximately 1,000 high-risk providers, and that Medicare will not conduct criminal background checks for these high-risk providers until 2020 or later.

CMS staff reported that although Medicare has not conducted fingerprint-based criminal background checks for these providers, CMS uses its Advanced Provider Screening (APS) system to monitor a variety of databases that might indicate whether a provider has a criminal history. APS is a useful tool; however, it is not equivalent to a criminal background check that uses a fingerprint—uniquely personal identifying information—and APS may not catch instances in which a provider with a criminal history alters his or her name or other personal information. Fingerprints are necessary for the positive identification of providers with criminal history records in repositories maintained by States and the Federal Bureau of Investigation.[52] Name-based background checks are subject to errors—false negatives—that could permit a provider with a disqualifying criminal history to enroll.[53] The use of fingerprints eliminates these errors.[54]

Forty-four States reported that they rely on Medicare enrollment results for providers that Medicare has already enrolled. These States may have enrolled any of the approximately 1,000 high-risk Medicare providers—without either Medicaid's or Medicare's having conducted fingerprint-based criminal background checks—because CMS gave States permission to rely on Medicare enrollment results, regardless of whether Medicare has conducted the criminal background check. This loophole could result in unscrupulous high-risk providers' being able to enroll in Medicaid without undergoing fingerprint-based criminal background checks, posing a threat to the program.

High-risk providers can conceal owners who require criminal background checks

States rely on providers to truthfully disclose all owners so that States know which individuals should undergo a criminal background check. The Federal rules require providers to disclose—and require States to collect fingerprints from—individuals whose ownership interest, either direct or indirect, in high-risk providers is 5 percent or greater.[55, 56] The Federal rules also require States to deny or terminate the enrollment of any provider that has an owner with a disqualifying criminal conviction.[57] Providers disclose their owners to States when submitting their enrollment applications and must report any changes in ownership that occur throughout their enrollment.[58] In past work, OIG found that 43 States did not collect on their enrollment applications information on all individuals with an ownership interest in their providers and that 32 States did not verify the accuracy of providers' self-reported ownership information, making it possible for unscrupulous providers to conceal owners with criminal histories and avoid detection by States.[59] If high-risk providers conceal owners and States have no way to detect these owners, a provider with an owner who has a disqualifying criminal history could enroll in Medicaid.

States and CMS have worked together to correct gaps on States' applications for Medicaid provider enrollment, but they face limits in

verifying the accuracy of providers' self-reported ownership information. Specifically, States and CMS lack an independent system for detecting whether providers' self-reported ownership information is accurate, and thus they cannot be certain that they have conducted criminal background checks on all individuals with an ownership interest in high-risk providers. In past work, OIG found that the States that did verify accuracy of ownership information used a variety of data to do so, including Federal and State databases, business documents, online searches, and site visits.[60] However, these separate activities do not represent a shared solution to this problem, and nine States reported in 2018 that they still lack the capability to identify owners whom providers failed to report on their enrollment applications or purposefully concealed. In July 2018, CMS staff stated that CMS also lacks the capability to verify the accuracy of ownership information that providers self-report, revealing that this problem extends beyond those nine States. Because States and CMS lack this capability and because provider ownership information is self-reported, States and CMS have no way to conclusively verify that providers are being truthful in their disclosures of their owners.

CONCLUSION AND RECOMMENDATIONS

CMS and States have made progress in implementing fingerprint-based criminal background checks—increasing from the 10 States in our 2016 report to the 35 States that reported implementation for this review—but despite this progress, 13 States had still not fully implemented these checks as of January 1, 2019. In addition, loopholes in the provider enrollment process exist that enable high-risk providers to enroll in Medicaid without first undergoing criminal background checks because (1) CMS permits States, in certain circumstances, to forgo conducting the criminal background check on high-risk providers applying to Medicaid that Medicare has already enrolled, regardless of whether Medicare has conducted criminal background checks on these providers; and (2) high-risk providers could conceal owners who must undergo criminal background checks, and States and CMS might be unable to detect this concealment. Until these concerns are addressed, unscrupulous providers and their owners might avoid undergoing criminal background checks as part of their enrollment in Medicaid, posing a threat to the program.

OIG reiterates its unimplemented recommendations that CMS should assist States in implementing provider enrollment screening activities for all Medicaid providers.[61, 62] In particular, OIG reiterates its unimplemented recommendations that CMS should ensure the accessibility and completeness of the results of Medicare's provider enrollment screenings so that States can rely on these screening results rather than duplicating them at the State level.[63] In addition, OIG recommends that CMS:

Ensure that all States fully implement fingerprint-based criminal background checks for high-risk Medicaid providers

CMS should ensure that all States fully implement criminal background checks, and CMS should use the authorities at its disposal—including financial disallowances—to prompt compliance. By "full implementation," OIG means that all States would have conducted criminal background checks for all high-risk providers according to the definition of "implementation" that CMS has articulated.[64]

CMS should use all available compliance tools, as necessary, to ensure compliance. OIG understands that CMS's plan is to use the PERM review—which examines a sample of claims—as a method of monitoring the degree of States' compliance with the provider enrollment requirements. CMS should also use the PERM review to designate as overpayments any sampled payments made to high-risk providers that did not undergo criminal background checks, and CMS should recover the Federal share of those payments. However, the PERM review operates on a cycle, and it examines only 17 States each year. Because the PERM program will not

effectively gauge compliance for all States in a timely way, CMS could also use other tools to ensure compliance. For example, CMS could require a State to develop a corrective action plan if CMS deems the State to be substantially out of compliance with the requirements for Medicaid provider enrollment screening.

Amend its guidance so that States cannot forgo conducting criminal background checks on high-risk providers applying to enroll in Medicaid that are already enrolled in Medicare unless Medicare has conducted the checks

CMS should amend its guidance to States so that they cannot forgo conducting criminal background checks on prospective high-risk providers that are already enrolled in Medicare unless the provider record in Medicare's enrollment system shows a result for a criminal background check. Failure to conduct such checks leaves Medicaid vulnerable to unscrupulous providers that may use Medicare's delay in fully implementing criminal background checks as an opportunity to avoid detection and defraud the Medicaid program.

OIG recognizes that CMS uses the APS system to monitor Medicare providers for criminal histories. However, the APS system is a name-based background check, and unscrupulous providers and their owners could alter their names or other personal information to avoid detection by it. In contrast, a fingerprint-based criminal background check relies on fingerprints—uniquely personal identifying information—and thus eliminates the errors associated with name-based background checks. Further, fingerprints are necessary for complete access to the criminal history records held by State criminal history repositories and the Federal Bureau of Investigation.

Compare high-risk Medicaid providers' self-reported ownership information to Medicare's provider ownership information to help States identify discrepancies

CMS should work with States to determine whether the self-reported ownership information from high-risk providers is consistent across Medicaid and Medicare. CMS should do this by requesting that States submit to CMS the ownership information for their high-risk Medicaid providers. CMS should then systematically compare this State-provided ownership information to the ownership information that CMS has on file for providers enrolled in Medicare. When CMS finds discrepancies between the two for a provider, it should report back to the relevant State(s) and both CMS and the State(s) should work together to resolve discrepancies.

To do this comparison, CMS would need to obtain from States the self-reported ownership information for their high-risk Medicaid providers. However, CMS has indicated that it may not have the authority

to compel States to submit such information. If that is the case, OIG recommends that CMS consider seeking legislative authority, to the extent necessary. However, even if CMS lacks the authority to compel States to submit such information, OIG recommends that—as a prudent program integrity practice—CMS ask States to provide it with this information.

Implementing this recommendation would create a shared system for States and CMS to systematically identify high-risk providers that falsify or omit owners on their enrollment applications, effecting greater consistency of providers' self-reported ownership information across both Medicaid and Medicare.

AGENCY COMMENTS AND OIG RESPONSE

CMS concurred with our first recommendation. CMS noted that its technical assistance and guidance to States has resulted in most States' implementing fingerprint-based criminal background checks. CMS stated that it is working with the remaining States to implement these checks. We commend CMS for this progress and support its continued efforts to work with States on implementing these checks.

CMS did not concur with our second recommendation. CMS noted that it allows States to forgo conducting fingerprint-based criminal background checks on providers that Medicare has enrolled as high-risk even when Medicare has not completed those background checks. CMS stated that it is in the process of procuring a contractor to conduct criminal background checks on all remaining Medicare providers. CMS believes this approach is the most effective and least burdensome strategy it can use to ensure that providers are appropriately screened.

OIG and CMS share the same program integrity goal of ensuring that all high-risk providers enrolled in Medicare and Medicaid have undergone criminal background checks. With this common goal in mind, we continue to recommend that CMS amend its guidance as a temporary measure until all Medicare providers are being fully screened, including undergoing criminal background checks. If CMS does not make changes to its guidance, the loophole discussed in this report—allowing high-risk Medicare providers to enroll in Medicaid without a fingerprint-based criminal background check in either program—will persist at least until 2020, when CMS will procure the contract to conduct criminal background checks on the remaining Medicare providers.

CMS did not concur with our third recommendation. CMS stated that many States collect providers' self-reported ownership information using paper records. CMS believes exchanging paper records to implement this recommendation would be a burden both on States and on CMS. However, CMS said that it would request that States with electronic records take advantage of the data matching service that CMS offers, which can identify discrepancies in providers' self-reported ownership information between Medicare and Medicaid.

We continue to recommend that CMS compare the self-reported ownership information for high-risk Medicaid providers to the ownership information that Medicare has on file, but we also acknowledge CMS's concerns about doing so for States that maintain paper records. To address the intent of the recommendation in a way that does not lead to undue burden for States and CMS, CMS could start by doing these comparisons for all States that maintain electronic records and add States as they convert from paper

to electronic records. CMS could also direct States with paper records that it is their responsibility to compare their records against the ownership information that Medicare has on file, which they can access through CMS's Provider Enrollment Chain and Ownership System.

APPENDIX A: Detailed Methodology

Methodology

Scope

We included all 50 States and the District of Columbia in our study to ensure that we had accurate numbers on implementation and the most up-to-date information about States' challenges.

Data Sources and Collection

The results for this study came from three data sources: a survey to all States, followup emails and phone calls to a subset of States, and structured interviews with 14 of the 18 States that had not implemented fingerprint-based criminal background checks by the required deadline (July 2018). We also conducted a structured interview with CMS in July 2018.

Survey to States. We used the survey (a) to ask States the extent to which they had implemented criminal background checks and (b) to identify remaining challenges that were preventing them from implementing criminal background checks and any solutions to these challenges. We sent the survey to States in May 2018. Forty-eight States responded. The three States that did not respond could not complete the survey by the OIG submission deadline because (a) State staff in two of the States were not available, and (b) a statewide emergency in one of the States. We followed up with at least two emails and two phone calls before considering these States as nonrespondents.

In our survey, we asked States the extent to which they had implemented criminal background checks. First, we asked States to indicate which of the four steps of implementation they had completed as of April 15, 2018, for newly enrolling high-risk providers. We then asked States which steps they had completed as of April 15, 2018, for high-risk providers enrolled after August 1, 2015 (known as "lookback providers"). When States indicated that they had not yet implemented criminal background checks for a group of providers, we prompted them to enter an anticipated implementation date for that group.

Next, we asked States to report their challenges to implementation. We asked States to select—from a closed-ended list that we provided—the best explanation for their challenges to implementation. We created the list using challenges that States had reported in OIG's provider enrollment report from 2016. States also had the opportunity to explain unique and/or new challenges that were preventing them from implementing background checks.

Finally, we asked States about solutions to their challenges in implementing criminal background checks. We requested this information both from States that had implemented the checks and those that had not. We asked

States to explain solutions they used (for those that had implemented the checks) or that they planned to use (for those that had not implemented the checks).

Followup Emails to a Subset of 22 States. To ensure we had the most recent data from States, we did two rounds of followup with the 22 States that had not implemented criminal background checks at the time of our survey in May 2018. We conducted our first round of followup generally within 7 business days of the July 1, 2018, deadline that CMS required for implementation of these checks. At that time, 4 of the 22 States indicated that they had met the deadline, leaving 18 States that had not implemented criminal background checks by CMS's deadline.

From November 29, 2018, to December 27, 2018, we conducted a second round of followup with the 18 States that had not met CMS's deadline. We contacted States twice via email and twice by phone. We asked States whether they had implemented criminal background checks. If they had not, we asked for an update on their progress and for the approximate date when they would implement the checks. We explained to States that if they did not respond, we would consider their reported implementation status from July 2018 to still be current as of January 1, 2019. Of the 18 States, 17 provided information on their implementation status, and 4 of these States had implemented criminal background checks. One of the 17 States did not provide information, and we did not update the implementation status for that State.

Structured Interviews with States. We conducted structured interviews with 14 of the 18 States that had not implemented criminal background checks as of July 2018 to (a) clarify how many of the 4 required steps they had completed and (b) gain context and greater insight into the specific challenges these States faced and their planned solutions. We selected States that reported in our survey an implementation date beyond CMS's deadline of July 1, 2018, and those States that we learned in our email followup had missed the deadline of July 1, 2018. For four States that had not implemented background checks, we were unable to conduct interviews because they did not respond to our request for an interview or because of time constraints. We conducted these interviews in May, June, and July 2018.

Structured Interview with CMS. To clarify CMS's guidance on requirements for criminal background checks, we conducted a structured interview with CMS staff responsible for provider enrollment. We conducted this interview in July 2018.

Data Analysis

We analyzed survey and interview responses to understand States' progress toward implementation. First, we reviewed survey responses to understand States' implementation status, challenges, and solutions. To determine

States' implementation status, we evaluated States' survey and interview responses to determine whether they would complete the four steps of implementation outlined in CMS guidance by the deadline of July 1, 2018. We also evaluated States' survey and interview responses to determine whether they completed the four steps for the three groups of providers for which they were required to complete criminal background checks: newly enrolling high-risk providers, "lookback" high-risk providers enrolled after August 2015, and high-risk providers with existing overpayments.

After determining States' respective statuses for implementing criminal background checks, we reviewed CMS's and States' interview responses to gain greater insight into the challenges faced by States that had not implemented the checks. In some cases, we identified through our interviews additional challenges that States had not cited in their surveys. In our analysis, we identified current challenges to implementation as well as issues that States and CMS raised as program integrity concerns going forward.

Limitations

It is possible that—as a result of our data collection methods—we underestimated the number of States that had not implemented fingerprint-based criminal background checks. Our analysis relied on self-reported data, which we did not independently verify for each State; we corroborated our survey results only for States that reported not having implemented the checks. In addition, we may have underestimated the number of States struggling to identify providers with a high-risk status that resulted from existing overpayments. We did not specifically request this information in our survey, but some States reported it on the survey as a barrier to implementation.

APPENDIX B: Agency Comments

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: MAY 21 2019

TO: Daniel R. Levinson
Inspector General

FROM: Seema Verma
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: Not All High-Risk Medicaid Providers Are Undergoing Criminal Background Checks (OEI-05-18-00070)

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 that all Medicaid providers are screened and enrolled appropriately.

CMS has established regulations to implement categorical risk-based screening of newly enrolling Medicaid providers and to revalidate all current Medicaid providers under these requirements. "Limited" risk providers undergo verification of licensure, verification of compliance with federal regulations and state requirements, and checks against various databases. "Moderate" and "high" risk providers undergo additional screening, including site visits. Additionally, individuals with a five percent or greater direct or indirect ownership interest in a "high" risk provider must consent to criminal background checks, including fingerprinting.

CMS has taken several steps to help states enroll and revalidate Medicaid providers. CMS has allowed states to rely on the results of provider screening performed for the Medicare program or other state Medicaid programs. CMS has also provided guidance and technical assistance to states to help them appropriately screen providers and has published, and updated as needed, the Medicaid Provider Enrollment Compendium, a consolidated resource for certain Medicaid provider enrollment regulations and guidance. Additionally, CMS offers substantive training, technical assistance, and support to states in a structured learning environment via the Medicaid Integrity Institute.

To help states implement the fingerprint-based criminal background check requirement, CMS worked with the Federal Bureau of Investigation to publish guidance. CMS also permits states to forgo conducting criminal background checks on providers that Medicare has already enrolled in the "high" risk category. In addition, CMS intends to procure a contractor to perform provider enrollment fingerprint-based criminal background checks for all Medicare and Medicaid providers. CMS anticipates conducting fingerprint-based criminal background checks on all remaining providers after we procure the new contract. As a result of these efforts, most states have implemented the fingerprint-based criminal background check requirement. CMS is working with the remainder of states to complete implementation.

CMS has also helped states identify all individuals with a five percent or greater direct or indirect ownership interest of a "high" risk provider. States may verify that the information they receive from providers matches the information Medicare has on file through the Medicare enrollment system or through CMS's data matching service. When a state reports a discrepancy in provider ownership information to CMS, we take steps to make sure Medicare providers are disclosing information in compliance with Medicare's requirements or recommend follow-up actions by the state.

OIG's recommendations and CMS' responses are below.

OIG Recommendation
Ensure that all states fully implement fingerprint-based criminal background checks for high-risk Medicaid providers

CMS Response
CMS concurs with OIG's recommendation. CMS has provided extensive technical assistance and guidance to states to help them implement fingerprint-based criminal background checks for "high" risk Medicaid providers. As a result of these efforts, most states have implemented the fingerprint-based criminal background check requirement. CMS is working with the remainder of states to complete implementation.

OIG Recommendation
Amend its guidance so that States can forgo conducting criminal background checks on high--risk providers applying to enroll in Medicaid who are already enrolled in Medicare only when Medicare has conducted the checks

CMS Response
CMS does not concur with OIG's recommendation. CMS permits states to forgo conducting criminal background checks on providers that Medicare has already enrolled in the "high" risk category. In addition, CMS intends to procure a contractor to perform provider enrollment fingerprint-based criminal background checks for all Medicare and Medicaid providers. CMS anticipates conducting fingerprint-based criminal background checks on all remaining providers after we procure the new contract. We believe this is the most effective and least burdensome approach to ensure that providers with many locations are screened appropriately.

OIG Recommendation
CMS should compare "high" risk Medicaid providers' self-reported owners to owners of Medicare providers to help States identify discrepancies.

CMS Response
CMS does not concur with OIG's recommendation. Many states collect provider ownership information in paper format. It would place an extreme burden on states to share this data with CMS. It would also place burden on CMS to collect these paper records and match them against Medicare provider ownership information. For states that collect this information in an electronic format, CMS offers a data matching service that can identify discrepancies between a state Medicaid agency's ownership information and the information Medicare has on file. CMS then takes steps to make sure Medicare providers are disclosing information in compliance with Medicare's requirements or recommends follow-up actions by the state. CMS will request that states with electronic provider ownership information take advantage of this resource.

As stated above, states with paper or electronic provider ownership information may use the Medicare enrollment system, the Provider Enrollment Chain and Ownership System, to verify that the information they receive from providers matches the information Medicare has on file. CMS has encouraged states to report any discrepancies they identify through this process to CMS so that we can take appropriate follow-up action.

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

Jonathan Jones served as the team leader for this study. Others in the Office of Evaluation and Inspections who conducted the study include Jonathan Carroll, Nicole Hrycyk, and Abigail Wydra. Office of Evaluation and Inspections staff who provided support include Kevin Manley and Christine Moritz.

This report was prepared under the direction of Thomas Komaniecki, Regional Inspector General for Evaluation and Inspections in the Chicago regional office, and Laura Kordish and Kelly Waldhoff, Deputy Regional Inspectors General.

To obtain additional information concerning this report or to obtain copies, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

ENDNOTES

[1] The Patient Protection and Affordable Care Act, P.L. No. 111-148 (March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (March 30, 2010).
[2] The Patient Protection and Affordable Care Act, § 6401(a)(3), (b)(1)(B).
[3] Ibid.
[4] OIG, *Medicaid Provider Enrollment Screenings Have Not Been Fully Implemented*, OEI-05-13-00520, May 2016.
[5] 42 CFR § 455.450. See also CMS, *CMCS [Center for Medicaid and CHIP Services] Informational Bulletin: Medicaid/CHIP Provider Screening and Enrollment*, December 23, 2011. Accessed at https://www.medicaid.gov/federal-policy-guidance/downloads/cib-12-23-11.pdf on December 1, 2017.
[6] 42 CFR §§ 455.450 and 455.434. See also Crime Identification Technology Act of 1998, P.L. No. 105-251 (October 9, 1998).
[7] 76 Fed. Reg. 5862, 5876 (Feb. 2, 2011). Accessed at https://www.gpo.gov/fdsys/pkg/FR-2011-02-02/pdf/2011-1686.pdf on December 1, 2017. See also Recommendation 1.1 in SEARCH (The National Consortium for Justice Information and Statistics), *Report of the National Task Force on the Criminal Backgrounding of America*, 2005, p. 9. Accessed at http://www.search.org/files/pdf/ReportofNTFCBA.pdf on March 1, 2018.
[8] Social Security Act § 1902(kk)(1); CMS, *Medicaid Provider Enrollment Compendium*, p. 21. We accessed the 2018 edition of the *Medicaid Provider Enrollment Compendium* at https://www.medicaid.gov/affordable-care-act/downloads/program-integrity/mpec-7242018.pdf on August 20, 2018.
[9] CMS, *CMCS [Center for Medicaid and CHIP Services] Informational Bulletin: Medicaid/CHIP Provider Screening and Enrollment* and CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 6. Accessed at http://www.medicaid.gov/federal-policy-guidance/downloads/SMD060115.pdf on December 1, 2017.
[10] 76 Fed. Reg. at 5870-5872 (Feb. 2, 2011). See endnote 7 for the URL.
[11] CMS, *CMCS [Center for Medicaid and CHIP Services] Informational Bulletin: Medicaid/CHIP Provider Screening and Enrollment* and CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL for SMD #15-002.
[12] 42 CFR § 455.450(e); CMS, *Medicaid Provider Enrollment Compendium*, p. 24. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[13] 42 CFR § 455.434; CMS, *Medicaid Provider Enrollment Compendium*, p. 61. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[14] 42 CFR § 455.104(c); CMS, *Medicaid Provider Enrollment Compendium*, p. 33. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[15] Ibid.
[16] CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL for SMD #15-002.
[17] CMS extended the deadline for implementing criminal background checks for 40 States to July 1, 2018. CMS staff reported to OIG that this was a blanket extension for all 40 States for which CMS had approved compliance plans. This information came from a teleconference between OIG and CMS staff on December 18, 2017. See also CMS, *CMCS [Center for Medicaid and CHIP Services] Informational Bulletin: Medicaid/CHIP Provider Screening and Enrollment*, December 23, 2011; CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002); CMS, *Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based criminal background checks (2016-002)*, Accessed at https://www.medicaid.gov/affordable-care-act/provisions/downloads/fcbc-2016-002.pdf on December 1, 2017.
[18] In June 2016, CMS approved compliance plans that extended the deadline for implementing criminal background checks from June 1, 2016, to July 1, 2017, for 40 States. Because States submitted compliance plans *voluntarily*, OIG did not assume that the remaining 11 States had implemented criminal background checks. Further, at least one State submitted its compliance plan past CMS's deadline and was not granted an extension. This information came from a teleconference between OIG and CMS staff on December 18, 2017, and a CMS presentation

to the public. See CMS, *Medicaid Provider Enrollment: Building Partnerships,* presentation by the Center for Program Integrity's Provider Enrollment and Oversight Group at the 2017 National Association for Medicaid Program Integrity conference, August 17, 2017. Accessed at https://nampi.net/images/2017/11am_Chong_Zabeen_Provider_Erollment_and_Screening_Compressed.pdf on December 20, 2018.

[19] CMS, *Payment Error Rate Measurement.* Accessed at https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/ on February 6, 2019.

[20] CMS, *Payment Error Rate Manual Version 1.7,* January 2018, p. 1. Accessed at https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/FY17PERMManual.pdf on January 10, 2018.

[21] Ibid, pp. 43-48.

[22] Ibid., p. 45.

[23] CMS, *Medicaid and CHIP 2016 Improper Payments Report*. Accessed at https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/2016MedicaidandCHIPImproperPaymentReport.pdf on July 19, 2018, pp. 19-20.

[24] 42 CFR § 431.1002; CMS, *Payment Error Rate Manual Version 1.7,* January 2018, p. 74. See endnote 20 for the URL for *Payment Error Rate Manual Version 1.7*.

[25] The PERM program is reviewing Report Year (RY) 2020 States from July 1, 2018, to June 30, 2019. Given the deadline of July 1, 2018, for implementation of criminal background checks, RY 2020 States are the first States for which CMS might find errors related to noncompliance with this requirement. The RY 2020 States are Alabama, California, Colorado, Georgia, Kentucky, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and West Virginia. See CMS, *Cycle 2 (RY 2020) States*. Accessed at https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Cycle_2.html on January 7, 2019.

[26] CMS, *Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based criminal background checks (2016-002)*. See endnote 17 for the URL for *Sub Regulatory Guidance*. See also CMS, *Medicaid Provider Enrollment Compendium*, p. 56. See endnote 8 for URL for the *Medicaid Provider Enrollment Compendium*.

[27] Ibid.

[28] At a minimum, States must follow the Federal requirements but have discretion to create stricter criteria (i.e., additional disqualifying crimes). See 42 CFR §§ 455.101, 455.416, 424.530, and 424.535; CMS, *Medicaid Provider Enrollment Compendium*, pp. 74-80. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.

[29] CMS, *Medicaid Provider Enrollment: Fingerprint-based criminal background checks (FCBC) 42 CFR §§ 455.434 & 455.450*. Accessed at https://www.medicaid.gov/affordable-care-act/provisions/downloads/fcbc-webinar.pdf on July 1, 2018.

[30] 42 CFR § 455.410; CMS, *Medicaid Provider Enrollment Compendium*, pp. 46, 48–49. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.

[31] CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL for SMD #15-002.

[32] 42 CFR § 455.410(c)(1) and CMS, *Medicaid Provider Enrollment Compendium*, "Scenario 1," p. 50. In Scenario 1, CMS states the following: "State Medicaid Agencies can rely on the Medicare screening up to and included in a particular risk category, regardless of whether Medicare's enrollment record reflects that a particular activity was completed." See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*. See also CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL for SMD #15-002.

[33] CMS, *Sub Regulatory Guidance for State Medicaid Agencies (SMA): Instructions for relying on provider screening conducted by Medicare (42 CFR 455.410) or conducting additional screening when required*, pp. 1-2. Accessed at https://www.medicaid.gov/affordable-care-act/provisions/downloads/revalidation-2016-001.pdf on December 1, 2017.

[34] CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL for SMD #15-002.

[35] OIG, *Improvements Needed To Ensure Provider Enumeration and Medicare Enrollment Data Are Accurate, Complete, and Consistent,* OEI-07-09-00440, May 2013.

[36] OIG, *Medicaid Provider Enrollment Screenings Have Not Been Fully Implemented*, OEI-05-13-00520, May 2016.

[37] OIG, *Enhanced Enrollment Screening of Medicare Providers: Early Implementation Results,* OEI-03-13-00050, April 2016.
[38] OIG, *Medicare: Vulnerabilities Related to Provider Enrollment and Ownership Disclosure,* OEI-04-11-00591, May 2016.
[39] OIG, *Medicaid: Vulnerabilities Related to Provider Enrollment and Ownership Disclosure,* OEI-04-11-00590, May 2016.
[40] Ibid, pp. 7-9.
[41] Recommendations cited pertain to the OIG report *Medicaid Provider Enrollment Screenings Have Not Been Fully Implemented*, OEI-05-13-00520, May 2016.
[42] Recommendation cited pertains to the OIG report *Medicaid: Vulnerabilities Related to Provider Enrollment and Ownership Disclosure,* OEI-04-11-00590, May 2016.
[43] These 13 States account for $177,513,967,055 (31 percent) of Medicaid costs for fiscal year 2017. See Henry J. Kaiser Family Foundation, *State Facts: Total Medicaid Spending, Timeframe FY 2017*. Accessed at https://www.kff.org/medicaid/state-indicator/total-medicaid-spending/ on February 2, 2019.
[44] The three States that did not respond could not complete the survey by the OIG submission deadline. See detailed methodology for more information.
[45] CMS, *Medicaid and CHIP 2016 Improper Payments Repo*rt, pp. 19-20. See endnote 23 for URL for *Medicaid and CHIP 2016 Improper Payments Report.*
[46] 42 CFR § 431.1002; CMS, *Payment Error Rate Manual Version 1.7,* January 2018, p. 74. See endnote 20 for the URL for *Payment Error Rate Manual Version 1.7.*
[47] Of the 13 States that have not implemented background checks, 2 States—Rhode Island and South Carolina—are in CMS's RY 2020 PERM review and could be subject to CMS's finding overpayment errors related to noncompliance. See endnote 25 for the source and URL for this information.
[48] These criteria are necessary for States to make an enrollment decision when a provider's criminal background check reveals a criminal history, according to CMS, *Medicaid Provider Enrollment: Fingerprint-based criminal background checks (FCBC) 42 CFR §§ 455.434 & 455.450*. See endnote 29 for the URL.
[49] CMS, *Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based criminal background checks (2016-002)*. See endnote 17 for the URL for *Sub Regulatory Guidance*. See also CMS, *Medicaid Provider Enrollment Compendium*, p. 56. See endnote 8 for URL for the *Medicaid Provider Enrollment Compendium*.
[50] 42 CFR § 455.410; CMS, *Medicaid Provider Enrollment Compendium*, "Scenario 1," p. 50. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[51] CMS, State Medicaid Director Letter, June 1, 2015 (SMD #15-002), p. 2. See endnote 9 for the URL.
[52] 76 Fed. Reg. 5862, 5876 (Feb. 2, 2011). See endnote 7 for the URL for the *Federal Register*. See also the Crime Identification Technology Act of 1998, P.L. No. 105-201 (October 9, 1998).
[53] Federal Bureau of Investigation, Criminal Justice Information Services, *National Fingerprint Based Criminal Background Checks Steps for Success.* Accessed at https://www.fbi.gov/services/cjis/compact-council/national-fingerprint-based-background-checks-steps-for-success on March 1, 2018.
[54] Ibid.
[55] 42 CFR § 455.104(b); CMS, *Medicaid Provider Enrollment Compendium*, pp. 26-27. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[56] 42 CFR § 455.434; CMS, *Medicaid Provider Enrollment Compendium*, p. 61. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[57] 42 CFR §455.416; CMS, *Medicaid Provider Enrollment Compendium,* p. 78. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[58] 42 CFR § 455.104(c); CMS, *Medicaid Provider Enrollment Compendium*, p. 33. See endnote 8 for the URL for the *Medicaid Provider Enrollment Compendium*.
[59] The 18 States that verified the accuracy of provider ownership information used a variety of mechanisms to do so, including State websites, Federal databases, online information about providers, and business documents from providers. See OIG, *Medicaid: Vulnerabilities Related to Provider Enrollment and Ownership Disclosure,* OEI-04-11-00590, May 2016, pp. 7-9.
[60] Ibid.

[61] OIG, *Enhanced Enrollment of Medicare Provider Screenings: Early Implementation Results*, OEI-03-13-00050, May 2016.
[62] OIG, *Medicaid Provider Enrollment Screenings Have Not Been Fully Implemented*, OEI-05-13-00520, May 2016.
[63] Ibid.
[64] CMS, *Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based criminal background checks (2016-002)*. See endnote 17 for the URL for *Sub Regulatory Guidance*. See also CMS, *Medicaid Provider Enrollment Compendium*, p. 56. See endnote 8 for URL for the *Medicaid Provider Enrollment Compendium*.

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