

BUILDING ON SUCCESS:

Lessons Learned from the Federal Background Check Pilot Program for Long-Term Care Workers

Committee Print

Prepared by the Majority Staff of the Senate Special Committee on Aging

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Note: This document has been printed for informational purposes. It does not represent either findings or recommendations formally adopted by the Committee.

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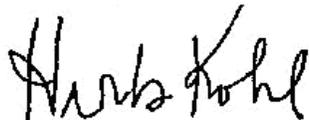
Preface

It is with pride and urgency that I release this Senate Special Committee on Aging print describing the success of a pilot program to conduct background checks on long-term care workers. Over three years and in seven states, this pilot program prevented more than 9,500 applicants with a history of substantiated abuse or a violent criminal record from working with and preying upon frail elders and individuals with disabilities.

The states who participated in the pilot are all planning to continue with the background check programs they have put in place, and build upon the success of the technological infrastructure they have created.

The federal government needs to do the same, as the current system of state-based background checks is haphazard, inconsistent, and full of gaping holes. We should not allow the safety of our loved ones to depend on the state in which they live. Just think about how many more vulnerable older Americans could be protected if we expanded these programs to create a nationwide system of background checks.

I call on my colleagues to pass S. 1577, the Patient Safety and Abuse Prevention Act. Eleven years ago today, the first version of this bill was introduced in the U.S. Senate. Since then, multiple versions have been introduced in both the Senate and the House. The policy has been improved and tested, and with this report, the results are undeniable. The time to pass this legislation is past due. Thank you, on behalf of aging Americans, for considering the material in this report.

A handwritten signature in black ink that reads "Herb Kohl". The signature is written in a cursive, slightly slanted style.

Herb Kohl
Chairman, U.S. Senate Special Committee on Aging

Executive Summary

As our population ages, elder abuse¹ is becoming a growing priority for policymakers. Studies vary, but conservative estimates are that elder abuse currently affects hundreds of thousands of seniors each year.² And although national surveys often exclude institutional settings such as nursing homes and adult day care centers, criminologists believe ample evidence exists to suggest that abuse in institutions is “extensive and alarming.”³

Background checks⁴ for job applicants have long been used as an important tool to help reduce the rates of abuse among vulnerable populations. For example, the National Child Protection Act enacted during the 1990s allows states to conduct background checks and suitability reviews of employees or volunteers of entities providing services to children, the elderly and disabled persons. At the state level, many states routinely require individuals seeking to work with children to undergo background checks as part of the pre-employment process. In 2002, a Government Accountability Office (GAO) report requested by members of the Senate Special Committee on Aging (Committee) recommended that individuals applying to work in long-term care settings also undergo background checks because the elderly, like children, are a highly vulnerable population.⁵

Nevertheless, there is still no federal law that requires long-term care providers to perform systematic, comprehensive background checks on employees who have direct patient access to vulnerable seniors. According to a 2006 study prepared for the Department of Health and Human Services, only a handful of states now require an FBI criminal history check for long-term care employees.⁶

In 2003, Congress authorized a pilot program under the Medicare Prescription Drug, Improvement and Modernization Act (MMA) to conduct background checks on workers in long-term care settings.⁷ This pilot program afforded states an opportunity to expand their existing background check programs in order to screen a wide range of long-term care workers working in a variety of settings, including the home, and to incorporate FBI criminal history checks. In addition, pilot programs were charged with identifying “efficient, effective, and economical procedures” for conducting comprehensive

¹ The term “elder abuse” includes any criminal, physical, or emotional harm or other unethical action that negatively affects the physical, financial, or general well-being of an elderly person

² Colello, Kirsten. “Background on Elder Abuse Legislation and Issues.” *Congressional Research Service*. 25 January 2007.

³ Payne, Brian and Gainey, Randy. “The Criminal Justice Response to Elder Abuse in Nursing Homes: A Routine Activities Perspective.” *Western Criminology Review*. 7(3). 67-81 (2006).

⁴ In this report, the term “background check” refers to comprehensive pre-employment screening of long-term care workers using a combination of state-based registries, state-based criminal history checks (name-based, fingerprint-based, or both), and FBI criminal history checks (fingerprint-based).

⁵ U.S. Government Accountability Office, “Nursing Homes: More Can Be Done to Protect Residents from Abuse.” GAO-02-312. March 2002.

⁶ The Lewin Group. “Ensuring a Qualified Long-Term Care Workforce” Prepared for the Office of Disability, Aging and Long-Term Care Policy, Contract #HHS-100-03-0027

⁷ P.L. 108-173, the Medicare Prescription Drug, Improvement and Modernization Act, Section 307.

background checks in long-term care settings. The Centers for Medicare and Medicaid Services (CMS) administered this pilot program between 2005 and 2007, allocating a total of \$16.4 million over three years to fund background check pilot programs in seven states: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin.⁸

This Committee print analyzes state assessment reports from each of the seven state pilot programs and describes the principal lessons learned by state policymakers interested in furthering the gains made to implement more effective, efficient, and economical background check programs. In particular, this paper assesses (1) the success of comprehensive background check programs in identifying and barring people with criminal records from working in long-term care settings, (2) the improved efficiency of integrated background check programs, and (3) the cost-saving potential of investing in improved background check technology.

The analysis finds that the MMA pilot program was successful in achieving its objectives. First and foremost, older Americans receiving long-term care services in these states are at lower risk of abuse: more than 9,500 applicants with a history of substantiated abuse or a serious criminal background have been barred from working in positions involving direct patient access. Second, better-integrated databases and electronic fingerprinting procedures have helped reduce background check processing time from several months to a few days. Third, investments in information technology (IT), such as a “rap back”⁹ system, helped some states reduce ongoing costs associated with conducting criminal history checks. Finally, all of the pilot states chose to continue their background check programs for long-term care workers at the end of the pilot period in September 2007.

Overall, the Committee concludes that the pilot program has been a success and recommends that similar background check programs be replicated in other states to reduce the risk of elder abuse in long-term care settings.

⁸ The MMA also included money for three states – Alaska, Michigan and Wisconsin – to conduct pilot programs in abuse prevention training for frontline direct care workers.

⁹ A rap back system is one in which any new crimes that an individual commits after an initial background check are flagged in the state’s database and reported back to the employer. Rap back systems can therefore avoid the cost of having to re-fingerprint individuals each time they change jobs.

Figure 1: Selected Major Findings

State	<i>Effectiveness</i>			<i>Efficiency</i>			<i>Sustainability</i>	
	Number of applications screened	Number of applicants disqualified	Percent of applicants disqualified	Number of databases used	Electronic fingerprint system	Online access system for providers	Rap back system	Continued background check program after pilot
Alaska	24,204	477	2.0%	8	X	X	X	X
Idaho	21,446	645	3.0%	7	X	X		X
Illinois	6,315	197	3.1%*	6	X	X	X	X
Michigan	115,651	6932	6.0%	7	X	X	X	X
Nevada	27,875	349	1.3%*	5	X			X
New Mexico	13,145	269	2.0%*	6		X		X
Wisconsin	14,748	640	4.3%	6	X	X		X
Total	223,384	9,509	4.3%	6 (mean)	Most	Most	Some	ALL

* Illinois, Nevada, and New Mexico did not report the number of applicants disqualified by registry background checks, so the true percent of applicants disqualified by all background checks is greater than the percent reported.

Source: State Reports (Appendix D)

I. Background

A. Elder Abuse

The Growing Problem of Elder Abuse

Elder abuse in the United States has been identified as a serious issue, with the act of abuse itself taking many forms. Elder abuse can take the form of physical abuse (battery, assault and rape), neglect (withholding or failure to provide adequate food, shelter and health care), and financial exploitation (theft, predatory lending and other illegal misuse or taking of funds, property or assets).

As discussed in the executive summary, the magnitude of elder abuse today is significant, and experts believe that without additional interventions to prevent and build awareness of elder abuse, mistreatment and exploitation of frail elders will increase due to the rapid growth of the elderly population in the U.S. According to a report by the National Research Council, “the frequency of occurrence of elder mistreatment will undoubtedly increase over the next several decades as the population ages.”¹⁰ Between 2000 and 2004, the number of elder abuse cases substantiated by state adult protective services increased by 15.6 percent.¹¹

It is also a troubling fact that today, most elder abuse goes unnoticed, because it is not reported. It is believed that for every case of elder abuse that is reported, four are not.¹²

Elder Abuse Imposes a Large Burden on Society

Elder abuse imposes a large economic burden on society, but measuring the direct and indirect costs of abuse to victims and society is difficult.

In 2005, the estimated direct costs to victims of crime over the age of 65, regardless of their mental or physical capacity for self-care, totaled \$1.3 billion, according to the Department of Justice’s Criminal and Victimization Survey.¹³ Direct costs in this survey include victims’ self-report of the economic value of property loss from theft, immediate medical expenses, and other personal economic losses incurred by crime victims incurred up to six months after the crime was committed.

¹⁰ Bonnie, Richard J. and Robert B. Wallace, eds., National Research Council of the National Academies, *Elder Mistreatment: Abuse, Neglect and Exploitation in an Aging America*, National Academy Press, Washington, DC 2003. p. 1

¹¹ National Center on Elder Abuse: Abuse of Adults Aged 60+ 2004 Survey of Adult Protective Services http://www.ncea.aoa.gov/NCEARoot/Main_Site/pdf/2-14-06%20FINAL%2060+REPORT.pdf.

¹² National Center on Elder Abuse: Abuse of Adults Aged 60+ 2004 Survey of Adult Protective Services http://www.ncea.aoa.gov/NCEARoot/Main_Site/pdf/2-14-06%20FINAL%2060+REPORT.pdf.

¹³ Bureau of Justice Statistics. “Total economic loss to victims of crime, 2005.” *Criminal Victimization in the United States, 2005*. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus/current/cv0582.pdf>. (The Department of Justice’s Criminal and Victimization Survey includes crimes of assault, rape, and theft, but neglect is not)

Directs costs are only part of the true economic burden of elder abuse. Indirect costs to victims (sometimes known as non-economic, or pain and suffering) are also significant, but are more difficult to quantify. The cost of elder abuse is also borne by federal and state governments, which pay for treating and assisting victims of abuse through Medicare, Medicaid and other health and social services programs. In addition, the costs of identifying and prosecuting the perpetrators of elder abuse in the criminal justice system are paid by federal, state, and local governments (see Figure 1).

Figure 2: Estimated Costs of Elder Abuse

	Direct Costs to Victims	Indirect Costs to Victims	Indirect Costs to Government
<i>Types of Costs</i>	- Direct cash or property losses, - Immediate medical costs and lost salary	- Long-term medical and psychological problems - Pain and suffering	- Medicare and Medicaid costs - Criminal justice costs - Other federal and state programs
<i>Estimated cost</i>	>\$1.3 billion a year	Unknown	Unknown

Source: Bureau of Justice Statistics

Elder Abuse and Neglect in Long-Term Care Settings

About 5.5 million, or about 16 percent, of adults aged 65 and older in the U.S. receive long-term care services. Of those receiving long-term care, the majority (70 percent, or 3.8 million) live in the community; the remaining 30 percent (1.7 million) live in institutional long-term care settings.¹⁴ The number of older and disabled adults in need of long-term care services is expected to grow significantly in the next several decades. The term “long-term care settings” in this report refers to both institutional settings--such as nursing homes, assisted living facilities, long-term care hospitals and hospice care providers--as well as non-institutional providers, which include home health agencies and personal care providers.

Although elder abuse can take place in many settings, those receiving long-term care are particularly at risk of abuse. Many long-term care recipients suffer from cognitive decline or mental disorders and may not be able to communicate their needs to family members, friends, and caregivers. Those in need of long-term care often must rely on the availability and good will of others to assist them with basic personal care needs such as eating, toileting, bathing and dressing.

In 2006, State Long-Term Care Ombudsman Programs reported over 14,000 complaints of abuse, gross neglect and exploitation in nursing homes, and over 5,000 similar

¹⁴ Congressional Research Service, “Long-Term Care: Consumers, Providers, Payers, and Programs”, by Carol O’Shaughnessy, Julie Stone, Laura B. Shrestha, and Thomas Gabe, March 15, 2007.

complaints in other residential care facilities.¹⁵ Ombudsman programs, administered by the Administration on Aging, were initially designed as a strategy to control abuse and neglect in nursing homes. The programs use paid employees and unpaid volunteers to receive and handle suspected allegations of nursing home abuse. In other research findings, two studies from the late 1990s found that between 81 and 93 percent of nurses and nurse's aides had either seen or heard about cases of elder abuse in long-term care facilities.^{16,17}

A 2001 Congressional report prepared by the House Committee on Government Reform concluded that 5,283 nursing homes, or one out of every three nursing homes, were cited for at least one abuse violation between 1999 and 2001, with over 9,000 abuse violations cited during that timeframe.¹⁸ To date, however, there has never been a national study of the prevalence of abuse in nursing homes.¹⁹

A recent analysis of Medicaid Fraud Control Unit cases of elder abuse provides insight into the scope and severity of elder abuse in long-term care settings. Of the 801 cases of nursing home abuse analyzed, about two-thirds were due to physical abuse.²⁰ Figure 3 provides the distribution of types of elder abuse offenses.

¹⁵ AOA "National Ombudsman Reporting System Data Tables." Available at <http://www.aoa.gov/prof/aoaprogram/elder_rights/LTCombudsman/National_and_State_Data/2006nors/A-5A-B%20comp%20Ver-Disp.xls>

¹⁶ Crumb, Deborah and Kenneth Jennings. "Incidents of Patient Abuse in Health Care Facilities are Becoming More and More Commonplace." *Dispute Resolution Journal*. 1998:37-43 (1998).

¹⁷ Mercer, Susan, Patricia Heacock, and Cornelia Beck. "Nurse's Aides in Nursing Homes." *Journal of Gerontological Social Work*. 21:95-113 (1996).

¹⁸ U.S. Congress, House Committee on Government Reform, Special Investigations Division, Minority Staff, *Abuse of Residents Is a Major Problem in U.S. Nursing Homes*, prepared for Rep. Henry A. Waxman, July 30, 2001.

¹⁹ Colello, Kirsten. "Background on Elder Abuse Legislation and Issues." *Congressional Research Service*. 25 January 2007.

²⁰ Payne, Brian and Randy Gainey. "The Criminal Justice Response to Elder Abuse in Nursing Homes: A Routine Activities Perspective." *Western Criminology Review*. 7(3), 67-81 (2006).

Figure 3: Types of Elder Abuse and Neglect in Nursing Homes from Medicaid Fraud Control Unit Cases, 1997-2002

Offense Type	%
Physical.....	67.7%
Sexual.....	9.7%
Duty-related ²¹	9.7%
Neglect.....	6.7%
Drug Theft.....	1.9%
Emotional Abuse.....	1.6%
Financial Abuse.....	1.2%
Unclear.....	1.4%

N=801

Source: Payne, Brian and Gainey, Randy. "The Criminal Justice Response to Elder Abuse in Nursing Homes: A Routine Activities Perspective." *Western Criminology Review*. 7(3), 67-81 (2006).

In non-institutional settings, elder abuse is also prevalent. A recent investigative report by the *Wall Street Journal* focused on growing reports of cases of abuse and neglect by home health aides.²² For example, the article notes that local prosecutors in one part of California have noted that "in tiny Lake County, California [population <66,000 in 2006], 80% of the 74 prosecutions of elder abuse in the past year involved home health aides."²³ Numerous other news accounts in states across the country show that workers are easily able to avoid detection under current background check procedures. One elder justice reform advocate in Florida, Wed Bledsoe, head of A Perfect Cause, a national group advocating for tougher laws to keep criminals from working in nursing homes, commented in 2006 that "there are huge gaps in the system, and what you're talking about is a gap you drive a truck through."²⁴ And in Missouri, a woman convicted of pushing an elderly woman out of a vehicle in a carjacking was allowed to work in nursing

²¹ Duty-related abuse is defined as failure to report abuse, unintentional oversight of job responsibilities, or knowing violating a workplace rule that results in patient harm

²² Shishkin, Philip. "Cases of Abuse by Home Aides Draw Scrutiny." *The Wall Street Journal*. 15 July 2008. D1

²³ Ibid.

²⁴ Gulliver, David. "Nurse with a History Easily Hired: Gaps in the Law Allowed Him to Get Jobs Despite Probes," *Sarasota Herald-Tribune*, 9 July, 2006. A1.

homes – because her conviction record in Kansas was not caught by the limited check of Missouri-only criminal history records.²⁵

Currently, 86% of people with long-term care needs live in community settings,²⁶ but most efforts at preventing elder abuse have been focused on institutional settings, such as skilled nursing facilities. Home-based care is expected to grow more rapidly than nursing home care in the coming decade, so addressing elder abuse in home-based care settings is becoming a growing concern.²⁷

B. Background Checks

Background Checks Have a Potential to Reduce Elder Abuse

Criminal justice research shows that people who commit crime once are more likely to commit crime again. The most recent national-level recidivism study found that about two-thirds of ex-offenders return to the criminal justice system within three years of their release.²⁸ Because of high recidivism rates, individuals with histories of abuse pose a higher-than-normal risk to vulnerable populations, such as frail elders in need of long-term care services.

Background checks are an established, effective tool for identifying individuals with histories of abuse as documented in a state registry, and criminal offenders as identified through state and federal criminal history checks. Recent research suggests that such checks may be particularly important in long-term care settings because many cases of elder abuse are due to serial abusers. One study found that 75.4 percent of abusers were classified as serial or pathological, while only 24.6 percent of abusers were classified as “stressed-out” by their work environment.²⁹ The study authors conclude by recommending background checks as an important policy to prevent elder abuse.

²⁵ Hollingsworth, Heather. “Missouri Case Points to Background Check Weaknesses,” *Associated Press*, 7 September, 2006.

²⁶ 2005 National Health Interview Survey

²⁷ Goldberg, Lee. “Everything You Wanted to Know About Long Term Care ... But Were Afraid to Ask.” Presentation to the National Academy of Social Insurance. July 22, 2008.

²⁸ Nuñez-Neto, Blas. “Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism.” *Congressional Research Service*. 17 December 2007.

²⁹ Payne, Brian and Randy Gainey. “The Criminal Justice Response to Elder Abuse in Nursing Homes: A Routine Activities Perspective.” *Western Criminology Review*. 7(3), 67-81 (2006).

Evaluations of background check programs are scarce, but a 2006 study on the use of background checks for the long-term care workforce³⁰ funded by the Department of Health and Human Services (HHS) determined that:

- a correlation exists between criminal history and incidents of abuse;
- the use of criminal background checks during the hiring process does not limit the pool of potential job applicants; and
- the long-term care industry supports the practice of conducting background checks on potential employees in order to reduce the likelihood of hiring someone who has potential to harm residents.

Yet other federal studies suggest that the use of comprehensive checks in the long-term care sector is too inconsistent and inadequate to protect residents of these facilities.³¹ Some state-based research supports this: in 2005, the Michigan Attorney General published a report concluding that 10 percent of employees who were then providing services to frail elders had criminal backgrounds.³² Such gaps in the background check system for employees of long-term care settings prevent background checks from achieving their full potential of reducing the risk of elder abuse in these settings.

Screening of Long-Term Care Workforce Involves Multiple Types of Checks

Three different types of databases are typically used to conduct background checks. Registry checks cross-list an individual's name with public databases, such as the National Sex Offender Registry, or with a list of workers found to have a record of substantiated abuse in a particular field, such as those maintained in State Certified Nurse Aide registries. State name-based and fingerprint criminal checks are searches of state police records using a person's name and other identifying information, or their fingerprint. Federal criminal history checks are conducted by the FBI through its all-state biometric repository, the Integrated Automated Fingerprint Identification System (IAFIS), which uses fingerprints to identify whether an individual has been arrested or convicted.

Because no one database is complete, a comprehensive background check using many different databases promises to be most effective. State-based registries only cover one state, while FBI records may not include a listing of all convictions if a state has not yet reported them to the federal government.

³⁰ U.S. Department of Health and Human Services (The Lewin Group), Ensuring a Qualified Long-Term Care Workforce: From Pre-Employment Screens to On-the-Job Monitoring, May 2006; <http://aspe.hhs.gov/daltcp/reports/2006/LTCWquales.htm>

³¹ GAO. "Nursing Homes: More Can Be Done to Protect Residents from Abuse." GAO-02-312. March 2002.

³² Office of the Attorney General (Michigan), Attorney General Investigation Uncovers Hundreds of Criminals Working in Adult Residential Care Facilities, June 2005; http://www.michigan.gov/ag/0,1607,7-164-34739_34811-119213--,00.html

Currently, long-term care providers are required to conduct registry checks on all Certified Nurse Aides (CNAs), but few conduct both state and federal criminal history checks on all employees who have direct access to patients.

Various ideas have been proposed over the years to better integrate background check databases. One proposal would create a master database that integrates state CNA registries. However, a national CNA registry would not cover individuals applying to work in most long-term care settings, such as home health agencies, personal care providers and hospices. By comparison, building an infrastructure to connect the numerous databases and registries at the state and federal level may be more effective.

In addition, recent technological improvements are helping to streamline background check processes. For example, livescan fingerprint technology, which records an electronic copy of a fingerprint, is less prone to error and is faster to process than paper-based inked fingerprints. Another technological innovation is the rap back system, which ensures that any new disqualifying crimes an individual commits after an initial background clearance are flagged in a state's database and can be reported back to the employer. The FBI is now working to create a federal rap back capability as part of the agency's "Next Generation Identification" (NGI) System initiative.³³

Sill, absent without federal requirements or funding, few states have moved to incorporate these efficiency-improving system changes. Instead, many states continue to use slower, less accurate paper-based systems that can result in long processing times for providers. In turn, slow processing times increase the risk of abuse by allowing employees with disqualifying crimes to work for several months before background check results are completed. In turn, this contributes to a practice of "job-hopping," in which workers switch jobs frequently, before their criminal history checks can be processed. In one instance, a Certified Nurse Aide with a disqualifying criminal record in Nevada worked for 15 different providers from 1993 through 1996, changing jobs every 90 days to stay ahead of his background check report.³⁴

C. Congressional Action

The Senate Special Committee on Aging has a long history of examining issues of elder abuse and exploring the specific potential of background checks for long-term care employees to address the issue of abuse in long-term care settings. Figure 4 outlines selected hearings that the Committee has held on these issues. In 1965, the Committee held a seven-part field hearing on abuse and neglect in the nation's nursing homes, and since then the committee has held nearly thirty hearings on elder abuse and related topics. Most recently, in July 2007, the Committee scheduled a hearing entitled, "Abuse of Our Elders and How We Can Stop It," which convened leading experts to discuss the challenges of preventing elder abuse and report on the state's experiences with the background check pilot program. At this listening session, comprehensive background

³³ U.S. Department of Justice. "The Attorney General's Report on Criminal History Background Checks." June 2006.

³⁴ Nevada State Report. Appendix D.

checks were cited by all witnesses as a critical measure to protect seniors in long-term care settings.³⁵

Figure 4: Selected Hearings on Elder Abuse in the Senate Special Committee on Aging

- Conditions and Problems in the Nation’s Nursing Homes (7 part field hearing, February and August 1965)
- Older Americans Fighting the Fear of Crime, September 22, 1981
- Crime Against the Elderly, Los Angeles, CA, July 6, 1983
- Crimes Against the Elderly: Let’s Fight Back, Las Vegas, NV, August 21-22, 1990
- Crimes Committed Against the Elderly, Lafayette, LA, August 6, 1991
- Elder Abuse and Violence Against Midlife and Older Women, May 4, 1994
- Crooks Caring for Seniors: The Case for Criminal Background Checks, September 14, 1998
- Saving Our Seniors: Preventing Elder Abuse, Neglect and Exploitation, June 14, 2001
- Safeguarding Our Seniors: Protecting The Elderly From Physical & Sexual Abuse in Nursing Homes, March 4, 2002
- Shattering the Silence: Confronting the Perils of Family Elder Abuse, October 20, 2003
- Abuse Of Our Elders: How We Can Stop It, July 18, 2007

One of the first major congressional actions taken to combat elder abuse was the creation of the Long-Term Care Ombudsman Program (LTCOP) in order to investigate and resolve complaints in nursing homes and other residential care settings. This program was initially created in 1972 as a Public Health Service demonstration project in five states. As a result of the pilot program’s success, the LTCOP was expanded to all states and included as an amendment to the Older Americans Act (OAA) in 1978.³⁶ In 1992, the program become incorporated into a new Title VII of the OAA that authorized elder rights protection activities and required the Administration on Aging (AoA) to create a permanent National Ombudsman Resource Center. The majority of federal funding for ombudsman activities comes from Title VII and Title III of the OAA. Ombudsman programs also receive some state and local support. In FY 2006, the most recent year for which data are available, the LTCOP received \$46.6 million in federal funding and \$31.2 million from state and local sources, for a total of \$77.8 million.³⁷

Other federal funding for services aimed at preventing elder abuse include the Social Services Block Grant (SSBG) program authorized by Title XX of the Social Security Act, and some programs of the Violence Against Women Act. In FY 2005, the most recent

³⁵ Senate Special Committee on Aging. “Abuse of Our Elders: How We Can Stop It.” *Government Printing Office*. S. Hrg. 110-308. Serial No. 110-12. 18 July 2007.

³⁶ P.L. 95-478

³⁷ Colello, Kirsten J. “Older Americans Act: Long-Term Care Ombudsman Program.” *Congressional Research Service*. April 17, 2008.

year for which data are available, states spent \$169 million on Adult Protective Services (APS) programs, supported by funding through SSBG. In FY2008, Congress appropriated \$4.2 million for the Violence Against Women Act. This funding supports programs and services that address violence against older women, such as training for law enforcement, prosecutors, victims' assistants and others. Within the Department of Justice, the "Elder Justice and Nursing Home Initiative" currently receives about \$1 million annually.³⁸

Although Congress has implemented several laws aimed at addressing child abuse^{39, 40} and domestic violence,⁴¹ somewhat less attention has been paid to combating elder abuse at the federal level.⁴² The Patient Safety and Abuse Prevention Act, which would require background checks for long-term care workers, was first proposed by Senator Kohl in 1997 and is still pending approval. Similarly, the Elder Justice Act, which would do much to improve the detection, investigation and treatment of elders who fall victim to abuse, has followed a parallel course of being considered by several Congresses. Figure 5 lists legislation that has been introduced in the 105th through the 110th Congresses that includes provisions to prevent elder abuse by requiring background checks for long-term care workers.

³⁸ Marie-Therese Connolly, (accepted for publication) Where Elder Abuse and the Justice System Collide: Police Power, Parens Patrie and Twelve Recommendations, *Journal of Elder Abuse & Neglect*, 22 (1/2).

³⁹ See, for example, The Child Abuse Prevention and Treatment Act of 1974 (CAPTA P.L. 93-247) or the Adam Walsh Child Protection Safety Act

⁴⁰ Stoltzfus, Emily. "Child Welfare: Federal Policy Changes Enacted in the 109th Congress." *Congressional Research Service*. November 2007.

⁴¹ See the Violence Against Women's Act (VAWA) of 1994

⁴² Colello, Kirsten J. "Background on Elder Abuse Legislation and Issues." *Congressional Research Service*. January 25, 2007.

Figure 5: Legislation That Would Require Background Checks for Long-Term Care Workers, 105th through 110th Congresses

Congress	Bill Name	Bill Lead Sponsor	Legislative Activity
105 th	Patient Abuse Prevention Act (S.1122)	Senator Herb Kohl	The bill was not taken up by committee
	Long-Term Care Patient Protection Act of 1998 (S. 2570)	Senator Herb Kohl	The bill was not taken up by committee
	Elder Care Safety Act of 1997 (H.R. 2953)	Representative Joseph Kennedy	The bill was not taken up by committee
	Elderly and Disabled Protection Act of 1998 (H.R. 4804)	Representative Jerry Weller	The bill was not taken up by committee
106 th	Patient Abuse Prevention Act (S. 1445/ H.R. 2627)	Senator Herb Kohl; Representative Fortney Pete Stark	The bill was not taken up by committee
	Elderly Protection Act (H.R. 1984)	Representative Joseph Crowley	The bill was not taken up by committee
	Nursing Home Criminal Background Check Act of 2000 (H.R. 4293)	Representative Chris Cannon	The bill was not taken up by committee
	Home Health Integrity Preservation Act (S. 255)	Senator Charles Grassley	The bill was not taken up by committee
	Senior Care Safety Act of 2000 (S. 3066)	Senator John Ashcroft	The bill was not taken up by committee
107 th	Patient Abuse Prevention Act (S. 3091/ H.R. 3933)	Senator Herb Kohl; Representative Brad Carson	The bill was not taken up by committee.
	Senior Safety Protection Act of 2002 (H.R. 5565)	Representative Mike Thompson	The bill was not taken up by committee.
	Elder Justice Act of 2002 (S.2933)	Senator John Breaux	The bill was not taken up by committee.
108 th	Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (H.R. 1)	Representative Dennis Hastert	The bill became Public Law 108-173 on 12/8/2003.
	Patient Abuse Prevention Act (S. 958)	Senator Herb Kohl	The bill was not taken up by committee.

Congress	Bill Name	Bill Lead Sponsor	Legislative Activity
108 th	Elder Justice Act (S. 333)	Senator John Breaux	The bill was ordered favorably reported by the Senate Finance Committee with an amendment in the nature of a substitute, but was never taken up on the Senate floor. Provisions that would establish national criminal background checks for long-term care employees were removed in the version of the bill reported by the Committee.
	Senior Safety Protection Act of 2003 (H.R. 208)	Representative Mike Thompson	The bill was not taken up by committee.
109 th	Senior Safety and Dignity Act of 2006 (H.R. 6161)	Representative Ginny Brown-Waite	The bill was not taken up by committee.
	Elder Justice Act (H.R. 4993)	Representative Peter King	The bill was not taken up by committee.
	Elder Justice Act (S. 2010)	Senator Orrin Hatch	The bill was ordered favorably reported by the Senate Finance Committee with an amendment in the nature of a substitute, but was never taken up on the Senate floor. Provisions that would establish national criminal background checks for long-term care employees were deleted in the version of the bill reported by the Committee.
110 th	Patient Safety and Abuse Prevention Act of 2007 (S. 1577/ H.R. 3078)	Senator Herb Kohl; Representative Tim Mahoney	S. 1577 was referred to the Senate Finance Committee; H.R. 3078 was referred to the following committees: Ways and Means, Energy and Commerce, Judiciary.
	Senior Safety and Dignity Act of 2007 (H.R. 1476)	Representative Ginny Brown-Waite	The bill was referred to the following committees: Ways and Means and Energy and Commerce.

Source: Congressional Research Service

II. The Background Check Pilot Program

A. Program Overview

The Medicare Prescription Drug, Improvement and Modernization Act of 2003, which created Medicare Part D, included Section 307, “Pilot Program for National and State Background Checks on Direct Patient Access Employees of Long-term Care Settings or Providers” (hereinafter referred to as the pilot program). This program was charged with identifying “efficient, effective, and economical procedures” for conducting background checks in order to establish the framework for a national program of background checks for employees of long-term care settings. CMS administered the pilot program in consultation with the Department of Justice between January 2005 and September 2007.

In 2004, the Centers for Medicare and Medicaid Services (CMS) issued a request for proposals for up to ten states to participate in pilot program to enhance background checks for workers in long-term care settings. CMS awarded grants to seven states: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. Michigan has established a state-wide program using pilot funds; the other states limited their program to certain counties.

At the end of the pilot program all states submitted final assessment reports. Information in this report comes from these final assessment reports as well as from discussions with state program officers conducted by committee staff from March 2007 to July 2008.

B. Pilot Program Requirements

Under the terms of the pilot program, states had flexibility to create background check programs that worked best for them while meeting certain basic requirements.

The primary requirement was for long-term care settings and providers to conduct background checks for job applicants who would have direct contact with patients. These providers include “any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such a facility or provider.”⁴³ If an employee with direct access to patients was found to have disqualifying information, long-term care settings were prohibited from knowingly employing that person.

As part of the background check process, applicants were required to be screened through state and federal fingerprint databases in addition to name-based registries. A written statement by the applicant disclosing any disqualifying information and authorizing the facility to conduct a national and state criminal record check as well as a set of fingerprints were also required of all applicants.

Finally, states were directed to have procedures to permit applicants to appeal or dispute the accuracy of the background check results and to prevent individuals from using the

⁴³ PL 108-173 §703 (g)(4)

results of the background check for purposes other than employment. Provisions were also put in place to give long-term care settings and providers immunity from any action brought by an applicant who was denied employment based on the results of background check information.

States were given flexibility to modify the parameters of the program to suit their needs. For example, disqualifying crimes were defined somewhat differently from state to state. (See Appendix B for a matrix of disqualifying crimes by state). Some states, such as Michigan, include time-limited bans for certain disqualifying felonies based on the point when parole or probation has been completed, while other states, such as Wisconsin, have lifetime bans only.⁴⁴

C. State Program Overview

Total federal spending provided to the seven states for the background check pilot program was \$16.4 million over three fiscal years, from 2005-2007.⁴⁵ Federal funding for the seven states for establishing background check programs over this three-year period ranged from \$1.5 million in Wisconsin to \$3.5 million in Michigan⁴⁶, as described in Figure 5. Funding depended on the specific proposals of the states and also the scope of their project.

Each state used the pilot program funding differently depending on varying needs and program designs. Some states, such as New Mexico and Idaho, used the funding primarily to improve and expand preexisting background check programs. Others, such as Illinois and Wisconsin, used the funding to completely redesign their background check programs in select counties (ten in Illinois and four in Wisconsin). Michigan, the state receiving the largest amount of funding, established a comprehensive state-wide program.

The pilot program funding was primarily intended to build capacity for comprehensive background checks in states. Additional state funding and fees from background check applications largely supported the ongoing cost of processing background checks. However, the pilot program's initial investment in improved infrastructure is expected to substantially reduce the costs of sustaining the program.

Figure 6 provides an overview of funding and program design for all participating states.

⁴⁴ See Appendix B for a matrix of disqualifying crimes by state

⁴⁵ This does not include funding for three states' abuse prevention pilot programs.

⁴⁶ Three states received additional funding to set up abuse prevention training programs under the pilot.

Figure 6: Overview of Background Check Pilot Program by State

State	Funding	Scope	Number of Participating Providers	Background Check Databases Used*
Alaska	\$3.4 million	State-wide	886	Alaska Public Safety Information Network, Alaska Court System/Court View and Name Index, Alaska Juvenile Offender Management Information System, Centralized Registry, Certified Nurse Aide Registry, NSOR, OIG, FBI
Idaho	\$2.7 million	State-wide	549	Idaho Transportation Department Driving Records, Adult Protection Registry, Child Protection Registry, Certified Nurse Aide Registry, NSOR, OIG, FBI
Illinois	\$3.0 million [†]	Ten Counties	180	Illinois Department of Corrections Inmate Database, Illinois Sex Offenders Registration, Certified Nurse Aide Registry, NSOR, OIG, FBI
Michigan	\$3.5 million	State-wide	4355	State Automated Fingerprint Identification System, Michigan Offender Tracking Information System, Michigan Internet Criminal History Access Tool, Public Sex Offender Registry, Certified Nurse Aide Registry, OIG, FBI
Nevada	\$1.5 million	State-wide	693	Nevada Department of Public Safety Central Repository, Certified Nurse Aide Registry, NSOR, OIG, FBI
New Mexico	\$1.7 million	State-wide	350	New Mexico Central Repository for Criminal History, New Mexico Employee Abuse Registry, Certified Nurse Aide Registry, NSOR, OIG, FBI
Wisconsin	\$1.5 million	Four Counties	210	Wisconsin State Criminal History Database, Wisconsin Department of Health and Family Services Background Check Database, Caregiver Misconduct Registry, Certified Nurse Aide Registry (including registries from other states), OIG, FBI

NSOR: National Sex Offender Registry

OIG: Office of Inspector General List of Excluded Individuals and Entities

FBI: Federal Bureau of Investigation Integrated Automated Fingerprint Identification System (IAFIS)

* As part of the pilot program, all states were required to conduct FBI criminal history checks. Current federal law also requires screening with Certified Nurse Aide Registries and the Office of Inspector General List of Excluded Individuals and Entities. For a glossary of background check databases, see Appendix A

[†] Illinois only spent \$1.3 million of grant funds awarded

Source: State Reports (Appendix D) and State Presentations from CMS Background Check Pilot State Annual Conference, June 12-13, 2007

III. Pilot Program Results

“It’s working. We’re catching them.”⁴⁷

– Mel Richardson, program manager of Alaska’s Background Check Unit

“The applicants that have been excluded from employment are not the types of people Michigan could ever allow to work with our most vulnerable citizens. We have prevented hardened criminals that otherwise would have access to our vulnerable population from employment.”⁴⁸

– Orlene Christie, Director of the Legislative and Statutory Compliance Office at the Michigan Department of Community Health

“This pilot may have been just a project for some but we in Illinois have tried to absorb it into our social consciousness and truly realize the importance that the results of this pilot may play on individual lives. Most of the health care employers selected to participate in the pilot rallied around this effort with an exceptional enthusiasm.... The value of the pilot program is indisputable.”

- Jonna Veach, Project Director of the Illinois Background Check Program

A. Comprehensive Background Checks are Effective

Over 9,500 Prior Criminals Were Barred from Working in Long-Term Care Facilities

In all states, the pilot program proved successful in preventing thousands of persons with a record of substantiated abuse or a serious criminal record from working in long-term care settings. During the program pilot period, over 220,000 individuals who applied for jobs in long-term care settings were screened. Of these, 9,509 applicants (4.3 percent) were barred for disqualifying crimes. The number of applicants barred from employment due to background checks as part of the pilot program are shown in Figure 7.

The total number of applicants screened and the number of applicants barred varied greatly among states, primarily because of the difference in the geographical scope of the programs. Michigan, a large state that conducted comprehensive state-wide screening was able to screen significantly more applicants than smaller states who conducted their programs in a few counties.

⁴⁷ Alaska’s presentation at the CMS Background Check Pilot State Annual Conference, June 12-13, 2007, Marriot Baltimore/Washington Int’l Airport, Baltimore, Maryland

⁴⁸ Written Testimony submitted at the U.S. Senate Special Committee on Aging hearing: The Nursing Home Reform Act Turns Twenty: What Has Been Accomplished, and What Challenges Remain?, May 2007

In many states, registry checks were the first method used for screening job applicants. As a result, the majority of applications disqualified due to background check findings were excluded because of registry checks (67 percent). Some states, however, did not report the number of applicants disqualified by registry checks, and Idaho and Alaska reported fewer applicants excluded by registry checks compared to the number of applicants excluded by state and federal criminal background checks.

Overall, state criminal background checks and federal FBI checks were responsible for identifying a total of 3,128 applicants with a disqualifying criminal background who had not been identified through the registry checks. While some applicants were excluded by both state and federal background checks, most applicants excluded by state and federal background checks were only excluded by one type of check (60 percent).

Of all the states, the Michigan pilot program not only had the most number of people screened, but it also had the highest percentage of individuals identified for disqualifying crimes. Of the 115,000 applicants screened, nearly 7,000 (6 percent) were barred from employment. This success was due in large part to the state's use of an integrated system which included a large number of other databases and allowed it to easily identify individuals with disqualifying criminal records.

Figure 7: Number of Applications Disqualified by Background Checks

		Alaska	Idaho	Illinois	Michigan	Nevada	New Mexico	Wisconsin	Total
(1)	Data collection period	4/06-9/07	10/05-9/07	10/06-9/07	4/06-9/07	1/06-9/07	4/06-9/07	02/06-9/07	
(2)	Total applicants screened	24,204	21,446	6,315	115,651	27,875	13,145	14,748	223,384
(3)	Excluded by registry checks and screening procedures	78	34	N/A*	5,936 [†]	N/A*	N/A*	333	6,381
(4)	Excluded by state criminal history check only	362	N/A [‡]	85	499	0	20	283	1,249
(5)	Excluded by FBI fingerprint check only	13	N/A [‡]	33	225	217	103	24	615
(6)	Excluded by both state and FBI checks	24	N/A [‡]	79	272	132	146	N/A [§]	653
(7)	Total excluded by name and fingerprint checks (state and FBI combined)	399	611	197	996	349	269	307	3,128
(8)	Total excluded by ALL checks (registries, state, and FBI criminal history checks)	477	645	197	6932	349	269	640	9,509
(9)	Percent of applicants excluded by all checks	2.0%	3.0%	3.1%	6.0%	1.3%	2.0%	4.3%	4.3%

(1) Data collection period differs by state due to variation in pilot start dates and data reporting systems

(7) Exclusions for fingerprint checks do not include the number of individuals who withdrew their application at the fingerprint stage (the deterrent effect). Idaho, for example, notes in its state report that 240 individuals withdrew their application after completing the fingerprint portion of the background check.

* Registry checks were conducted in Illinois, Nevada, and New Mexico, but the number of applicants excluded by registry checks was not reported in these states

[†] Total number of applications that were excluded by registry checks in Michigan may include applicants who were excluded by multiple registries

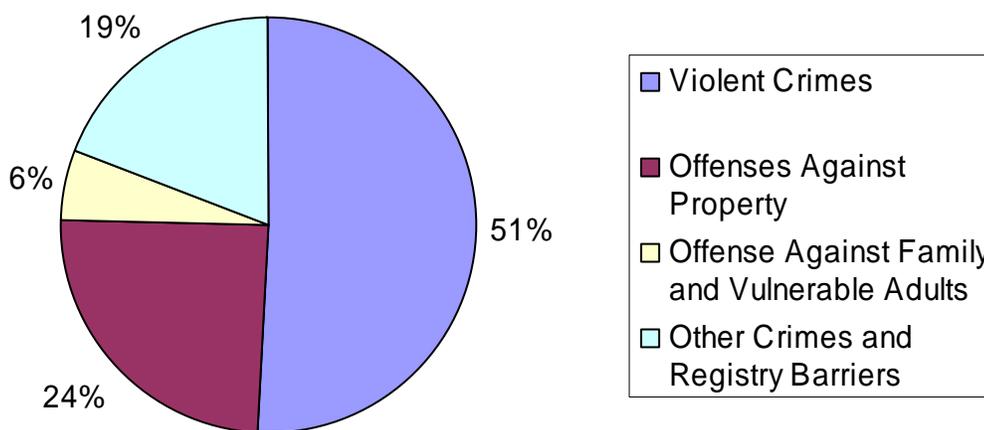
[‡] Idaho did not report the distribution of exclusions by type of check.

[§] Because WI providers ended the background check after the name-based state search when disqualifying information was discovered, no applicants are disqualified by both a State fingerprint hit and FBI fingerprint check (#6).

Source: State Reports (Appendix D)

Although the specific disqualifying crimes differed from state to state, data from Alaska suggests that the majority of background check exclusions were for violent crimes, such as assault, rape and murder (Figure 8).⁴⁹ About 6 percent of applicants screened in Alaska had a previous conviction for a crime against a family member or a vulnerable adult, such as an elderly person.

Figure 8: Category of Disqualifying Crimes Identified Through Background Checks, Alaska, 4/06-9/07



Source: Alaska State Report (Appendix D)

Note: Data on disqualifying crimes were collected between April 2006 and September 2007

FBI Fingerprint Checks Played an Important Role

Under the pilot program, states were required to conduct FBI criminal history checks in addition to state police and state registry-based background checks. By adding FBI checks, states were able to identify a large number of applicants with disqualifying crimes who were missed by state checks. Among those states that reported the number of applicants barred by FBI checks exclusively, federal criminal history records were responsible for 6.5 percent of all exclusions and 19.7 percent of the criminal history exclusions (see Figure 7).

Data from Alaska demonstrate that FBI checks are important for eliminating violent felons. Seventy-five percent of FBI exclusions in the Alaska pilot were due to murder, assault, rape and other violent crimes, compared to about 50 percent of background check bans in all seven pilot programs that were excluded for those crimes.⁵⁰

⁴⁹ These crimes that direct harm individuals are classified legally as “offenses against the person.”

⁵⁰ Alaska State Report. Violent crimes are classified as “offenses against the person”

The importance of federal checks in other states varied. In Wisconsin, for example, the state identified most of the excluded applicants through state registry and name-based criminal history checks, while Nevada identified most through an FBI criminal history check.

Employers Were Generally Satisfied with Background Check Programs

Participating long-term care providers in many states reported high rates of satisfaction with the more effective and efficient background check procedures established as a result of the pilot. In Idaho, a survey of providers found that 86 percent felt that the background check requirement was successful and 73 percent of providers would choose to continue to use the background check system, even if the checks were optional with a fee (see Figure 9).

Figure 9: Satisfaction Survey of Participating Idaho Long-term Care Providers

	Yes	No
<i>Was the background check requirement successful in screening potential workers?</i>	86%	15%
<i>Was the quality of employees hired increased due to the background check requirements?</i>	63%	37%
<i>If funding was available, should the background check requirement continue?</i>	88%	12%
<i>If funding was not available, should the background check continue?</i>	61%	39%
<i>If the background check was optional with a fee, would the facility or provider continue to use it as a resource?</i>	73%	27%

**Survey of 204 providers and facilities, response rate = 65%
Source: Idaho state report (Appendix D)*

B. Integrated Background Check Programs are Efficient

Processing Time Was Cut Significantly

Many states were able to substantially reduce the time required to complete the background check process. For example, Illinois reported the time to complete background checks was reduced from as much as two months to as few as two days (see Figure 10).

Idaho and Illinois reduced their background check processing times to a few days by using an internet-based background check system accessible to authorized providers. In

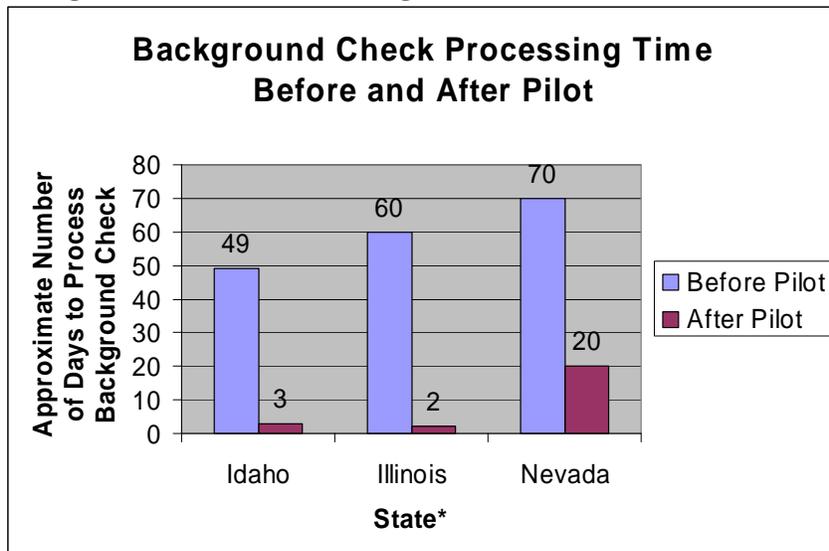
addition, digital livescan fingerprint technology allowed for faster processing of fingerprint checks.

By reducing processing times for background checks, states virtually eliminated the risk that applicants with serious criminal histories could go undetected by moving from one employer to another. The Nevada state report notes, “In 2006, we identified six individuals operating in a similar pattern [of job hopping], but as processing times improved, we saw fewer incidents of this practice. In 2007, we observed no such cases.”⁵¹

Several states also noted that a significant number of applicants withdrew their applications prior to a fingerprint check. In Michigan, for example, 17.9 percent of applicants withdrew their applications prior to fingerprinting. While data do not exist on the reasons for these withdrawals, some state officials believe that the faster and more accurate fingerprint checks may act as a deterrent for individuals with a criminal history.⁵² However, no adverse impact on the number of individuals applying for jobs in the long-term care sector was reported in the final state reports for the pilot program.

Reducing the time for completing background checks did allow states to screen more workers in long-term care settings. In Idaho, for example, the number of applications screened nearly doubled from 15,000 to 28,000 applications after a web-based system was implemented.

Figure 10: Background Check Processing Time Before and After Pilot Program



* Only states that reported estimates for background check processing time in their final reports are included above, but all states reported some reduction in processing time as a result of the pilot.

Source: State Reports (Appendix D)

⁵¹ Nevada State Report, p. 10. Appendix D.

⁵² See for example Nevada State Report, Appendix D

States Developed Innovative Models to Integrate Existing Databases

Pilot states succeeded in establishing comprehensive background check programs that were able to incorporate and coordinate various registry checks (e.g., state Certified Nurse Aide registries and registries established for sex offenders and child care workers), as well as federally-required checks against the HHS Office of Inspector General's provider exclusion list, and criminal history checks at the state and federal level. All states used their grant funds to establish more coordinated linkages and working relationships between different agencies charged with administering various registries and databases.

Some states also created an online access point for providers and officials. In Michigan, for example, state officials contracted with researchers at Michigan State University to create a single database that was efficient for providers and allowed researchers and state officials to clearly understand at what point an individual was excluded, whether it be at the registry check level, or at the level of a state or FBI criminal history check. The information collected allows the state to examine the effectiveness of a registry check or fingerprint check.

Appeals Processes Allowed for Adequate Protections

All states instituted processes to allow workers to appeal results of a background check. These processes varied in scope by state. Some states only allowed individuals to appeal if they could demonstrate there was an error in the background check finding, while other states allowed individuals to appeal the definition of a disqualifying crime on a case-by-case basis. Although a small percentage of people who were barred from employment based on a disqualifying crime appealed the decision, a large percentage of those who did appeal were granted an exemption. Data from the three states submitting appeals data are summarized in Figure 11.

Figure 11: Excluded Applicants, Appeals Requested, and Appeals Approved

State*	Excluded Applicants	Appeals Requested	Appeals Approved
<i>Alaska</i>	477	42	31
<i>Illinois</i>	197	159	142
<i>New Mexico</i>	269	87	57

Note: Only states that reported appeals data are included in the above table.

Source: State Reports (Appendix D)

C. Investments in Background Check Systems are Economical

“Rap Back” Technologies Can Reduce Cost in the Long-Term

Many pilot states used information technology to reduce the costs of fingerprint checks. Illinois, Alaska, and Michigan instituted rap back programs, in which any new crimes that an individual commits after an initial background check are flagged in the state’s database and reported back to the database and the employer. As a result, these states can avoid the cost of re-fingerprinting for the individuals each time they change jobs. All three states that used a rap back program noted the cost-saving potential and other benefits of a rap back system at a state level, but the full cost savings were limited because these states were not able to implement a rap back system to help reduce costs for the FBI criminal history check. In the future, additional cost savings may be possible if the FBI implements a federal rap back system.

States were also able to reduce costs by obtaining fingerprints using digital technology. Often referred to as “livescan,” digital fingerprinting reduces costs over time because these scans are significantly more accurate than inked fingerprints on cards, which are prone to error and misinterpretation. In addition, fingerprint scans can be transmitted electronically and read using automated technology, eliminating human error and reducing the need for additional staff. In order to efficiently distribute livescan equipment, some states established mobile units and online reservation systems for an applicant to schedule a fingerprint check.

Comprehensive Programs Create Efficiencies

As the programs expanded, they were able to achieve additional cost savings. In particular, states found that as they expanded their programs, they were able to negotiate better deals with vendors. Wisconsin, for example, reported that their actual cost for background check processing (\$297,533) was less than half of the projected cost (\$634,132). Such savings signal that similar economies of scale may be achievable in some other states.

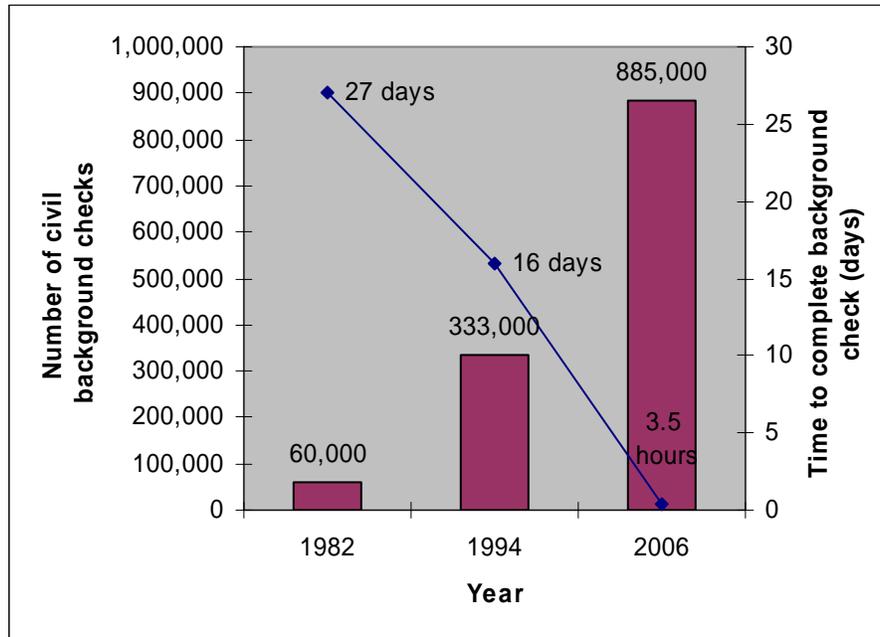
Some states were able to apply the improvements in their screening programs for long-term care workers to other existing background check programs. Alaska, for example, uses its newly improved state criminal history database (APSIN) to screen many employees who work with children.

A welcome cost saving that occurred during the pilot program was a reduction in the fees charged for federal FBI criminal history checks and a reduction in processing time. In June 2008, the FBI formally announced in a regulation that it was reducing the fees for civil fingerprint checks due in part to increased demand.⁵³ Figure 12, shows historical trends in fingerprint submissions and processing times, suggesting that improvements in

⁵³ “FBI Criminal Justice Information Services Division User Fees.” *Federal Register*. 73(119) June 19, 2008

technology and economies of scale may continue to drive further fee reductions and shorten processing time if additional states expand and improve their background check systems for workers.

Figure 12: Number of FBI background checks submitted and processing time, 1982-2006



Source: "FBI Criminal Justice Information Services Division User Fees." *Federal Register*. 73(119)

States Continuing Background Check Programs

All states have continued their comprehensive background check programs after the completion of the pilot in September 2007. Many states have expanded their programs by (1) requiring additional categories of workers to have mandatory background checks (e.g., workers who have "direct access" to a resident/beneficiary's property, financial records and/or treatment information), (2) requiring workers that have direct access to other vulnerable populations (e.g., children) to undergo the same type of background check as those who have access to older people, and/or (3) increasing the types of settings that are required to have background checks done on their employees before they are hired (e.g., general acute-care hospitals).

All of the states concluded that including fingerprint-based background checks was a vital part of the overall criminal background check process. Prior to participating in the pilot, Illinois and Wisconsin did not have widely used fingerprint-based background checks in place. They used the pilot funds to compare their existing name-based background checks with fingerprint-based background checks. The remaining states (Alaska, Idaho, Michigan, Nevada and New Mexico) already had fingerprint-based background checks in place. New Mexico used the pilot funds to improve the quality of their ink-based fingerprint cards by providing training and technical assistance. Alaska, Idaho and Nevada used pilot funds to test the feasibility of converting from ink-based

fingerprint cards to livescan (electronic) fingerprinting. Michigan already had livescan fingerprinting in place. They used the pilot funds to enhance their integrated online background check system.

Several of the states (Alaska, Illinois and Michigan) planned to expand their fingerprint-based background check by implementing a “rap back” process. The rap back process will enable state law enforcement to notify the state agency requesting the information as to whether or not the applicant has been convicted of any subsequent criminal activity after the initial background check was conducted. Rap back processes save time and money because the fingerprints are kept on file and do not have to be retaken and resubmitted each time a person applies for a new job.

Overall, the program was successful in helping states build the infrastructure they need to conduct comprehensive, coordinated and cost-effective background checks for long-term care employees. As a result, these programs are helping to create a safer workforce for frail elders and individuals with disabilities.

D. State Pilot Program Summaries

Alaska

Alaska CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$3,400,000

Abuse prevention training program award: \$1,500,000

Administering State Agency: Department of Health and Social Services

Alaska's background check program was already in the process of being restructured when they received a grant from CMS. As the largest state in the country, Alaska's extreme geography and expansive rural regions led to large, decentralized jurisdictions that often overlapped. Faced with these unique challenges, Alaska looked to the pilot program to help streamline their existing background check program for long-term care workers.

In addition to the scope of workers and facilities required by the Pilot to be included as part of the background check program, Alaska's statute required background checks for any individual or entity that was required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department to provide for the health, safety and welfare of persons who are served by the programs administered by the departments. This included individual service providers, such as public home care providers, providers of home and community-based waiver services and case managers coordinating community mental health services.⁵⁴

Two key goals of Alaska's pilot program were to 1) create a single administrative Background Check Unit within the Department of Health and Social Services (DHSS) to oversee all aspects of the background check program and 2) adopt uniform definitions and descriptions of disqualifying crimes or findings of substantiated abuse applicable to all licensed and certified health and long-term care programs under the authority of the DHSS. The first element, reorganizing the DHSS, was necessary because the system had 19 different licensing and certification programs that were being administered under 12 different statutes and 15 different sets of regulations. The second element, adopting

⁵⁴ Background checks are performed on 1) all administrators or operators; 2) individual service providers; 3) employees, independent contractors, unsupervised volunteers, officers, directors, partners, members, or principals of the business organization that owns an entity or a board member if that individual has: regular contact with recipients of services; access to personal or financial records maintained by the entity or provider regarding recipients of services; or control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a relative of the individual who has authorized that individual to make financial decisions for that relative; recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or recipient for whom a court has authorized that individual to make financial decisions; 4) individuals who reside in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or 5) any other individual who is present in the entity and would have regular contact with recipients of services.

uniform definitions, was meant to provide consistency in the way individuals were evaluated during the background check process.

The first step of Alaska's background check process consisted of checking registries and court records from Alaska as well as from those states the individual has lived in during the past 10 years. The registries searched include: Alaska Public Safety Information Network (APSIN); Alaska Court System/Court View and Name Index; Juvenile Offender Management Information System; Centralized Registry (i.e Employee Misconduct Registry); Certified Nurses Aide Registry; National Sex Offender Registry; Office of the Inspector General List of Excluded Individuals and Entities; FBI fingerprint check; and any other records/registries DHSS deems are applicable. After this information was reviewed, a fitness determination was made. If no disqualifying information was found, a provisional authorization that the applicant can work was posted on the Background Check Unit website. The information was protected so that only the entity hiring the individual has access to this information.

The second step involved the submission of fingerprints for state and FBI criminal history review. If no disqualifying results were found, the provisional authorization was replaced with final authorization, and a final determination letter is sent to the individual, the employer, and the department or agency having oversight of the entity.

Finally, the individual's name was then flagged in the Alaska Public Safety Information Network. This is commonly known as a "rap back" process which means that DHSS would be notified on a real-time basis if there were any new or subsequent criminal activity that was considered a disqualifying crime and required that the individual be removed from working with vulnerable persons in health and long-term care settings.

Results

During the pilot phase, Alaska followed their original program development plan. The state processed 24,304 applications for background checks and identified 477 individuals with barring conditions including 283 for violent crimes, 136 for offenses against property, and 31 for offenses against family and vulnerable adults.

Post-Pilot

After the pilot ended in September 2007, Alaska's Background Check Unit continued to improve the accessibility and availability of fingerprinting services for rural residents by installing 24 livescan (electronic) fingerprinting machines in 23 rural Office of Children's Services locations. This is in line with Alaska's goal to expand the background check to include individuals working directly with children served by state-licensed foster care and childcare. The state has also begun to expand background checks to all staff serving vulnerable populations in programs that are required by statute or regulation to be licensed or certified by DHSS or who are eligible to receive payments, in whole or in part, from the department. After the Pilot ended, Alaska picked up the cost of continuing

to operate the Background Check Unit through a combination of state funds and fees collected by the program.

Idaho

Idaho CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$2,072,026

Administering State Agency: Idaho Department of Health and Welfare

Prior to participating in the CMS Background Check Pilot Program, Idaho conducted background checks for people who worked with children and vulnerable adults in facilities such as foster care and adoption, child care, developmental disabilities, psychosocial rehabilitation, and mental health clinics. They had a paper-based background check process in place that involved mailing applications and fingerprint cards to the Idaho State Police for processing. Applicants had to wait approximately six to eight weeks to receive background check clearance. To address inefficiencies with this process, Idaho used the pilot funds to implement a web-based application system that allowed fingerprints to be collected and transmitted electronically. A more efficient way of processing applications was necessary since the pilot required Idaho to expand its list of facilities requiring employee background checks to include nursing facilities, assisted living or residential care facilities, intermediate care facilities for persons with mental retardation, home health, hospice, and hospitals with swing beds.⁵⁵ Providers, employees, and contractors with access to vulnerable individuals in these types of long-term care settings were required under the pilot to have background checks.⁵⁶

Idaho's new web-based background check system allowed for: 1) online application submission; 2) online fingerprint scheduling; 3) real-time status check of application, and; 4) email notifications informing applicants and employers of the status of each application as it goes through the process. Applicants began the process by completing an online application that required them to disclose any crimes or other relevant information in their background. Next they had to schedule a fingerprint appointment in one of several livescan (electronic) fingerprint offices throughout the State.⁵⁷ Then the applicant either printed out the application, signed it and had it notarized, and brought it to their fingerprint appointment; or submitted the application electronically and had their signature notarized when they were fingerprinted. By submitting the application, the individuals authorized the Criminal History Unit to complete the background check, obtain necessary information, and release it in accordance with the applicable laws. If no disqualifying offenses were disclosed in the notarized application, the individuals were granted a provisional work period if he or she is fingerprinted within 21 days, and then another provisional work period until the background check was completed.

⁵⁵ Volunteers in these settings were excluded from background check requirements.

⁵⁶ Although the pilot included personal care attendants as part of the required entities, Idaho already had existing regulations requiring personal care attendants to have a background check therefore they were not included in the pilot project.

⁵⁷ A small percentage of applicants, who live in remote towns or cities, had a law enforcement officer roll and submit a fingerprint card.

During the fingerprint appointment, the Criminal History Unit completed the required registry checks against the following registries: Idaho Child Protection Registry, Idaho Adult Protection Registry, National Sex Offender Registry, Office of Inspector General List of Excluded Individuals and Entities, Nurse Aide Registry, and Idaho Department of Motor Vehicles Driving Records. Next, the applicant's fingerprints were transmitted to the Idaho State Police who conducted a comparison against State crime records. The Idaho State Police then forwarded the fingerprints electronically to the FBI for comparison against national criminal records. If no criminal record or registry information was found, the Criminal History Unit was notified and they changed the individual's status in the database to "clear." If a criminal history was found, the Idaho Criminal History Unit reviewed the information and made a determination based on State's list of disqualifying crimes.⁵⁸ Applicants and employers could check on the status of the application at any point during this process by logging on to a secure website. Applicants and employers were notified via email when the background check was complete and/or if any disqualifying offenses were found. Idaho does not have a "rap back" process in place where new or subsequent criminal activity is automatically sent to the Criminal History Unit.

Results

Between October 2005 and March 2007, Idaho screened 20,117 applications of which 648 (3 percent) were denied access or not allowed to work with vulnerable persons in long-term care settings. 408 individuals were denied access due to information found during a criminal record or other record search and an additional 240 withdrew their applications after they disclosed a disqualifying offense or other incident would have likely resulted in a denial.

Post-Pilot

At the end of the pilot, Idaho's Division of Medicaid surveyed the directors of the participating long-term care settings to find out whether they thought the background checks should continue after the Pilot ended. The response was overwhelmingly positive. Based on the combination of successful screening results, and positive feedback from the provider community, Idaho's Division of Medicaid modified their regulations to continue requiring background checks for: home health agencies, skilled nursing homes, residential assisted living facilities, and intermediate care facilities for the mentally retarded. Hospice agencies and hospitals with swing beds were not included in the modified regulations and did not continue requiring background checks for job applicants. During the Pilot, grant funds were used to cover the cost of the background checks. Post-pilot, the fee for the background checks will be paid for by either the applicant or the provider.

⁵⁸ Idaho's list of disqualifying crimes is included in Appendix B

Illinois

Illinois CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$3,000,000

Administering State Agency: Illinois Department of Public Health (IDPH)

Prior to participating in the Background Check Pilot Program, Illinois relied primarily on name-based background checks for direct health care workers. Fingerprint background checks were performed only if name-based checks revealed multiple common names, a waiver request was made for disqualifying convictions, or the applicant challenged the results. Recognizing name-based background checks were not as effective or efficient as fingerprint-based checks. Illinois used the pilot funds primarily to test the feasibility of implementing a fingerprint based background check process in their state.⁵⁹ To institute a fingerprint-based system, and automate all the background check processes, Illinois amended the state's Health Care Workers Background Check Act.

Illinois developed a background check process for the Pilot that included several steps. First, an applicant seeking a position in a long-term care facility where he or she may have access to a resident; the resident's living quarters; or the resident's financial, medical or personal records, was asked to fill out a disclosure and authorization form. The employer logged into the Illinois Department of Public Health (IDPH) online Web portal to the Health Care Worker Registry (HCWR)⁶⁰ to check for any disqualifying offenses or substantiated findings. If no offenses or substantiated findings were found, the employer checked the following registries through links provided in the Web application: Office of Inspector General List of Excluded Individuals and Entities; Illinois Sex Offenders Registration, Illinois Department of Corrections Sex Registrant, Inmate Search and Wanted Fugitives; and National Sex Offender Public Registry. If no matches were found, the applicant was sent to a livescan vendor to have his or her fingerprints electronically scanned. After the applicant's fingerprints were scanned, the livescan vendor sent a data file to IDPH who then sent it to the Illinois State Police (ISP).

⁵⁹ The scope of the Pilot in Illinois originally included the entire state and all the requested provider types but due to the high cost of background checks, the scope of the Pilot was negotiated down to include only 10 counties (i.e., Boone, Carroll, Jo Daviess, Lake, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago) in the northern part of the state and only five of the mandated provider types (i.e., skilled nursing facilities/nursing facilities; intermediate care facilities for persons with mental retardation, home health agencies, long-term care hospitals/hospitals with swing beds and home-and-community-based service facilities over eight beds). The smaller scope allowed grant funds to be used to subsidize the cost of the fingerprint background checks. The reduced scope retained a true representation of the geographic, social and economic structure of the entire state. Illinois consists of an extraordinary amount of border counties where workers can live in one state and work in another. Eight of the ten counties bordered another state. The scope captured enough rural area to be characteristic of the plain states. Illinois has one of the most concentrated metropolitan areas in the United States; therefore, one of the counties included in the pilot was a highly populated urban area.

⁶⁰ Illinois received additional grant funds from CMS to develop a web-based application system to coordinate their background checks, the IDPH Online Health Care Worker Registry (HCWR).

conducted a state-based criminal history records search and forwarded the file to the FBI for a national search. The results of the background check were sent to IDPH electronically and matched to the applicant's social security number and transaction control number (provided by the livescan vendor). If no criminal record was found, the applicant's name was moved to the status of "Direct Access Worker" and an automatically generated email was sent to the employer with notification that the applicant was eligible to work. If any criminal record was found, the IDPH reviewed the information and made a determination as to whether there was a disqualifying conviction. As soon as the determination was entered into the web application an automatically generated email was sent to the employer stating whether the conviction was disqualifying. The applicant was mailed a copy of the rap sheet along with a waiver application (if applicable) when the conviction was disqualifying. If the applicant was convicted of any subsequent criminal activity after the background check has been completed, the ISP automatically notified the IDPH as part of their "rap back" process.⁶¹ As soon as a determination is made by the IDPH on the conviction, an email was automatically generated and sent to the employer.

Results

Illinois was late entering the pilot study because of difficulties faced early on (i.e., having to reduce the scope of the pilot). However, between October 2006 and September 2007, 6,315 background check applications were submitted to IDPH for screening of which 3.1 percent (1,924) were either disqualified based on prior offenses, substantiated findings, or criminal histories or were withdrawn by the applicants themselves.

Post-Pilot

Illinois is currently in the process of implementing a fingerprint-based background check process statewide, using all the automation features introduced during the pilot. Fingerprint background checks are now required for unlicensed direct care workers for multiple health care settings and unlicensed workers who have (or may have) contact with residents, residents' living quarters, or residents' personal, financial, and medical records in many long-term care settings.⁶² Furthermore, since health care providers are now required to initiate fingerprint background checks through the Department of Public Health's (IDPH) web application, IDPH can legally store the fingerprints and use the rap back to notify IDPH of any future convictions that are associated with those fingerprints.

⁶¹ A "rap back" system involves maintaining the fingerprints of individuals who have been cleared in a law enforcement database, allowing detection of any subsequent disqualifying crimes that these individuals may commit. When this occurs, the database notifies the department that requested the background check as part of their oversight for a particular industry (e.g., Illinois' Department of Public Health), which in turn notifies the employer of their employee's relevant arrest or conviction.

⁶² Long-term care settings currently required to screen applicants in Illinois include assisted living and shared housing establishments; community living facilities; children's respite homes; freestanding emergency centers; full hospices; home health agencies; hospitals; life care facilities; long-term care settings; post-surgical recovery care facilities; and sub-acute care facilities.

Michigan

Michigan CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$3,500,000

Abuse prevention training program award: \$1,500,000

Administering State Agency: Michigan Department of Community Health

Michigan used the funds from the CMS Background Check Pilot program to enhance the comprehensive background check program they already had in place. The major improvement they made was to develop, in partnership with Michigan State University, an online application that provides health and human service agencies with a systematic process of conducting the background checks. In addition to receiving funds to supplement and expand their background check program, they were one of three states awarded an additional \$1.5 million to create and deliver a comprehensive adult abuse and neglect prevention-training program for employees and managers of long-term care settings.

Prior to the pilot, Michigan performed background checks on a limited number of employees in nursing homes, county medical care facilities, homes for the aged, and adult foster care facilities. They relied primarily on name-based background checks with fingerprint background checks required only for employees residing in Michigan for less than three years. Using pilot funds, Michigan expanded the scope of facilities covered to also include hospices, hospitals with swing bed long-term care units, assisted living facilities that are classified in Michigan as “homes for aged,” psychiatric hospitals, and intermediate care facilities for the mentally retarded. They performed background checks on all prospective long-term care employees who will have direct access to patients with plans to check current employees in the future.

Michigan’s background check program had three stages. First, the provider entered the applicant’s personal information into the online system where it was screened against five integrated registries: Office of Inspector General List of Excluded Individuals and Entities, Michigan Nurse Aide Registry, Michigan Public Sex Offender Registry, Offender Tracking and Information System, and Internet Criminal Access Tool. Second, if no convictions for a relevant crime were found, the applicant was required to complete a digital fingerprint scan which was submitted to the Michigan State Police and then to the FBI. Third, if a match was found, a notice was sent to either the Department of Community Health or the Department of Human Services where the department staff examined the applicant’s criminal history to see if it was exclusionary.⁶³

During the pilot, Michigan developed new functionality to integrate a rap back process that would allow the Michigan State Police to legally store the fingerprints and provide

⁶³ Michigan’s list of disqualifying crimes can be found in Appendix B.

either the Michigan Department of Community Health or Department of Human Services with notifications of any future convictions that are associated with those fingerprints. One limitation of Michigan's background check system was a limited appeal process if an applicant was deemed inappropriate to work in a facility due to their criminal background. Appeals were only granted to applicants if their criminal record was found to be inaccurate, or if the record should have been expunged from the record.

Results

Because Michigan had such a comprehensive background check system already in place, between March 2006 and September 2007 they were able to process 103,251 background check applications for those applying to work in long-term care settings. During that 18 month period, they excluded 6,932 applicants (6.0 percent) from working with vulnerable older persons because of prior offenses, substantiated findings, or criminal histories.

In 2006, Michigan enacted a law that not only expanded the scope of facilities that were required to perform background checks on potential employees, but also expanded the types of workers required to have background checks. In addition to "direct care" workers (people who provide personal, hands-on care to residents/beneficiaries), workers who had "direct access" to a resident/beneficiary's property, financial records, and/or treatment information also had to undergo a background check.⁶⁴ The law also required Michigan's Department of Community Health to cover the cost of background checks for long-term care workers with no charge to the applicant or the facility. Approximately one-quarter of the total costs were to be reimbursed through a Medicaid match. State officials have reported substantive cost-savings as a result of the Michigan program, including one-year crime prevention savings of \$37 million.

Post-Pilot

One important component of Michigan's background check program that continues to evolve is the online application. A second component which Michigan continues to work on is the appeals process for applicants that have been denied employment because of their past criminal activity. The Michigan Workforce Background Check system is being modified to incorporate and track the appeals process so that people with minor infractions can have the opportunity to demonstrate that they have been rehabilitated. Michigan has requested and received approval from HHS to bill Medicaid for the cost of FBI checks as an allowable administrative cost.

⁶⁴ Private duty long-term care workers were not included.

Nevada

Nevada Criminal Background Check Pilot Program for Long-Term Care Workers

Grant award: \$1,891,018

Administering State Agency: Nevada State Health Division

Nevada has been conducting fingerprint-based state and national criminal background checks for certain long-term care settings since 1997. As one of the fastest growing states in America, many of Nevada's residents have lived and worked in other states, making a national fingerprint background check critical for long-term care workers. Before the Pilot, the majority of fingerprints were collected manually using ink-based cards. These cards first had to be scanned by the Nevada Department of Public Safety for the state-based check, and then mailed to the FBI for the national check. This process took 90 to 120 days and often required re-fingerprinting due to the poor quality of the ink-based cards. Realizing the need to also check applicants against the FBI registry, Nevada used the majority of their Pilot funds to improve their existing background check program by installing livescan (electronic) fingerprinting machines across the state. By increasing the number of locations from which applicants' prints could be submitted electronically, they were able to significantly reduce the processing time of fingerprint background checks.

As part of the Pilot, Nevada expanded the scope of workers who were required to have a criminal background check.⁶⁵ It now includes all prospective long-term care employees who will have direct access to patients and independent contractors working in intermediate care facilities, skilled nursing facilities, residential care facilities, and agencies that provide personal care services and/or nursing care in the home. Persons applying for a license to operate intermediate care facilities, skilled nursing facilities, and residential facilities for groups must also undergo a criminal background check.

Under Nevada statute, providers were required to submit the employee's fingerprints to the Department of Public Safety, which conducted the background check search and notifies the provider and the Bureau of Licensure and Certification of the results.⁶⁶ Although Nevada does not conduct name-based criminal checks (except in the rare instance where an individual's fingerprints cannot be taken) they do check applicants against the National Sex Offender Registry, the Central Repository for Nevada Records of Criminal History, and the Certified Nurses Aide Registry. The fingerprint check serves as a back-up and the long-term care agencies are required to keep a copy of the fingerprints submitted to the Central Repository for Nevada Records of Criminal History for future inspections by the Health Division.

⁶⁵ The facility must do a criminal history background check when the employee is first hired and at least every five years that the person remains employed there.

⁶⁶ Prior to the pilot, the Department of Public Safety only notified the Bureau of Licensure and Certification if an applicant had a criminal background or a disqualifying offense. To streamline and track the background check process, the Department of Public Safety now shares the results of all background checks with the Bureau of Licensure and Certification.

Results

At the end of the pilot, Nevada had installed 37 new livescan fingerprinting sites across the state thus drastically reducing the average time it took to perform a background check from about 80 days to less than 20 days. In addition to providing more timely results to employers, shorter turn-around times also allowed Nevada to better identify previously missed “job-hoppers” who had criminal histories but were rarely caught. Between January 2006 and September 2007, Nevada excluded 349 people (1 percent) who applied for health care positions because they had criminal backgrounds or disqualifying offenses. Although this percentage seems low, it may reflect effective screening of applicants by employers before they submitted fingerprints, or it may be that increased awareness of the background check program now acts as a deterrent for people with criminal histories.

Post-Pilot

After the pilot, Nevada has continued to expand the background check program and has assumed portions of the cost of fingerprint-based criminal history background checks for prospective long-term care employees.

New Mexico

New Mexico CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$1,100,000

Administering State Agency: New Mexico Department of Health

Since 1999, New Mexico's Caregivers Criminal Screening Act has required health care facilities to perform nationwide and statewide criminal background checks on persons whose employment or contractual service with a care provider include direct care or routine and unsupervised physical or financial access to any care recipient⁶⁷ served by that provider.⁶⁸ The Act requires over 20 different types of long-term care settings to screen direct care employees.⁶⁹ However for the purposes of the pilot, New Mexico only reported data on the care provider types specifically identified in the CMS Background Check Pilot Program requirements (i.e., skilled nursing facilities/nursing facilities; long-term care hospitals/hospitals with swing beds; intermediate care facilities for persons with mental retardation; home health agencies; home-and-community-based service group homes over eight beds; and personal care agencies).

Due to a limited information technology (IT) infrastructure, New Mexico's Department of Health can not utilize livescan (electronic) fingerprinting. Instead, they use inked fingerprint cards to collect fingerprints. Although fingerprint cards are prone to low-quality fingerprinting, and their use can cause significant delays in processing, New Mexico did not use the pilot funds to upgrade their IT infrastructure to utilize electronic fingerprinting. Instead, they used the \$1.1 million they received from the Pilot to improve the efficiency of the existing background check process by: 1) providing for training and technical assistance for individuals who process fingerprints throughout the state; 2) developing an integrated web-based application allowing agencies and providers to access criminal history information as well as check on the training status of applicants; 3) establishing methods to monitor provider compliance; 4) replacing outdated scanning equipment and software; and 5) conducting research for statutory and regulatory reforms for system improvements.

New Mexico's criminal history screening had three stages: 1) application submission and processing, 2) employment fitness determination, and 3) administrative reconsideration (if needed).

⁶⁷ Care recipient is defined as any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities.

⁶⁸ The Caregivers Criminal History Screening Act stipulates that care providers can only conditionally employ a caregiver pending completion of the criminal history screening.

⁶⁹ See Appendix D for list of long-term care settings in New Mexico's Background Check Pilot Program Final Report.

During the first stage, application submission and processing, the applicant's personal information was entered into an online system and screened against three integrated registries: Nurse Aide Registry, New Mexico Employee Abuse Registry, and Caregivers Criminal History Screening Program (CCHSP) database. Simultaneously, their fingerprints were scanned and electronically sent to the New Mexico Department of Public Safety for a statewide criminal history search and to the FBI for a nationwide criminal history search. If the fingerprints come back without a match (no criminal history found), the CCHSP database is updated and the care provider facility is sent a letter stating that the applicant's background check is clear. If a match is found either through the registry screening or the fingerprint search, the application is sent to the CCHSP for further review.

The second stage of New Mexico's criminal background check, employment fitness determination, occurred only if the direct care worker is found to have a criminal history. The CCHSP legal assistants review the rap sheets and determine if there is any part of that individual's criminal history that would disqualify them from employment in accordance with the Caregivers Criminal History Screening Act and Rule. If there is an item in their criminal history that meets the threshold determined by the CCHSP disqualification list⁷⁰ then a disqualification letter is sent to the direct care worker and the care provider facility. If the item does not meet the threshold, it was updated in the CCHSP database and processed for clearance.

The third stage of the criminal background check, administrative reconsideration, is the appeals process. If an applicant is sent a disqualification letter by the CCHSP, they can request that their employment fitness determination be reconsidered. The applicant is required to submit all supporting documents and may be requested to provide additional material if the reconsideration committee deems it necessary.

Results

Between April 2005 and June 2007, New Mexico processed 13,145 applications and excluded 649 health care applicants (2 percent) because they had criminal backgrounds which included disqualifying crimes. One of the major successes of the pilot was identified as the substantial improvement in compliance by care provider agencies. New Mexico found that using resources to train, assist, and inform in the beginning of the background check process is a better use of resources than trying to fix problems as they arise during the process. New Mexico's background check process is budget-neutral to the state. The state paid for the background checks by charging the long-term care providers an application fee.

Post-Pilot

After the pilot ended, New Mexico continued the background check program for the long-term care settings identified in the pilot as well as the facilities identified in the 1999

⁷⁰ New Mexico's list of disqualifying crimes is included in their final report which can be found in Appendix D.

Caregivers Criminal Screening Act. In addition, New Mexico began screening general acute care hospitals. Post-Pilot, New Mexico also expanded the types of caregivers to include students who participate in clinical practicum trainings in both long-term care and general acute care (and meet the caregiver definition) as well as a select number of volunteers.

New Mexico has plans to improve the current IT system to allow providers to submit applications electronically now that the New Mexico Department of Public Safety has the capability to accept and match electronic fingerprints in their state repository. This process will allow CCHSP to end its current labor intensive process and reduce processing time.

Wisconsin

Wisconsin CMS Background Check Pilot Program for Long-Term Care Workers

Grant award: \$1,500,000

Abuse prevention training program award⁷¹: \$858,260

Administering State Agency: Department of Health and Family Services

Prior to participating in the CMS Background Check Pilot Program, Wisconsin lacked an automated system that utilized fingerprint-based background checks for long-term care employees. They used the pilot funds to test the feasibility of establishing a more comprehensive approach to screening applicants for jobs in the state's long-term care sector. Specifically, they enhanced their existing name-based criminal background check system by adding a fingerprint-based background check program.

Beginning in February 2006, Wisconsin received \$1.5 million to cover fingerprint-based background checks in four counties: Dane, Kenosha, La Crosse, and Shawano. These four counties were chosen to represent specific populations, communities, and trends that exist within Wisconsin – rural and urban settings, rapid and slow growth populations, border counties with high interstate movement, and a variety of commuting patterns.

The Pilot required providers to have background checks for prospective employees in long-term care settings, including skilled nursing facilities; nursing facilities; intermediate care facilities for persons with mental retardation; home health agencies; long-term care hospitals; hospitals with swing beds; hospice providers; personal care agencies approved by the Medicaid program; and community-based residential facilities with at least nine beds. The state trained these providers in procedures for conducting coordinated registry checks and criminal history checks, using both the state's name-based system and state and federal fingerprint-based checks. Records were searched in the following registries: Office of the Inspector General List of Excluded Individuals and Entities, Wisconsin Nurse Aide Registry, and Nurse Aide Registries in other states if the applicant had lived in another state. If the applicant had a finding in any of the above registries, he or she was denied employment and the background check ended. If the applicant passed the registry review, fingerprint scans were sent to the Wisconsin Department of Justice which simultaneously searched the state fingerprint database and forwarded the prints to the FBI for a federal fingerprint search and the Department of Health and Family Services for an Integrated Background Check Information System Check.

Wisconsin employers have long been accustomed to requesting and receiving full criminal history information on applicants – including the actual “rap sheets” that are

⁷¹ Michigan, Alaska, and Wisconsin were awarded additional funds to create a deliver a comprehensive adult abuse and neglect prevention-training program for employees and managers of long-term care settings.

maintained by law enforcement agencies, since Wisconsin is an open-record state, which means that criminal records are accessible to the public. Because of this, Wisconsin employers are more accustomed to making “fitness determinations” about crimes that are not automatically disqualifying under state and federal law, but which the provider may or may not deem sufficiently serious to exclude an applicant.⁷² State officials also believe that employers are sufficiently well-informed to use background check information appropriately for making decisions about an individuals’ suitability for employment.

State officials indicated that they did not have concerns about long-term care providers receiving applicants’ criminal information directly and making fitness determinations. State officials argue that there are minimal confidentiality risks in allowing providers to receive sensitive criminal history information on individuals as long as they observe proper security procedures for handling and storing this information. The Wisconsin Department of Justice conducts periodic audits to review security procedures used by providers.

Results

Overall, Wisconsin’s pilot program screened 14,748 applicants and disqualified 640 applicants based on a disqualifying criminal history finding (4.3 percent). Most long-term care workers who were disqualified due to their background check results were disqualified before the fingerprint background check. The staged pilot process allowed employers to stop the process as soon as any disqualifying information was found. Many employers indicated that they will continue the up-front free registry searches post-pilot.

Wisconsin officials reported that the overall results of the pilot verify the effectiveness of Caregiver Law requirements. Wisconsin’s process is straightforward. The state’s Offenses List is relatively short and the conditions apply to everyone the same way – all the crimes result in lifetime bans unless the person completes a Rehabilitation Review. Anomalies are handled on a case-by-case basis. This is a more effective process than establishing different time lines for different offenses. No records need to be kept at the state level regarding where individuals are employed and the state agency does not need to keep copies of fingerprints or background check results.⁷³

Many of the participating employers indicated they appreciated acquiring criminal history information through the FBI fingerprint-based background check, which eliminated the need to track down out-of-state results for caregivers who have lived outside of Wisconsin. They also said that overall the pilot provided a measure of increased assurance for long-term care employers that their employees did not have a history of committing abuse, neglect, or stealing client property. The state’s automated system developed during the pilot, decreased turnaround time for fingerprint-based background checks to between 24 and 48 hours for those submitted electronically.

⁷² Wisconsin’s list of disqualifying crimes is included in Appendix B.

⁷³ The Wisconsin Pilot program did not attempt to assess the value of a “rap back” system, in which fingerprint records are retained in a state-administered database so that individuals who have been checked and cleared once do not have to be re-fingerprinted each time they change jobs.

Post-Pilot

Wisconsin has required background checks for caregivers working in regulated healthcare and daycare settings since 1998 and supports a requirement for all caregivers nationwide to undergo a thorough background check. After the pilot, they have continued their background check program.

Abuse Prevention Training Program

Wisconsin was one of three states to receive additional funding to develop and provide innovative abuse and neglect prevention training for Wisconsin's direct caregivers. Wisconsin's experience with the Abuse and Neglect Prevention pilot project demonstrated a critical need for direct caregivers, especially those who are non-credentialed, to receive training that offers the behavioral and interpersonal skills to respond positively in potentially abusive situations. Wisconsin's efforts to provide meaningful training to direct caregivers and their supervisors and managers received an extremely positive response. The response was so great, and the need for training resources was so clear, that the Department identified additional funding to continue training through 2008.

Appendix A: Glossary of Background Check Databases

Selected Federal Background Check Databases

Name	Description	Source
FBI Integrated Automated Fingerprint Identification System (IAFIS)	IAFIS is a national database that links fingerprint records to a criminal history system maintained by the Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI). Fifty-five million subjects are included in the IAFIS Criminal Master File, which is compiled from voluntary submissions from federal, state and local law enforcement agencies. As an electronic database, it is available 365 days a year and agencies can receive responses within 24 hours for civil fingerprint submissions. For background checks in civil cases, however, a small fee is charged.	http://www.fbi.gov/hq/cjis/iafis.htm
National Crime Information Center (NCIC)	NCIC is a national database of criminal record history information, current fugitives, stolen property and other criminal justice information. The data in NCIC is provided by the FBI, authorized courts and Federal, state and local law enforcement agencies. NCIC is normally only available to law enforcement agencies, and outside requests must be made through a law enforcement agency that has access to NCIC.	http://www.fas.org/irp/agency/doj/fbi/isc/ncic.htm
National Sex Offender Registry (NSOR)	The Dru Sjodin National Sex Offender Public Registry (NSOR) is a national online registry coordinated by the Department of Justice that compiles results from state-based public sex offender registries. This database includes all 50 states, the District of Columbia, Guam and Puerto Rico, but the specific criteria for searching and the criteria for qualifying crimes varies by state. As an online public database, instant searching is available free of charge.	http://www.nsofr.gov/
Office of Inspector General (OIG) exclusion list	The OIG exclusion list is a federal list of individuals who have been convicted for prior patient abuse, program-related fraud, licensing board actions and default on Health Education Assistance Loans. Section 1128 and 1156 of the Social Security Act mandate that individuals on the OIG list can not be hired by federally-funded health care programs. The database is available online and searchable by the general public for free.	http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html

Selected State-based Registries

Name	Description	Source
Alaska Centralized Registry (employee misconduct registry)	The Centralized Registry, also called the Employee Misconduct Registry, is an Alaska-wide registry of persons who have been investigated and found guilty by a state investigator for abuse, neglect and/or exploitation. For a set fee, the Alaska Background Check Program will search APSIN, JOMIS, the Employee Misconduct Registry and other databases at once.	http://www.hss.state.ak.us/dph/CL/bgcheck/FAQ.htm
Alaska Juvenile Offender Management Information System (JOMIS)	JOMIS is the primary database for juvenile offense history records in the state of Alaska. JOMIS is separate from the Alaska database of adult criminal records, but for a set fee, the Alaska Background Check Program will search APSIN, JOMIS, the Employee Misconduct Registry and other databases at once.	http://www.hss.state.ak.us/dph/CL/bgcheck/FAQ.htm
Alaska Public Safety Network (APSIN)	APSIN is an integrated criminal justice information system for the state of Alaska. In addition to serving as a repository for Alaska criminal histories, Alaska Department of Motor Vehicle Records and other information, APSIN also provides access to federal law enforcement resources, such as NCIC (National Crime Information Center), NLETS (National Law enforcement Telecommunications System), III (Interstate Identification Index) and others. APSIN is primarily designed for local law enforcement agencies, but it can also be used for background checks and other non-criminal justice uses as part of the Alaska Background Check Program.	http://www.dps.state.ak.us/Statewide/apsin/whatisapsin.aspx
Idaho Bureau of Criminal Identification (BCI)	BCI is a repository of Idaho's criminal records, fingerprints and crime statistics and provides access to these data through an electronic database, the Idaho Public Safety and Security System, known as ILETS. BCI primarily serves the criminal justice community, but it also serves the general public. Background checks through the Bureau of Criminal Identification are supported by fees.	http://www.idsp.state.id.us/identification/
Idaho transportation department driving records	Idaho transportation department driving records include a history of motor vehicle violations, license suspensions and other details about an individual's driving history. Driving record information can be accessed online by individuals or businesses for a small fee.	http://www.dmv.org/id-idaho/driving-records.php

<u>Name</u>	<u>Description</u>	<u>Source</u>
Illinois Database of Current Inmates	The Illinois Department of Corrections maintains a list of inmates that are currently incarcerated or on parole. This database is searchable for free online by name, date of birth or Illinois Department of Correction (IDOC) number.	http://www.idoc.state.il.us/subsections/search/default.asp
Michigan Internet Criminal History Access Tool (ICHAT)	ICHAT is an online database that includes public criminal records in the state of Michigan. Felonies and serious misdemeanors punishable by over 93 days are included in the database, but suppressed records and warrant information are not included publicly. Anyone can request a search through ICHAT, but a fee is charged for each public search.	http://apps.michigan.gov/ichat/home.aspx
Michigan Offender Tracking Information System (OTIS)	OTIS is an online database of offenders who are or have been under the jurisdiction or supervision of the Michigan Department of Corrections within the last three years from the date of search. The database allows individuals to search by name, age, race, marks/ tattoos and/or MDOC number. The general public can access this database for free online.	http://www.state.mi.us/mDOC/asp/otis2.html
New Mexico Central Repository for Criminal History	The New Mexico State Central Repository for Criminal History maintains a database of information on persons arrested felony, DWI and misdemeanor offenses punishable by six months or more imprisonment. These data are linked with fingerprint records taken at the time of arrest. This information is available in non-criminal cases for a small fee.	http://www.dps.nm.org/lawEnforcement/records.php
New Mexico Employee Abuse Registry	The Employee abuse registry is a state-mandated listing of employees with substantiated registry-referred abuse, neglect or exploitation. This registry became effective in 2006 and allows an opportunity for individuals with records of substantiated abuse to have an opportunity for a hearing before being included on the registry.	http://dhi.health.state.nm.us/elibrary/NewItems/EAR_Rule.pdf

<u>Name</u>	<u>Description</u>	<u>Source</u>
Certified Nurse Aide Registry	Nurse aide registries are state-based databases of all individuals who are registered to work as a nurse aide in that state and all individuals who have been prohibited from employment due to prior substantiated findings of abuse, neglect or misappropriation of property. Federal regulations (42 CFR § 483.156) require that each state and the District of Columbia maintain a nurse aide registry, and long-term care settings are required to check their state nurse aide registry and the registries of other states that are believed to have any information before hiring new nurse aides. Searching online nurse aide registries is free, but there is currently no national database which requires states to check other nurse registries at once.	http://www.oig.hhs.gov/oei/reports/oei-07-04-00140.pdf

Appendix B: Disqualifying Crimes Matrix

	<u>ALASKA</u>	<u>NEW MEXICO</u>	<u>NEVADA</u>
<u>Lifetime Ban</u>	<p>Attempt to commit a crime if the crime attempted is murder in the first degree, unclassified felony other than murder in the first degree, class A, B, or C felony and is a barrier crime, class A or class B misdemeanor and is a barrier crime; solicitation to commit a crime if the crime solicited is murder in the first degree, unclassified felony other than murder in the first degree, a class A, B, or C felony and is a barrier crime; Conspiracy to commit a crime if the object of the conspiracy is murder in the first degree, a crime punishable as an unclassified felony other than murder in the first degree, or a crime punishable as a class A or B felony; Murder in the first or second degree; manslaughter; criminally negligent homicide; assault in the first, second, and third degrees; stalking in the first degree; kidnapping; crime involving domestic violence in the first degree; sexual assault in the first, second, third, or fourth degree; sexual assault of a minor in the first, second, third, or fourth degree; incest; online enticement of a minor; unlawful exploitation of a minor; indecent exposure in the first or second degree; robbery in the first or second degree; extortion; arson in the first and second degree; endangering the welfare of a child in the first degree if a Class B or C Felony or a Class A misdemeanor; endangering the welfare of a vulnerable adult in the first or second degrees; failure to register as a sex offender or child kidnapper in the first or second degrees; indecent viewing or photography if a Class C Felony or Class A Misdemeanor; distribution of child pornography if a Class A or B Felony; Possession of child pornography; electronic distribution of indecent material to a minor; promoting prostitution in the first, second, and third degrees if a Class A or B Felony and the person who was induced or cause to engage in prostitution was under 16 or 17 years of age at the time of the offense.</p>	<p>Homicide, trafficking, or trafficking in controlled substances; kidnapping, false imprisonment, aggravated assault or aggravated battery; rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses; crimes involving adult abuse, neglect, or financial exploitation; involving child abuse or neglect; involving robbery, larceny, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.</p>	<p>Murder, voluntary manslaughter, mayhem; assault with intent to kill or to commit sexual assault or mayhem; sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime; Abuse or neglect of a child or contributory delinquency; A violation of any provision of NRS 200.50955 or 200.5099, two statutes addressing elder abuse and neglect.</p>

	<u>ALASKA</u>	<u>NEW MEXICO</u>	<u>NEVADA</u>
<u>10 Years From the Date of Conviction*</u>	Stalking in the first degree; theft in the first degree; issuing a bad check (if class B Felony); issuing a bad check if a Class B Felony; fraudulent use of an access device if a Class B Felony; burglary in the first degree; criminal mischief in the first and second degrees; forgery in the first degree; offering a false instrument for recording in the first degree; scheme to defraud; defrauding creditors if a Class B Felony; terroristic threatening in the first degree; manufacture or delivery of an imitation controlled substance in the first, second or third degrees; misconduct involving weapons in the first or second degrees; criminal possession of an explosive if a Class A or B Felony; promoting prostitution in the first degree if the person who was induced or cause to engage in prostitution was 18 years of age or older at the time of the offense; delivery of an imitation controlled substance to a minor; fraudulent or criminal insurance act if a Class B Felony; operating a vehicle, aircraft, or watercraft while intoxicated; refusal to submit to chemical tests.		Any violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS; Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property; Any other felony involving the use of a firearm or other deadly weapon.
<u>5 Years From the State of Conviction</u>	Theft in the third degree; criminal trespass in the first degree; criminally negligent burning; criminal mischief in the fourth degree; forgery in the third degree; deceptive business practices if a Class A misdemeanor; criminal nonsupport if a Class A misdemeanor; violating protective order; interfering with a report of a crime involving domestic violence; criminal possession of explosives if a Class A misdemeanor.		
<u>1 Year From the Date of Conviction</u>	Criminal mischief in the fifth degree; unlawful contact in the first or second degrees; harassment		

	<u>ILLINOIS</u>	<u>MICHIGAN**</u>
<u>Lifetime Ban</u>	Solicitation of Murder Class; Solicitation of Murder for Hire; First Degree Murder; Intentional Homicide of an Unborn Child; Second Degree Murder; Voluntary Manslaughter of an Unborn Child; Involuntary Manslaughter and Reckless Homicide; Concealment of Homicidal Death; Involuntary Manslaughter and Reckless Homicide of an Unborn Child; Drug Induced Homicide; Kidnapping; Aggravated Kidnapping; Indecent Solicitation of a Child; Sexual Exploitation of a Child; Exploitation of a Child; Child Pornography; Aggravated Domestic Battery; Aggravated Battery; Heinous Battery; Aggravated Battery With a Firearm; Aggravated Battery With a Machine Gun, et al.; Aggravated Battery of a Child; Aggravated Battery of an Unborn Child; Aggravated Battery of a Senior Citizen; Drug Induced Infliction of Great Bodily Harm; Criminal Sexual Assault ; Aggravated Criminal Sexual Assault; Predatory Criminal Sexual Assault of a Child; Criminal Sexual Abuse; Aggravated Criminal Sexual Assault; Abuse/Gross Neglect of a LTC Facility Resident; Criminal Neglect of an Elderly/Disabled Person; Financial Exploitation of an Elderly/Disabled Person; Armed robbery; Aggravated Vehicular Hijacking; Aggravated Robbery.	Felonies related to manufacture, distribution, prescription or dispensing of a controlled substance after August 21, 1996; Felony or misdemeanor patient abuse; Felony health care fraud; Ever found not guilty by reason of insanity; Ever had a finding of abuse, neglect, or misappropriation of property in a nursing facility (non-criminal findings).
<u>10 Years from the Date of Conviction*</u>		Misdemeanors involving the use or threat of violence; Misdemeanors involving the use of a firearm or dangerous weapon; Misdemeanors involving abuse of vulnerable adults, eg. Misdemeanor elder abuse; Misdemeanor criminal sexual conduct (4th degree); Misdemeanor involving cruelty or torture; Misdemeanor involving abuse or neglect).

	<u>ILLINOIS</u>	<u>MICHIGAN**</u>
<u>5 Years from the Date of Conviction</u>	<p>Forcible Detention; Battery of an Unborn Child; Tampering with Food, Drugs or Cosmetics; Aggravated Stalking; Home Invasion; Ritual Mutilation; Ritual Abuse of a Child; Financial Identity Theft; Aggravated Financial Identity Theft; Forgery; Robbery; Vehicular Hijacking; Burglary; Residential Burglary; Arson; Aggravated Arson; Residential Arson; Unlawful Use of a Weapon by a Felon; Aggravated Discharge of a Firearm; Aggravated Discharge of a Machine Gun; Unlawful Discharge of Firearm Projectiles; Armed Violence; Permitting sexual abuse of a child; Cannabis Trafficking; Delivery to Person Under 18; Calculated Criminal Cannabis Conspiracy; Manufacture of Controlled/Counterfeit Substance Controlled Substance Analog; Controlled Substance Trafficking; Look-alike Substances; Calculated Criminal Drug Conspiracy; Element of the Offense; Delivery to a Person Under 18/Violations at School, Public Housing, Public Park; Employing Person Under 18 to Delivery Substance; Aggravated Unlawful Use of a Weapon; Unlawful Sale or Delivery of Firearms on the Premises of any School; Theft; Unlawful Use of a Weapon if a Felony; Manufacture, Delivery, or Possession With Intent to Deliver/Manufacture if a Felony; Delivery of Cannabis on School Grounds if a Felony; Endangering the Life or Health of a Child if a Felony; Offense of Retail Theft; Domestic Battery; Unlawful Restraint; Aggravated Unlawful Restraint; Child Abduction; Aiding and Abetting Child Abduction; Reckless Discharge of a Firearm; Receiving Stolen Credit Cards or Debit Cards; Receiving a Credit or Debit Card with Intent to Use, Sell, or Transfer; Selling or Buying a Credit Card; Using a Credit or Debit Card With the Intent to Defraud; Altering an Electronic Transmission With the Intent to Defraud; Criminal Jurisprudence Act; Wrongs to Children Act; Aggravated Assault.</p>	<p>Misdemeanor involving cruelty if committed by an individual under the age of 16; Misdemeanor home invasion, e.g. misdemeanor breaking and entering; Misdemeanor embezzlement; Misdemeanor negligent homicide; Most misdemeanor theft offenses; Retail fraud (shoplifting) in the 2nd degree; Certain misdemeanor controlled substance offenses; Most misdemeanors involving fraud.</p>
<u>1 Year from the Date of Conviction</u>	<p>Unlawful Use of a Weapon if a Misdemeanor; Manufacture, Delivery, or Possession With Intent to Deliver/Manufacture if a misdemeanor; Delivery of Cannabis on School Grounds if a misdemeanor; Endangering the Life or Health of a Child if a misdemeanor; Aggravated Assault if a misdemeanor; Criminal Trespass to Residence; Pretending to be a Nurse; Assault; Battery; Theft or mislaid property.</p>	<p>Misdemeanor assaults; Retail fraud (shoplifting) in the 3rd degree; Most misdemeanors involving creation, delivery, possession or use of a controlled substance.</p>

	<u>IDAHO</u>	<u>WISCONSIN</u>
<u>Lifetime Ban</u>	<p>Abuse, neglect, or exploitation of a vulnerable adult, Aggravated, first-degree and second-degree arson, Crimes against nature, Forcible sexual penetration by use of a foreign object, Incest, Injury to a child, felony or misdemeanor, Kidnapping, Lewd conduct with a minor, Mayhem, Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, Poisoning, Possession of sexually exploitative material, Rape, Robbery, Felony stalking, Sale or barter of a child, Sexual abuse or exploitation of a child, Video voyeurism, Enticing of children, Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, Any felony punishable by death or life imprisonment; Attempt, conspiracy, or accessory after the fact.</p>	<p>First degree intentional homicide; 1st degree reckless homicide; Felony murder; 2nd degree intentional homicide; Assisting suicide; Battery (felony); Sexual exploitation by therapist; duty to report; 1st, 2nd, or 3rd degree sexual assault; Abuse of vulnerable adults (misdemeanor or felony); Abuse of residents of a penal facility; Abuse or neglect of patients & residents (misdemeanor or felony); 1st or 2nd degree sexual assault of a child; Repeated acts of sexual assault of same child; Physical abuse of a child – intentional causation of bodily harm; Sexual exploitation of a child; Causing a child to view or listen to sexual activity; Incest with a child; Child enticement; Soliciting a child for prostitution; Exposing child to harmful material or harmful descriptions or narrations; Possession of child pornography; Child sex offender working with children; Neglect of a child – resulting in death (felony); Abduction of another’s child; constructive custody; Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client’s property; Finding by a governmental agency of child abuse or neglect.</p>

	<u>IDAHO</u>	<u>WISCONSIN</u>
<u>10 Years from the Date of Conviction*</u>		
<u>5 Years from the Date of Conviction</u>	Aggravated assault, Aggravated battery, Arson in the third degree, Burglary, A felony involving a controlled substance; Felony theft, Forgery of and fraudulent use of a financial transaction card, Forgery and counterfeiting, Grand theft, Insurance fraud, Public assistance fraud, Attempt, conspiracy, accessory after the fact, or aiding and abetting.	
<u>1 Year from the Date of Conviction</u>		

NOTES

*For Nevada and Illinois, the time limit is 7 years.

**In addition to the time-limited bans from the point of conviction, Michigan also imposes time-limited bans for certain crimes following completion of parole or probation.

Disqualifying crimes that trigger a 15-year ban on employment in long-term care facilities following completion of parole or probation are:

- Felonies involving the use or threat of violence, e.g. felonious assault; Felonies that result in, or were intended to result in, death or serious injury, e.g. assault with intent to do great bodily injury (including 1st degree murder, assault, assault against a family member or family independence agency employee, assault and battery, opposing someone performing duty); Felonies involving cruelty or torture; Felonies involving abuse of vulnerable adults, e.g. elder abuse; Felonies criminal sexual conduct (1st, 2nd, or 3rd degree); involving abuse or neglect, e.g. child abuse; involving the use of a firearm or dangerous weapon, e.g. armed robbery; involving the diversion or adulteration of medication, e.g. forging drug prescriptions.

Disqualifying crimes that trigger a 10-year ban after completion of parole or probation include:

- Other felonies not subject to the 15-year ban (see bullet above) or felonies listed in the matrix, which trigger either permanent or time-limited bans from the point of conviction. Felonies include larceny from a person, stealing the firearm from another person; larceny of money goods or chattel; bank note; bond; promissory note; due bill; bill of exchange; larceny from a motor vehicle; breaking and entering a coin-operated telephone; 1st degree retail fraud.

Appendix C: Section 307 of the MMA

MMA of 2003

SEC. 307. <<NOTE: 42 USC 1395aa note.>> PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM CARE SETTINGS OR PROVIDERS.

- (a) Authority To Conduct Program.--The Secretary, in consultation with the Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees.
- (b) Requirements.--
- (1) In general.--Under the pilot program, a long-term care facility or provider in a participating State, prior to employing a direct patient access employee that is first hired on or after the commencement date of the pilot program in the State, shall conduct a background check on the employee in accordance with such procedures as the participating State shall establish.
- (2) Procedures.--
- (A) In general.--The procedures established by a participating State under paragraph (1) should be designed to--
- (i) give a prospective direct access patient employee notice that the long-term care facility or provider is required to perform background checks with respect to new employees;
- (ii) require, as a condition of employment, that the employee--
- (I) provide a written statement disclosing any disqualifying information;
- (II) provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks;
- (III) provide the facility with a rolled set of the employee's fingerprints; and
- (IV) provide any other identification information the participating State may require;
- (iii) require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider; and
- (iv) permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a 10-fingerprint check that utilizes State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.
- (B) Elimination of unnecessary checks.--The procedures established by participating State under paragraph
- (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.

(3) Prohibition on hiring of abusive workers.--

(A) In general.--A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.

(B) Provisional employment.--

(i) In general.--Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee's provisional period of employment as the participating State determines appropriate.

(ii) Special consideration for certain facilities and providers.--In determining what constitutes appropriate supervision of a provisional employee, a participating State shall take into account cost or other burdens that would be imposed on small rural long-term care settings or providers, as well as the nature of care delivered by such facilities or providers that are home health agencies or providers of hospice care.

(4) Use of information; immunity from liability.--

(A) Use of information.--A participating State shall ensure that a long-term care facility or provider that obtains information about a direct patient access employee pursuant to a background check uses such information only for the purpose of determining the suitability of the employee for employment.

(B) Immunity from liability.--A participating State shall ensure that a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.

(5) Agreements with employment agencies.--A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider through an employment agency (including a temporary employment agency).

(6) Penalties.--A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.

(c) Participating States.--

(1) In general.--The <<NOTE: Contracts.>> Secretary shall enter into agreements with not more than 10 States to conduct the pilot program under this section in such States.

(2) Requirements for states.--An agreement entered into under paragraph (1) shall require that a participating State--

(A) be responsible for monitoring compliance with the requirements of the pilot program;

(B) have procedures by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the pilot program; and

(C) agree to—

- (i) review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;
 - (ii) immediately report to the entity that requested the criminal history background checks the results of such review; and
 - (iii) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a-7e), report the existence of such conviction to the database established under that section.
- (3) Application and selection criteria.--
- (A) Application.--A State seeking to participate in the pilot program established under this section, shall submit an application to the Secretary containing such information and at such time as the Secretary may specify.
 - (B) Selection criteria.--
 - (i) In general.--In selecting States to participate in the pilot program, the Secretary shall establish criteria to ensure--
 - (I) geographic diversity;
 - (II) the inclusion of a variety of long-term care settings or providers;
 - (III) the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and
 - (IV) the evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.
 - (ii) Additional criteria.--The Secretary shall, to the greatest extent practicable, select States to participate in the pilot program in accordance with the following:
 - (I) At least one participating State should permit long-term care settings or providers to provide for a provisional period of employment pending completion of a background check and at least one such State should not permit such a period of employment.
 - (II) At least one participating State should establish procedures under which employment agencies (including temporary employment agencies) may contact the State directly to conduct background checks on prospective direct patient access employees.
 - (III) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care settings and providers as part of the pilot program conducted in that State.
 - (iii) Inclusion of states with existing programs.--Nothing in this section shall be construed as prohibiting any State which, as of the date of the enactment of this Act, has procedures for conducting background checks on behalf of any entity described in subsection (g)(5) from being selected to participate in the pilot program conducted under this section.
- (d) Payments.--Of the amounts made available under subsection (f) to conduct the pilot

program under this section, the Secretary shall--

- (1) make payments to participating States for the costs of conducting the pilot program in such States; and
- (2) reserve up to 4 percent of such amounts to conduct the evaluation required under subsection (e).

(e) <<NOTE: Grants. Contracts.>> Evaluation.--The Secretary, in consultation with the Attorney General, shall conduct by grant, contract, or interagency agreement an evaluation of the pilot program conducted under this section. Such evaluation shall--

- (1) review the various procedures implemented by participating States for long-term care facilities or providers to conduct background checks of direct patient access employees and identify the most efficient, effective, and economical procedures for conducting such background checks;
- (2) assess the costs of conducting such background checks (including start-up and administrative costs);
- (3) consider the benefits and problems associated with requiring employees or facilities or providers to pay the costs of conducting such background checks;
- (4) consider whether the costs of conducting such background checks should be allocated between the Medicare and Medicaid programs and if so, identify an equitable methodology for doing so;
- (5) determine the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for such facilities or providers;
- (6) review forms used by participating States in order to develop, in consultation with the Attorney General, a model form for such background checks;
- (7) determine the effectiveness of background checks conducted by employment agencies; and
- (8) recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers.

(f) Funding.--Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out the pilot program under this section for the period of fiscal years 2004 through 2007, \$25,000,000.

(g) Definitions.--In this section:

- (1) Conviction for a relevant crime.--The term ``conviction for a relevant crime" means any Federal or State criminal conviction for--
 - (A) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7); and
 - (B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.
- (2) Disqualifying information.--The term ``disqualifying information" means a conviction for a relevant crime or a finding of patient or resident abuse.
- (3) Finding of patient or resident abuse.--The term ``finding of patient or resident abuse" means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed--

- (A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or
 - (B) such other types of acts as a participating State may specify for purposes of conducting the pilot program in such State.
- (4) Direct patient access employee.--The term "direct patient access employee" means any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by a participating State for purposes of conducting the pilot program in such State.
- (5) Long-term care facility or provider.--
- (A) In general.--The term "long-term care facility or provider" means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act:
 - (i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act) (42 U.S.C. 1395i-3(a)).
 - (ii) A nursing facility (as defined in section 1919(a) in such Act) (42 U.S.C. 1396r(a)).
 - (iii) A home health agency.
 - (iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act) (42 U.S.C. 1395x(dd)(1)).
 - (v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act) (42 U.S.C. 1395ww(d)(1)(B)(iv)).
 - (vi) A provider of personal care services.
 - (vii) A residential care provider that arranges for, or directly provides, long-term care services.
 - (viii) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) (42 U.S.C. 1396d(d)).
 - (B) Additional facilities or providers.--During the first year in which a pilot program under this section is conducted in a participating State, the State may expand the list of facilities or providers under subparagraph (A) (on a phased-in basis or otherwise) to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.
 - (C) Exceptions.--Such term does not include--
 - (i) any facility or entity that provides, or is a provider of, services described in subparagraph (A) that are exclusively provided to an individual pursuant to a self-directed arrangement that meets such requirements as the participating State may establish in accordance with guidance from the Secretary; or
 - (ii) any such arrangement that is obtained by a patient or resident functioning as an employer.
- (6) Participating state.--The term "participating State" means a State with an agreement under subsection (c)(1).

Appendix D: State-prepared reports submitted to CMS

ALASKA'S BACKGROUND CHECK PILOT PROGRAM
FINAL REPORT

ALASKA'S BACKGROUND CHECK PILOT PROGRAM
FINAL REPORT

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State of Alaska
Department of Health and Social Services
Division of Public Health
Certification & Licensing Section

CMS Pilot ID No. 11-P-93-40/0

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The statements contained in this report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services. The awardee assumes responsibility for the accuracy and completeness of the information contained in this report.

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EXECUTIVE SUMMARY

Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directed the Secretary of Health and Human Services, in consultation with the Attorney General, to establish a pilot program to identify efficient, effective, and economical procedures to conduct background checks on prospective long-term care direct patient access employees.

This report summarizes the Background Check Pilot Program conducted by the State of Alaska from March 31, 2006 through September 30, 2007. The Pilot Program gave Alaska the opportunity to create a Background Check program not only to evaluate the effectiveness of such a program on long-term care facilities and to support the safety and welfare of all those receiving long term care services, but also to provide a centralized service for all programs subject to certification and licensing authority of the Department of Health and Social Services. Upon implementation of Alaska Statute 47.05.300-.390 in March, 2006, 860 licensed and certified Long Term Care entities and individual service providers became subject to Criminal History and Centralized Registry requirements. Data contained in this report relates to these facilities and the over 24,000 background check applications processed by the Background Check Unit during the pilot for individuals providing services in long-term care settings.

The main outcomes of the Alaska Background Check Program pilot are:

- Implementation of a more effective fingerprint-based criminal history records investigation and fitness determination program.
- Consistent implementation and application of criminal history and centralized registry standards across all Long-Term Care programs licensed or certified by the Department.
- Improved monitoring and enforcement of criminal history and centralized registry standards across all Long-Term Care programs licensed or certified by the Department.
- Implementation of a unique “flag” process that alerts the Background Check Unit of activity in the state criminal history repository of persons who are approved for and in Long-Term Care programs.
- Improved overall safety and security of vulnerable individuals in state licensed and certified Long-Term Care facilities and programs, and;
- Creation of a Background Check Unit that will continue to serve as the central program to process fingerprint-based criminal history checks for all entities and individuals who are required to become licensed or certified or who are eligible to receive payments from the Department. In addition to Long-Term Care programs, incorporating programs such as Child Care and Foster Homes and Group Homes into the Background Check Unit, creates a comprehensive program encompassing all individuals who provide care to Alaska’s vulnerable populations.

The CMS Background Check Pilot Program grant funds allowed Alaska to accelerate the implementation and consolidation of an effective and efficient finger-print based criminal history records investigation and fitness determination program. With the strong desire to improve the safety and security of individuals in out-of-home care settings, the State has been able to overcome obstacles and road blocks to reach pilot program goals and continues to improve and to explore further opportunities for consolidation and collaboration with other state agencies.

INTRODUCTION

The Constitution of the State of Alaska, Article VII § 4-5, requires the legislature to provide for the public welfare and promote and protect the public health. The legislature has enacted statutes directing and authorizing the Alaska Department of Health and Social Services (DHSS), as an executive branch agency under Alaska Statutes (AS) 18.05.010 and 47.05.010 (Appendix A), to administer legislative appropriations and take appropriate action to facilitate services and protections for vulnerable children and adults in long-term care (LTC) programs.

To protect vulnerable individuals, DHSS requires facilities and programs to comply with LTC certification and licensing laws and regulations. These requirements mandate background checks and fitness determinations for those seeking employment with a LTC community or group living agency. These authorities were scattered throughout the statutes and administrative codes and contained provisions that were inconsistent and sometimes contradictory to one another.

On March 10, 2003, former Governor Murkowski directing a reorganization of the DHSS published Executive Order 108. The organizational restructuring placed many of the state's licensing and certification programs under DHSS. On July 1, 2004, a new Certification and Licensing Section was established in the DHSS, under the Division of Public Health (DPH). Section management immediately identified the need to standardize and consolidate the DHSS background investigative process.

Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directs the Secretary of Health and Human Services, in consultation with the Attorney General, to establish a pilot program to identify efficient, effective, and economical procedures to conduct background checks on prospective long-term care direct patient access employees. The Centers for Medicare and Medicaid Services (CMS) selected seven states to participate in the Background Check Pilot Program (Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico and Wisconsin).

The State of Alaska was awarded \$3,400,000 in grant funds to implement the CMS Background Check Pilot Program on December 17, 2004. Since the grant ran concurrent with the State's restructuring, the grant award provided DHSS the ability to initiate a comprehensive overhaul to standardize LTC statutes and regulations for background check requirements across all state programs. Grant funding supported efforts to implement a more effective finger-print based criminal history records investigation and fitness determination program for LTC programs. In addition, the grant provided the opportunity for DHSS to lay the foundation for a program that will continue to serve as the central base to process fingerprint-based criminal history checks for all entities and individuals required by DHSS.

PROGRAM DISCUSSION

Authorizing Legislation: Two key elements of Alaska's grant application stated that Alaska would create a single administrative unit to oversee all aspects of the background check program across divisional and program boundaries within DHSS and adopt uniform definitions and descriptions of disqualifying information applicable to all licensed and certified programs under the authority of DHSS. These two key elements fell in line with the restructuring of DHSS. On March 10, 2003, DHSS was given a directive to begin placing licensing and certification functions into one program under Division of Public Health and to create common statutes and regulations for those programs. While DHSS recognized it had sufficient statutory authority to regulate programs in Alaska, there were 19 different licensing and certification programs being administered under 12 different statutes and 15 different sets of regulations. Often, the requirements contained provisions that were inconsistent and sometimes contradictory.

To fulfill the elements of Executive Order 108, in support of the State's reorganization, and of the grant award, a new Certification & Licensing section was established in DHSS, Division of Public Health on July 1, 2004. As part of this section, the Background Check Unit (BCU) was created to serve as the central program for processing finger-print based criminal history checks. The BCU would become the Department's "clearing house" for all state required background checks.

A legislative initiative was begun to reframe and rewrite the health and welfare facility and program licensing laws and regulations. DHSS worked to consolidate licensing statutes and establish broad authority to adopt regulations to administer and oversee specific health and welfare facilities and programs. At the same time, a major effort was made to statutorily require fingerprint-based criminal history checks for entities and individuals required to be licensed or certified by DHSS or who were eligible to receive payments, in whole or in part, to provide for the health, safety, and welfare of persons who are served by the programs administered by DHSS.

On June 24, 2005, Senate Bill 125 was passed. This Bill enacted Alaska Statute 47.05.300-.390 relating to criminal history requirements and became effective March 1, 2006. On this date, all LTC facilities began processing fingerprint-based criminal history check applications through the BCU.

While Alaska succeeded in creating a statutory requirement for fingerprint-based criminal histories, it caused some challenges during this portion of the pilot program. The Alaska Statute is broad, does not create uniform definitions and only states general descriptions of disqualifying information, but did require DHSS to adopt regulations setting forth the uniform definitions and standards of barrier crimes and conditions in regulation.

Work on the new regulations was on-going, but background checks were simultaneously being conducted by the BCU staff who did not have a common set of regulations to review an individual's history against to make a fitness determination. BCU staff were charged with upholding the new statute and ensuring its consistent application and implementation.

At the same time, staff was faced with making a fitness determination on an individual's background check application that required reviewing 15 different sets of regulations. With so many different regulations involved, making initial fitness determinations were sometimes delayed.

The omnibus set of background check regulations (Appendix B) were adopted and became effective on February 9, 2007. This allowed all background check applications to be reviewed against the same barrier crime and condition requirements and ensured more consistent and uniform fitness determinations on individuals in contact with Alaska's vulnerable populations. This in turn enhanced overall background check determinations.

While the implementation of the regulations was to ensure a centralized, consistent implementation of the barrier crime and condition standards, the initial implementation did cause yet another challenge for the BCU. Prior to implementation of the BCU, Alaska did not have a database to monitor those who worked in LTC facilities or whether those employees had background checks. Even with a central database, it was impossible to know exactly how many individuals associated with LTC facilities were without a fingerprint-based criminal history checks; prior to the regulation's effective date, only employees new to a LTC facility were required to have a fingerprint-based criminal history check conducted by the BCU. Only those individuals who processed through the BCU were entered into the database. The new regulations not only required those individuals new to a LTC facility, but also any currently employed individual meeting certain criteria. Those currently employed individuals who did not have a fingerprint-based criminal history check or who had a fingerprint-based criminal history check dating back six years or more from the date of the implementation of the regulations, were required to have a background check. The regulations only allowed 60 days for those individuals to request a fingerprint-based check. With over 850 entities, the BCU was inundated with background check applications receiving as many as 4,000 in one day. This caused yet another delay in fitness determinations for employees.

While the BCU focused on LTC staff for the processing of fingerprint-based criminal history checks, programmatic delays relating to the adoption and implementation of regulations were created by the state attempting to encompass all licensed and certified entities under the one set of regulations. Although this was a major challenge for the BCU staff, it ultimately has had a positive outcome overall. Alaska's Background Check Program continues beyond the pilot with the framework and foundation having been laid ensuring a smoother future transition for state programs, service providers and entities coming into the BCU.

State Agency and Stakeholder Collaboration: Primary partnerships and collaboration involved state stakeholders to include the Department of Health and Social Services' Divisions of Public Health (DPH); Senior and Disabilities Services (DSDS); and Behavioral Health (DBH). These divisions are responsible for providing oversight to the LTC populations, ensuring that all background check requirements are met. Prior to the pilot these divisions were already working collaboratively to unify and standardize overall department regulations; thus, partnering was somewhat smoother for the BCU. The BCU also engaged the Department of Public Safety (DPS), of which already had a long standing partnership with DHSS.

During the first six months of the pilot program, it was clear a crucial obstacle to overcome was consolidating all LTC programs in order to implement the background check requirements consistently. BCU staff worked diligently to educate state oversight staff while at the same time providing education, direction and support to LTC consumers and providers. Early responses from the majority of those affected by the new processes were somewhat negative and support for the new policies and procedures were fraught with anxiety and some resistance.

Statewide meetings occurred through face to face gatherings, newsletters and teleconferences; not only with state staff, LTC providers and entities but also with associations affiliated with those services. Gradually, the BCU garnered participation from over 850 LTC entities, from the largest facility of over 300 beds and more than 400 employees, to a small Alaskan village provider with only 10 beds and less than 15 staff.

One of the state's most active associations, Alaska State Hospital and Nursing Home Association (ASHNA), was instrumental in forming an alliance with the state by ensuring open communication existed between their organization and the BCU throughout the pilot implementation. This partnership continues to enhance program policies and procedures. Eventually, mutual efforts and activities began to acquire and earn support for the implementation of the program through the operation of the BCU.

Negotiations were also initiated with other agencies upon which the pilot program had dependencies, such as DPS. DPS recognized the mandates of the background check process, including the timeline requirements, and actively worked to assure the necessary support for the Alaska Public Safety Information Network (APSIN) access and fingerprint handling were in place. Alaska Courts prepared a list of court events to be considered as part of the background review activity. The Alaska Board of Nursing agreed to expand the Nurse Aide Abuse Registry to include the other care giver types stipulated in the background check program.

As the pilot program concludes, work continues internally with our Department stakeholders that provide oversight to required entities. We have started negotiations with two additional divisions Office of Children Services (OCS) and Division of Public Assistance (DPA) for inclusion of their programs in the background check process which will add approximately 2,700 new entities by the end of the year. Earlier partnership with OCS, establishing an agreement in where they provide sites throughout rural Alaska for the mutual use of live scan equipment with LTC entities, have paved the way for a smooth transition into the BCU processes.

In addition to ongoing collaborative efforts, a "frequently asked questions" (FAQ) component was made available on the BCU website for providers and entities to further enhance understanding of the requirements and provide an opportunity for informational updates. Meetings continue with oversight agencies to ensure consistent compliance with these requirements and to discuss any issues or concerns, as applicable. Initial steps have been taken for the creation of the task force, comprised of state staff, service providers and consumers to review and improve the web based resources and tools.

Throughout the background check implementation process, the successes far outweighed the trials. Trusting relationships have been established with those providing the most vital care for the most vulnerable populations. Not only have those directly involved with the pilot been educated regarding the valuable resources available to ensure safety and well being of our LTC populace but the families have been assured procedures are now in place that will enhance the protection and welfare of their loved ones.

Description of state background check program:

Covered Providers and Employees: Alaska Statute 47.05.300-.390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the department. Individual service providers, including public home care providers, providers of home and community-based waiver services, and case managers to coordinate community mental health services are also subject to this statute.

Alaska Administrative Code (7 AAC 10.900-.990) defines those who are subject to a fingerprint-based criminal history check, to include:

- an administrator or operator;
- an individual service provider;
- an employee, an independent contractor, an unsupervised volunteer, an officer, director, partner, member, or principal of the business organization that owns an entity or a board member if that individual has;
 - regular contact with recipients of services;
 - access to personal or financial records maintained by the entity or provider regarding recipients of services; or
 - control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a
 - relative of the individual who has authorized that individual to make financial decisions for that relative;
 - recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or
 - recipient for whom a court has authorized that individual to make financial decisions;
- an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or
- any other individual who is present in the entity and would have regular contact with recipients of services.
 - A criminal history check under 7 AAC 10.900 – 7 AAC 10.990 is not required for a recipient of services, unless that individual is also associated with the entity or individual service provider and provides services to other recipients.

While the framework of the BCU and the statutes and regulations apply to a variety of individuals and entity types, the unit focused on LTC programs and individuals associated with

those entities. The pilot program involved over 850 facilities and over 24,000 background check applications.

Background Check Fees: In the early stages of the pilot program, the fee for processing a background check was \$59 per new application. This fee consists of a \$35 Alaska Department of Public Safety fingerprint processing fee and a \$24 Federal Bureau of Investigation fingerprint processing fee. When regulations became effective on February 9, 2007, a \$25 background check application fee was added by the BCU for a total of \$84 per new application. Fingerprint capture fees are not included. Rates for capturing fingerprints vary greatly around the state and range from \$0 - \$50 per set. The average cost in urban areas is \$35 per set.

Policies and Procedures: The BCU consists of two sub-units; the Data Unit and the Determination Unit. These units are responsible for ensuring procedures are implemented and internal policies met.

The Data Unit is responsible for:

- Entering hard copy background check applications into the database.
- Ensuring receipt of and database recording of signed Release of Information forms.
- Reconciling fees.
- The transferring of fingerprint cards to the DPS.
- The placement of individuals on and monitoring of the APSIN program, and;
- Mailing of eligibility determinations.

The Determination Unit is responsible for:

- Conducting registry and court records checks.
- The review of DPS and FBI fingerprint results for disqualifying information, and;
- Determining eligibility for association with a licensed or certified LTC facility.

The application and determination are generally completed using a two step process. A complete background check application consisting of a completed hard copy or an on-line application, a completed Release of Information and disclosure of criminal history form, two fingerprint cards, submitted via ink hard copy or through a Livescan system, and all applicable fees, is received by the Data Unit. At that point, all information is recorded in the database. The electronic case file is then ready for review by the Determination Unit.

The Determination Unit conducts a review to determine if a provisional authorization for association with a facility should be granted. This first step of the background check process consists of a registry and court records check from both Alaska and those states the individual has lived in for the past 10 years.

Records searched are, but are not limited to:

- **Alaska Public Safety Information Network (APSIN)** - APSIN serves as a central repository for Alaska criminal justice information. This information is also known as an “Interested Persons Report”.

- **Alaska Court System/Court View and Name Index** - Provides civil and criminal case information and is used to assist in determination of disposition for cases in APSIN.
- **Juvenile Offender Management Information System (JOMIS)** – JOMIS is the primary repository for juvenile offense history records for the State of Alaska, Division of Juvenile Justice.
- **Centralized Registry (employee misconduct registry)** - Includes those persons which have been investigated by a state investigator for abuse, neglect and/or exploitation, found guilty of abuse, neglect, and/or exploitation, and due process has been provided. Alaska and other states (birth and residence) as applicable.
- **Certified Nurses Aide (CNA) Registry** – Professional registry listing those individuals certified to perform duties as a CNA. In some states, this registry also serves an abuse registry. Alaska and other states (birth and residence) as applicable.
- **National Sex Offender Registry (NSOR)**- The NSOR provides centralized access to registries from all 50 states, Guam, Puerto Rico and the District of Columbia.
- **Office of Inspector General (OIG)** - a database which provides information relating to parties excluded from participation in the Medicare, Medicaid and all Federal health care programs; and,
- **Any other records/registries the Department deems are applicable.**

After a review of this information, a fitness determination is made. When no disqualifying information is found, the Determination Unit posts a provisional authorization on the BCU website. This information may only be viewed by the entity with which the individual will be associated. It is then necessary for the entity to ensure fingerprint cards and all applicable fees are submitted to the BCU prior to submittal to DPS.

Upon receipt of state and FBI criminal history results, the results are reviewed to determine whether there is any criminal history. As applicable to the results, the Data Unit prepares and mails a final fitness determination letter to the individual, the employer, and the state having oversight of the entity. If the results show a criminal history record, the Determination Unit reviews the information to determine if the history contains disqualifying information. When it is verified the information is not disqualifying, the Data Unit completes the final fitness determination notice.

After a final fitness determination is made on an individual, replacing the provisional eligibility for association with a LTC facility, the individual's name is flagged in the APSIN program. This program alerts the BCU to an individual's new criminal activity on a real time basis. The Determination Unit reviews the alert to determine whether or not it presents a barrier to association with a LTC facility. No action is taken if the activity does not present a barrier. If disqualifying information is found after a review of any information submitted, or from an APSIN alert, the Data Unit sends a barrier notification letter to the individual, the entity with which the individual was to be associated, and to the state oversight agency.

Individuals who are found ineligible for association with a LTC facility have two options for review of the barrier determination. The first option is a request to the BCU for reconsideration of the determination. This, however, can only be requested if the individual believes the barrier

information is incorrect or has additional information they can submit regarding the barrier. The second option is to work with the entity they wish to become associated with to request a variance. The entity has the option to submit a variance request on behalf of the individual. The variance must contain all criminal history information, a rationale why the department should grant the variance and a plan to ensure the health and safety of individuals in care. If approved, the individual would be eligible for association with the LTC facility. If disapproved, the individual may request reconsideration of the variance denial from the Commissioner of DHSS.

Program Data: Prior to the establishment of the pilot program, there was no centralized background check processing being done by DHSS. Little, if any, data concerning background checks was maintained by the division oversight agencies.

The following provides the most significant data from Alaska’s Background Check Pilot Program:

• Applications received	24,204
• Provisional Authorizations	19,918
• Final Authorizations	5,067
• Barred individuals	477
• Withdrawn applications	3,235
• APSIN monitored	3,038
• Variances requested	42
• Variances approved	31

The following is a representation of the general categories for which individuals have been barred from association with a LTC facility from April 1, 2006 through September 30, 2007:

GENERAL CATEGORY OF BARRIER CRIMES	APSIN Bars	DPS Bars	FBI Bars	Total Bars
Offenses Against the Person	266	8	9	283
Offenses Against Property	131	5	0	136
Offenses Against Family and Vulnerable Adults	29	1	1	31
Offenses Against Public Order	10	0	0	10
Offenses Against Public Administration	13	0	0	13
Misconduct Involving Controlled Substances	22	0	0	22
Attempt, Solicitation, and Conspiracy to Commit a Crime	13	0	1	14
OIG – Mandatory Exclusion	2	0	0	2
OIG – Permissive Exclusion	1	0	0	1
Other Crimes and Registry Barriers	43	0	1	44
Total Number of Barriers Identified	530	14	12	556

Program Implementation Issues: The administrative structure for the BCU includes:

- Project Director, responsible for the overall implementation of the pilot project. This position is currently the Administrator of the Certification & Licensing Section.
- Program Manager, providing both technical leadership and team management for the pilot project. The Program Manager also oversees program design, documentation, all deliverables, structure, and make up of the project.
- Regulation Technical Assistance Expert, responsible for providing technical assistance for regulatory and statutory development, as well as providing critical insight and expertise to the projects design team.
- BCU supervisor, the front line supervisor for the BCU, in charge of staffing needs and overall implementation of internal requirements.

There were three critical areas which affected program implementation. These areas include regulatory implementation, the creation of the state's database, and initial staffing issues. One of Alaska's biggest barriers circumventing a smooth transition to the background check program had to do with the regulatory implementation issues. Alaska's goal for the pilot program had always been to create a program that would extend and continue beyond the life of the pilot. While LTC was the focus, BCU staff were dealing with multiple sets of regulations which caused a lengthy delay in creating common definitions and descriptions of disqualifying information for LTC facilities. The delay also caused inconsistencies of eligibility for individuals associated with more than one facility type.

The drafting and implementation of one set of regulations for all affected individuals proved to be a lengthy and arduous process. In hind sight, taking smaller steps in the regulation process by drafting and implementing regulations specific to those individuals affected by the pilot program would have given a much stronger foundation upon which to build and eventually incorporate all other individuals into the background check process.

The impact of the implementation of the regulations also flooded the BCU with a large influx of applications for background checks with little transition time. The regulations required not only individuals new to a LTC facility to have a fingerprint based criminal history check, but also required individuals currently associated with a facility to submit an application within 60 days of implementation. The regulation did not apply to current employees whom previously had a fingerprint based check that was less than 6 years old. Because the majority of applicants required a fingerprint based check, this created a large influx of background check applications which overwhelmed the BCU staff and caused long delays in issuing provisional and final authorizations for employment. Individuals who were currently employed were not affected by the delay as they were permitted to continue employment during the background check process.

Another hurdle Alaska experienced related to the development and implementation of an electronic operating system that met the operational needs of both CMS and the State of Alaska.

The lack of initial communication between the CMS IT technical assistance contractors and the State's IT staff created a backlog of technical work essential for a successful database. This disconnect abruptly halted work on the database system during the development of the new program.

As work on the database resumed, the BCU continued to experience setbacks. This left the BCU's project with an incomplete operating system requiring many work-a-rounds from state IT staff and the manual recording of certain information. Alaska did work to obtain a state based IT contract to support and supplement the database, once the initial technical assistance through CMS ended. Work continues today towards a productive, efficient database system.

Critical staff issues set the project progress back several months during the second year into the project. The resignation of the initial project director and program manager had a devastating impact on the project and this stalled processes until those positions were filled. The break in leadership did not interrupt on-going BCU work, but the lack of management was apparent in attempting to maintain communication with the CMS pilot program contacts and in meeting the pilot requirements. The program is still regaining composure and a lesson well learned is the importance of consistent leadership, especially in managing a new program.

Information Technology (IT) Enhancements: Many IT enhancements have been accomplished during the pilot program. Not only does the BCU have the capability of receiving and transferring electronic fingerprints but the BCU has worked with Alaska's OCS to provide live scan fingerprint services in 23 rural communities (Appendix C). The state-supported system operates in accordance with a Memorandum of Agreement between the Division of Public Health and OCS in providing fingerprinting access to areas where little to no services were available. Most rural areas are accessible only by air, sea, snow machine, four wheeler or dog sled (Appendix D). Because of their statewide locations and involvement with local communities, OCS was chosen as the DHSS agency to implement the electronic fingerprinting service to rural Alaska. The Live Scan system utilizes a combination of vendor live scan services from urban areas and the department live scan services through OCS.

An unexpected outcome for Alaska's pilot was the creation of a database identifying those individuals associated with LTC facilities. This resource has proven to be a valuable asset. Real time criminal history monitoring, APSIN alerts, in conjunction with the database has allowed early detection and removal of individuals from facilities who are found to be threat to the health, safety and welfare of recipients in care.

Program costs and use of funds – The program use of the \$3,400,000 authorized for the Alaska CMS Background Check Pilot Program grant is shown below.

- 52 percent, \$1,771,621 Program Staff
- 13 percent, \$440,000 Indirect costs
- 13 percent, \$435,994 Rural Live Scan System
- 7 percent, \$249,517 Program infrastructure – equipment, supplies, etc
- 7 percent, \$205,810 Department core services
- 3 percent, \$95,000 State IT contractor database enhancements
- 2 percent, \$76,750 Legislation and regulation development – Professional services

- 2 percent, \$70,000 State IT database enhancements
- 1 percent, \$55,308 Travel and training

Actions to sustain the background check program -- The BCU, responsible for implementing the Department's background check program, has been made an organizational element of the Department and will be funded and staffed by the state upon completion of the CMS Background Check Pilot Program grant.

Future goals of the background check program are:

- To extend the background checks and fitness determinations processed by the BCU to all staff serving vulnerable populations in programs that are required by statute or regulation to be licensed or certified by DHSS or who are eligible to receive payments, in whole or in part, from the department;
- To develop and implement a comprehensive set of measurements and reports across all DHSS licensed and certified programs;
- To develop and implement electronic data interchange interfaces for submission and reporting fingerprint based background results; and
- Continued development of the background check information technology infrastructure to improve current services and meet future needs.

Alaska Statute Title 47
Article 3
Criminal History; Registry

47.05.300. Applicability. (a) The provisions of AS 47.05.310 - 47.05.390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the department.

(b) Those individual service providers subject to AS 47.05.310 - 47.05.390 under (a) of this section include

- (1) public home care providers described in AS 47.05.017;
- (2) providers of home and community-based waiver services financed under AS 47.07.030(c); and
- (3) case managers to coordinate community mental health services under AS 47.30.530.

47.05.310. Criminal history; criminal history check; compliance. (a) If an individual has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation, that individual may not own an entity, or be an officer, director, partner, member, or principal of the business organization that owns an entity. In addition, an entity may not

- (1) allow that individual to operate the entity;
- 2) hire or retain that individual at the entity as an employee, independent contractor, or unsupervised volunteer of the entity;
- (3) allow that individual to reside in the entity if not a recipient of services; or
- (4) allow that individual to be present in the entity if the individual would have regular contact with individuals who receive services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

(b) The department may not issue or renew a license or a certification for an entity that is in violation of (a) of this section or that would be in violation based on the information received as part of the application process.

(c) The department may not issue or renew a license or certification for an entity if an individual is applying for a license, license renewal, certification, or certification renewal for the entity and that

- (1) individual has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or
- (2) individual's name appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

(d) An entity shall provide to the department a release of information authorization for a criminal history check for an individual who is not a recipient of services from the entity and, after the entity has been issued a license, license renewal, certification, or certification renewal by the department,

(1) who intends to become an owner of the entity, or an officer, director, partner, member, or principal of the business organization that owns the entity;

(2) whom the entity intends to hire or retain as the operator of the entity's business;

(3) whom the entity intends to hire or retain as an employee, independent contractor, or unsupervised volunteer of the entity; or

(4) who will be present in the entity or at the places of operation of entity, and would have regular contact with individuals who receive services from the, but who is not a family member or visitor of an individual who receives services from the entity.

(e) An individual for whom a release of information authorization has been provided to the department shall submit the individual's fingerprints to the department, with the fee established under AS 12.62.160, for a report of criminal justice information under AS 12.62 and for submission by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide the report of criminal justice information and the results of the national criminal history record check to the department for its use in considering an application for a license, license renewal, certification, or renewal, or in considering other approval or selection regarding an entity, for compliance with the standards established in this section. For purposes of obtaining access to criminal justice information maintained by the Department of Public Safety under AS 12.62, the department is a criminal justice agency conducting a criminal justice activity. The department may waive the requirement for fingerprint submission if an individual is unable to provide fingerprints due to a medical or physical condition that is documented by a licensed physician.

(f) The provisions of this section do not apply if the department grants an exception from a requirement of (a) - (e) of this section under a regulation adopted by the department.

(g) The department shall adopt regulations listing those criminal offenses that are inconsistent with the standards for licensure or certification by the department.

(h) An individual service provider is subject to the provisions of (a) - (g) of this section as if the individual service provider were an entity subject to those provisions.

(i) For purposes of (b) and (c) of this section, in place of nonissuance or nonrenewal of a license or certification, an entity or individual service provider that is not required to be licensed or certified by the department or a person wishing to become an entity or individual service provider that is not required to be licensed or certified by the department is instead ineligible to receive a payment, in whole or in part, from the department to provide for the health, safety, and welfare of persons who served by the programs administered by the department if the entity, individual service provider, or person

(1) is in violation of (a) of this section or would be in violation based on information received by the department as part of an application, approval, or selection process;

(2) has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(3) appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

47.05.320. Criminal history use standards. The department shall by regulation establish standards for the consideration and use by the department, an entity, or an individual service provider of the criminal history of an individual obtained under AS 47.05.310.

47.05.330. Centralized registry. (a) The department shall by regulation provide for a centralized registry to facilitate the licensing or certification of entities and individual service providers, the authorization of payments to entities or individual service providers by the department, and the employment of individuals by entities and individual service providers.

(b) Except for the name of each victim being redacted before the information is placed on the registry, the registry shall consist of the following information for an entity or individual service provider, an applicant on behalf of an entity or individual service provider, or an employee or unsupervised volunteer of an entity or individual service provider:

(1) decisions, orders, judgments, and adjudications finding that the applicant, employee, or unsupervised volunteer committed

(A) abuse, neglect, or exploitation under AS 47.10, AS 7.24, AS 47.62, or a substantially similar provision in another jurisdiction; or

(B) medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction;

(2) orders under a state statute or a substantially similar provision in another jurisdiction that a license or certification of the entity or individual service provider to provide services related to the health, safety, and welfare of persons was denied, suspended, revoked, or conditioned.

(c) As a condition for applying for licensure or certification of an entity or individual service provider, or for payment to an entity or individual service provider by the department, an applicant must agree to submit timely to the registry the information required under this section relating to the entity, any individual, the applicant, employees, and unsupervised volunteers of the entity or individual service provider.

(d) Within 24 hours of a court decision, order, judgment, or adjudication that an entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section, the entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider shall report the court action to the department.

(e) Within 24 hours of receiving notice of an allegation that an employee, unsupervised volunteer, or former employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section within the past 10 years, the entity or individual service provider shall report the allegation to the department.

(f) The department shall prescribe by regulation the form or format by which an applicant shall submit required information to the registry.

(g) Notwithstanding any contrary provision of law, the department may also submit information described in this section to the registry. An entity or individual that is exempt from department licensure or certification and that does not receive money from the department for its services may voluntarily submit information described in this section to the department for placement in the registry.

(h) Information contained in the registry is confidential and is not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, information contained in the registry may be released to entities, individual service providers, and governmental agencies authorized and in a manner provided under this section and regulations adopted under this section.

(i) A person is presumed to be acting in good faith and is immune from civil and criminal liability if the person

(1) makes a report of medical assistance fraud, abuse, neglect, or exploitation;

(2) submits information to the registry; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in the registry.

(j) A person about whom information is placed in the registry shall be notified of the placement by the department and may request the department to delete or modify the information to correct inaccuracies. The department shall investigate the request and make necessary deletions or modifications if the department finds no relationship between the information placed in the registry and the risk of harm to the entity's clientele.

47.05.340. Regulations. The department shall adopt regulations to implement AS 47.05.300 - 47.05.390.

47.05.350. Use of information; immunity. An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 may use that information only as provided for in regulations adopted by the department under AS 47.05.320. However, if an entity or individual service provider reasonably relies on the information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information.

47.05.390. Definitions. In AS 47.05.300 - 47.05.390, unless the context otherwise requires,

(1) "criminal history records" has the meaning given in AS 12.64.010;

(2) "criminal justice activity" has the meaning given in AS 12.62.900;

(3) "criminal justice agency" has the meaning given in AS 12.62.900;

(4) "criminal justice information" has the meaning given in AS 12.62.900;

(5) "department" means the Department of Health and Social Services;

(6) "entity" means an entity listed in AS 47.32.010(b) and includes an owner, officer, director, member or partner of the entity;

(7) "individual service provider" means an individual described in AS 47.05.300(a), and includes those listed in AS 47.05.300(b);

(8) "license" includes a provisional license;

(9) "unsupervised" means that an individual who is licensed under AS 47.32, after submitting a criminal history background check, is not physically present to observe the volunteer at the entity.

Title 7. Health and Social Services.
Part 1. Administration.
Chapter 10. Licensing, Certification, and Approvals.

Article 3. Barrier Crimes, Criminal History Checks, and Centralized Registry.

Section

- 900. Purpose and applicability; exceptions
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7 AAC 10.900. Purpose and applicability; exceptions. (a) The purpose of 7 AAC 10.900 – 7 AAC 10.990 is to establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks, and the centralized registry, including

(1) the identification of offenses and conditions that would bar an individual from
(A) licensure, certification, or approval by the department;
(B) a finding of eligibility to receive certain payments from the department; and
(C) association with an entity or individual service provider in a manner described in (b) of this section;

(2) requirements for requesting a criminal history check and procedures to determine whether a barrier crime exists;

(3) requirements for maintaining compliance with AS 47.05.300 – 47.05.390, AS 47.32, and 7 AAC 10.900 – 7 AAC 10.990, including standards for association and requirements for continued monitoring and notification; and

(4) the establishment of a centralized registry as required by AS 47.05.330.

(b) The provisions of 7 AAC 10.900 – 7 AAC 10.990 apply to an entity or individual service provider seeking licensure, certification, approval, or a finding of eligibility to receive payments from the department. Each individual who is to be associated with the entity or provider in a manner described in this subsection must have a valid criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990 if that individual is 16 years of age or older and will be associated with the entity or provider as

- (1) an administrator or operator;
- (2) an individual service provider;
- (3) an employee, an independent contractor, an unsupervised volunteer, or a board member if that individual has

(A) regular contact with recipients of services;
 (B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or
 (C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a
 (i) relative of the individual who has authorized that individual to make financial decisions for that relative;
 (ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or
 (iii) recipient for whom a court has authorized that individual to make financial decisions;

(4) an officer, director, partner, member, or principal of the business organization that owns an entity, if that individual has
 (A) regular contact with recipients of services;
 (B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or
 (C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a
 (i) relative of the individual who has authorized that individual to make financial decisions for that relative;
 (ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or
 (iii) recipient for whom a court has authorized that individual to make financial decisions;

(5) except as provided in (c) and (d)(10) of this section, an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or

(6) except as provided in (c) and (d) of this section, any other individual who is present in the entity and would have regular contact with recipients of services.

(c) A criminal history check under 7 AAC 10.900 – 7 AAC 10.990 is not required for a recipient of services, unless that individual is also associated with the entity or individual service provider in any manner described in (b)(1) – (4) of this section.

(d) A criminal history check under 7 AAC 10.900 – 7 AAC 10.990 is not required for the following individuals, if supervised access is provided in accordance with (e) of this section:

(1) a relative of a recipient of services, unless that relative is also associated with the entity or provider in any manner described in (b)(1) – (5) of this section;

(2) a visitor of a recipient of services, unless that visitor is also associated with the entity or provider in any manner described in (b)(1) – (4) of this section;

(3) an individual for whom the entity or provider submits evidence to the department of a fingerprint-based background check
 (A) conducted and implemented under a process that meets or exceeds the standards of 7 AAC 10.900 – 7 AAC 10.990; and
 (B) that is required
 (i) as a condition for obtaining a professional license or certification under AS 08;
 (ii) by federal law for an entity or individual service provider described in AS 47.05.300; or
 (iii) as a condition of employment or association that is imposed by an entity or individual service provider described in AS 47.05.300;

(4) an employee, independent contractor, unsupervised volunteer, board member, officer, director, partner, member, or principal of the business organization that owns an entity if that individual is not associated with the entity or an individual

service provider in any manner described in (b)(1) – (4) of this section;

(5) an approved relative provider under 7 AAC 41.200(e);

(6) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who

(A) is not associated with the entity or provider under (b) of this section;

and

(B) provides support services to the entity or provider or to a recipient of services;

(7) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services;

(8) an individual who resides in any part of an entity, including a residence if services are provided in the residence, if the individual remains in the entity or residence for less than 45 days, in total, in a 12-month period;

(9) a parent's designee to drop off and pick up a child in care, unless the designee is also associated in a manner described in (b) of this section with the entity providing child care;

(10) a parent who receives money from the department for purposes of paying an approved in-home child care provider under 7 AAC 41.370, and any other individual who resides in that parent's household; however, the exemption in this paragraph does not apply to an approved in-home child care provider who resides in the household;

(11) an occasional guest of the administrator or operator of an entity or of a provider.

(e) An entity or individual service provider must provide supervised access for an individual exempted under (d) of this section if the individual is present in the entity during hours of operation. Supervised access is not required in a residence where in-home child care is provided under 7 AAC 41.370.

(f) For purposes of (b)(5) and (d)(8) of this section, "individual who resides in any part of an entity" means an individual who dwells continuously in, or legally occupies, the premises housing the entity or provider, as evidenced by

(1) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or

(2) observation by another individual of the individual occupying the premises.
(Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340

AS 47.32.030 AS 47.05.320

7 AAC 10.905. Barrier crimes. (a) A barrier crime is a criminal offense that is inconsistent with the standards for licensure, certification, approval, or eligibility to receive payments. The barrier crime standards and prohibitions in this section apply to an individual who

(1) seeks to be associated or to remain associated in a manner described in 7 AAC 10.900(b) with an entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990; and

(2) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in this section or a crime with similar elements in another jurisdiction.

(b) Except as otherwise provided in this section, the following are permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) an unclassified, a class A, or a class B felony under AS 11.41 (Offenses

Against the Person);

(2) a crime involving domestic violence that is a felony under AS 11;

(3) a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime involving a perpetrator who was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290;

(4) a crime under AS 11.41.220 (Assault in the Third Degree);

(5) a crime under AS 11.41.460 (Indecent Exposure in the Second Degree);

(6) a crime under AS 11.46.400 or 11.46.410 (Arson in the First or Second Degree);

(7) a crime under AS 11.51 (Offenses Against the Family and Vulnerable Adults) as follows:

(A) AS 11.51.100 (Endangering the Welfare of a Child in the First Degree);

(B) AS 11.51.200 (Endangering the Welfare of a Vulnerable Adult in the First Degree);

(C) AS 11.51.210 (Endangering the Welfare of a Vulnerable Adult in the Second Degree);

(8) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.835 (Failure to Register as a Sex Offender or Child Kidnapper in the First Degree);

(B) AS 11.56.840 (Failure to Register as a Sex Offender or Child Kidnapper in the Second Degree);

(9) a crime under AS 11.61 (Offenses Against Public Order) as follows:

(A) AS 11.61.123 (Indecent Viewing or Photography);

(B) AS 11.61.125 (Distribution of Child Pornography);

(10) a crime under AS 11.66 (Offenses Against Public Health and Decency) as follows, if the person induced or caused to engage in prostitution was under 18 years of age at the time of the offense:

(A) AS 11.66.110 (Promoting Prostitution in the First Degree);

(B) AS 11.66.120 (Promoting Prostitution in the Second Degree);

(C) AS 11.66.130 (Promoting Prostitution in the Third Degree);

(11) any sex offense, as defined in AS 12.63.100, that is not already listed in this subsection;

(12) two or more class B felonies that are not included in this subsection.

(c) The following are 10-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41.260 (Stalking in the First Degree);

(2) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.120 (Theft in the First Degree);

(B) AS 11.46.280 (Issuing a Bad Check), if the crime is a class B felony;

(C) AS 11.46.285 (Fraudulent Use of an Access Device), if the crime is a class B felony;

(D) AS 11.46.300 (Burglary in the First Degree);

(E) AS 11.46.475 (Criminal Mischief in the First Degree);

(F) AS 11.46.480 (Criminal Mischief in the Second Degree);

(G) AS 11.46.500 (Forgery in the First Degree);

(H) AS 11.46.565 (Criminal Impersonation in the First Degree);

(I) AS 11.46.600 (Scheme to Defraud);

(J) AS 11.46.730 (Defrauding Creditors), if the crime is a class B felony;

(3) a crime under AS 11.56.807 (Terroristic Threatening in the First Degree), if it is a crime involving domestic violence;

(4) a crime under AS 11.61 (Offenses Against Public Order) as follows:

- (A) AS 11.61.190 (Misconduct Involving Weapons in the First Degree);
- (B) AS 11.61.195 (Misconduct Involving Weapons in the Second Degree);
- (C) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A or B felony;
- (5) a crime under AS 11.66.110 (Promoting Prostitution in the First Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;
- (6) a crime under AS 11.71.010 – 11.71.030 (Misconduct Involving a Controlled Substance in the First, Second, or Third Degree);
- (7) a crime under AS 11.73.030 (Delivery of an Imitation Controlled Substance to a Minor);
- (8) a class B felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);
- (9) a class C felony under AS 28.35.030(n) (Operating a Vehicle, Aircraft, or Watercraft While Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, for operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;
- (10) a class C felony under AS 28.35.032(p) (Refusal to Submit to Chemical Test), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, or if punishment under AS 28.35.030(n) or 28.35.032(p) was previously imposed within the last 10 years.
- (d) The following are five-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:
 - (1) a crime under AS 11.41 (Offenses Against the Person) as follows:
 - (A) AS 11.41.230 (Assault in the Fourth Degree);
 - (B) AS 11.41.250 (Reckless Endangerment);
 - (C) AS 11.41.270 (Stalking in the Second Degree);
 - (D) AS 11.41.330 (Custodial Interference in the Second Degree);
 - (E) AS 11.41.530 (Coercion);
 - (2) a class C felony under AS 11.46 (Offenses Against Property);
 - (3) a crime under AS 11.51 (Offenses Against Family and Vulnerable Adults) as follows:
 - (A) AS 11.51.110 (Endangering the Welfare of a Child in the Second Degree);
 - (B) AS 11.51.120 (Criminal Nonsupport), if the crime is a class C felony;
 - (C) AS 11.51.121 (Aiding the Nonpayment of Child Support in the First Degree);
 - (D) AS 11.51.130 (Contributing to the Delinquency of a Minor);
 - (4) a crime under AS 11.56 (Offenses Against Public Administration) as follows:
 - (A) AS 11.56.765 (Failure to Report a Violent Crime Committed Against a Child);
 - (B) AS 11.56.810 (Terroristic Threatening in the Second Degree), if it is a crime involving domestic violence;
 - (C) AS 11.56.815 (Tampering With Public Records in the First Degree);
 - (5) a crime under AS 11.61 (Offenses Against Public Order) as follows:
 - (A) AS 11.61.130 (Misconduct Involving a Corpse);
 - (B) AS 11.61.140 (Cruelty to Animals);
 - (C) AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;
 - (D) AS 11.61.200 (Misconduct Involving Weapons in the Third Degree);
 - (E) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class C felony;
 - (F) AS 11.61.250 (Unlawful Furnishing of Explosives);

(6) a crime under AS 11.66.120 (Promoting Prostitution in the Second Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;

(7) a crime under AS 11.71.040(a)(1), (2), (5), (6), (7), (8), or (10) (Misconduct Involving a Controlled Substance in the Fourth Degree);

(8) a class C felony under AS 11.73 (Imitation Controlled Substances);

(9) a serious offense as defined in AS 12.62.900, except for

(A) a serious offense included in (b) or (c) of this section; and

(B) an offense under AS 11.61.110 (Disorderly Conduct);

(10) a class C felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);

(11) a felony under AS 47.30.815 (Bad Faith Initiation of an Involuntary Mental Commitment Proceeding).

(e) The following are three-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.140 (Theft in the Third Degree);

(B) AS 11.46.320 (Criminal Trespass in the First Degree), if it is a crime involving domestic violence;

(C) AS 11.46.430 (Criminally Negligent Burning), if it is a crime involving domestic violence;

(D) AS 11.46.484 (Criminal Mischief in the Fourth Degree), if it is a crime involving domestic violence;

(E) AS 11.46.510 (Forgery in the Third Degree);

(F) AS 11.46.710 (Deceptive Business Practices), if the crime is a class A misdemeanor;

(2) a crime under AS 11.51.120 (Criminal Nonsupport), if the crime is a class A misdemeanor;

(3) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.740 (Violating a Protective Order), if it is a crime involving domestic violence;

(B) AS 11.56.745 (Interfering With a Report of a Crime Involving Domestic Violence);

(4) a crime under AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A misdemeanor.

(f) The following are one-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46.486 (Criminal Mischief in the Fifth Degree), if it is a crime involving domestic violence;

(2) a crime under AS 11.56.750 or 11.56.755 (Unlawful Contact in the First or Second Degree);

(3) a crime under AS 11.61.120 (Harassment), if it is a crime involving domestic violence.

(g) If an individual does not pass a criminal history check as a result of a barrier crime established in this section, the individual is prohibited from associating with an entity or provider in a manner described in 7 AAC 10.900(b), unless the department grants a variance under 7 AAC 10.935.

(h) If an individual is charged with a barrier crime, that individual is barred from any contact with recipients of care during the pendency of the charge, unless the department grants a variance under 7 AAC 10.935. The crime charged ceases to be a barrier under this section on the date that the

(1) individual is acquitted of that crime;

(2) charge is dismissed; or

(3) district attorney's office decides not to prosecute the charge.

(i) Except as otherwise provided in this section, the barrier times listed in this section begin to run from the date that an individual was charged with or convicted of the crime, whichever period ends at a later date. If the individual is subject to a judgment of a court related to sentencing, probation, or parole, the individual is barred as described in (a)(1) of this section for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, or parole, whichever period is longer.

(j) If an individual is convicted of a lesser crime than was originally charged, the length of time an individual is barred will be based upon the crime for which the individual was convicted.

(k) If an entity or individual is also subject to federal criminal history check requirements, and the federal standards, including standards related to civil findings, are more stringent than those set out in this section, the federal standards apply.

(l) For the purpose of determining whether a person is convicted of a single offense or of multiple offenses, the provisions of AS 12.55.145(a)(1)(C) apply.

(m) In this section,

(1) "charged with" means a person

(A) has been indicted by information or presentment for an offense, or has been arrested and provided a uniform summons and complaint for an offense; and

(B) is awaiting adjudication or dismissal of the matter, or a decision by the district attorney's office not to prosecute;

(2) "convicted" or "conviction" means a judgment entered by a court of competent jurisdiction in this state or another jurisdiction, either upon the entry of a plea, or after a bench or jury trial; "convicted" or "conviction"

(A) includes a suspended imposition of sentence, even if the conviction is formally set aside under AS 12.55.085; and

(B) does not include an executive order of clemency, or a record that has been expunged by order of a court. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010 AS 47.05.310 AS
47.05.340

AS 47.32.030

7 AAC 10.910. Request for criminal history check. (a) An entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 must request a criminal history check under this section, or provide proof of a valid fingerprint-based criminal history check, for each individual to be associated, or to remain associated, with the entity or provider in a manner described in 7 AAC 10.900(b). An entity or individual must request a criminal history check

(1) when the entity or provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

(2) for a new owner, officer, director, partner, member, or principal of the business organization if there is a change in ownership of the business organization, or if an officer, director, partner, member, or principal of the business organization is replaced; the criminal history check must be completed before the individual begins association unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(3) except as provided otherwise in this section, if the entity or provider wishes to hire or retain an employee, independent contractor, or unsupervised volunteer described in 7 AAC 10.900(b)(3); the criminal history check must be completed before hiring unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(4) for an individual 16 years of age or older who is not a recipient of services, and who wishes to reside in the entity or to be present as described in 7 AAC 10.900(b)(5) or (6); the criminal history check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid criminal history check under 7 AAC 10.920; or

(B) the individual is residing in the entity before that individual's 16th birthday; for an individual described in this subparagraph, the entity or provider must submit the information required under (b) of this section within 30 days before the individual's 16th birthday;

(5) at any time requested by the department

(A) to show compliance with 7 AAC 10.900 – 7 AAC 10.990 during inspection, monitoring, or investigation; or

(B) for an individual if the department has good cause to believe that the individual's criminal history has changed; or

(6) on or before April 10, 2007, for each individual who is associated with an entity or provider operating under a current license, certification, approval, or finding of eligibility to receive payments, and who

(A) does not have a valid criminal history check; or

(B) passed a criminal history check conducted before February 9, 2007

that

(i) was not fingerprint-based; or

(ii) was fingerprint-based and conducted more than six years

before February 9, 2007.

(b) The entity or provider must submit the following with each request for a criminal history check:

(1) a release of information authorization, on a form provided by the department, signed by the individual for whom the request is submitted;

(2) an authorization, on a form provided by the department and signed by the individual for whom the request is submitted, permitting the department to mark the individual's name in the Alaska Public Safety Information Network (APSIN) under 7 AAC 10.915(e);

(3) two sets of fingerprints for the individual for whom the request is submitted;

(4) a signed statement, on a form provided by the department, from the individual who took the fingerprints, attesting that at least one government-issued picture identification was used to verify the identity of the individual fingerprinted;

(5) the fees required by the Department of Public Safety under 13 AAC 68.900(a)(2)(B) and (5); if the legislature makes an appropriation for the department to pay those fees for unpaid volunteers,

(A) the department will not pay a fee for a volunteer who is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); and

(B) an entity or provider must reimburse the fee to the department if an unpaid volunteer for whom the department paid a fee becomes a paid employee within 60 days after that fee was paid;

(6) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); if an unpaid volunteer for whom the department waived an application fee becomes a paid employee within 60 days after that fee was waived, the entity or provider must pay the waived fee.

(c) Unless a more frequent fingerprint-based criminal history check is required under federal law, or for certain entities and providers under (f) of this section, a fingerprint-based criminal history check is valid for six years from the date the check became valid under (h) of this section for an individual who

(1) remains associated with an entity or provider in a manner described in 7 AAC

10.900(b), subject to verification under (d) of this section;

(2) becomes re-associated with the same entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with that entity or provider, subject to verification under (e) of this section; or

(3) becomes associated with another entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with a previous entity or provider, subject to verification under (e) of this section.

(d) Upon renewal of a license, certification, or approval, or when a finding is made for continued eligibility to receive payments, an entity or individual service provider must provide to the department proof that an individual described in (c)(1) of this section has a valid criminal history check. If the department determines that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section.

(e) An individual described in (c)(2) or (c)(3) of this section must verify with the department that the current fingerprint-based criminal history check is still valid. The entity or provider shall submit to the department a \$25 fee for this verification. The department will waive the fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5). If an unpaid volunteer for whom the department waived a verification fee becomes a paid employee within 60 days after the department waived the fee, the entity or provider must pay the waived fee. If the department determines during the verification process that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section, and that the department will consider the verification fee the department's application fee under (b)(6) of this section.

(f) Except as provided otherwise in this subsection, and unless the department granted a variance under 7 AAC 10.935, a new criminal history check is not required if a person associated with an entity or provider in a manner described in 7 AAC 10.900(b) is transferred from one site operated by the entity or provider to another site operated by that entity or provider, if all sites are identified in the request for a criminal history check. Before October 1, 2007, an entity or provider must submit the items required under (b) of this section for an individual described in the following list, each time that individual changes employment, regardless of what entities or providers were listed on the request for a criminal history check:

(1) an individual associated with

(A) a nursing facility;

(B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; for purposes of this subparagraph,

(i) "hospital that provides swing-bed services" has the meaning given "swing-bed hospital" in 42 C.F.R. 413.114(b); and

(ii) the definition of "swing-bed hospital" in 42 C.F.R. 413.114(b), as revised as of October 1, 2006, is adopted by reference;

(C) an intermediate care facility for the mentally retarded or persons with related conditions;

(D) an assisted living home;

(E) a hospice agency;

(F) a home and community-based services provider as defined in 7 AAC 43.110;

(G) a home health agency; or

(H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;

(2) an individual providing care coordination, case management, adult day services, or respite care services.

(g) A willful misrepresentation of an individual's criminal or civil history by an entity or provider, or by the individual, is cause for immediate denial of a request for a criminal history check, or revocation of a valid criminal history check.

(h) A valid criminal history check means that, within the applicable timeframes referred to in this section,

- (1) the person submitted all items listed under (b) of this section;
- (2) the department determined that a barrier crime or condition did not exist;
- (3) the person's name has been marked in APSIN on a continuous basis; and
- (4) if applicable, any variance granted under 7 AAC 10.935 is still in effect and authorized by the department, and the individual who was the subject of the variance is associated with the same entity or provider.

(i) Nothing in this section precludes an entity or provider from requiring

(1) an individual who is subject to a criminal history check under 7 AAC 10.900 – 7 AAC 10.990 to pay a cost involved in the submittal of a request under this section; the provisions of this paragraph do not apply to a foster home; or

(2) a criminal history check for an individual who is not otherwise subject to 7 AAC 10.900 – 7 AAC 10.990. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.340 AS 47.32.030 AS 47.05.310 AS 47.32.010

Editor's note: Forms referred to in 7 AAC 10.910 may be obtained from the Department of Health and Social Services, Division of Public Health, Section of Certification and Licensing, 619 East Ship Creek Avenue, Suite 232, Anchorage, Alaska 99501, or are available at the department's website: <http://www.hss.state.ak.us/dph/CL/bgcheck>.

7 AAC 10.915. Criminal history check. (a) The department will screen a request for a criminal history check through the

- (1) centralized registry established under 7 AAC 10.955 to determine whether a barrier condition exists for the individual who is the subject of the criminal history check;
- (2) registry of certified nurse aides under AS 08.68.333;
- (3) central registry of sex offenders and child kidnappers under AS 18.65.087;
- (4) United States Department of Health and Human Services, Office of the Inspector General database of individuals and entities excluded under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and
- (5) any other registry or database determined by the department to be relevant to the screening being conducted for an individual, including any registry or database maintained by another state where that individual has resided.

(b) In addition to its review under (a) of this section, the department will review the criminal justice information supplied by the Department of Public Safety, court or other applicable government agency records, and the national criminal history record check supplied by the Federal Bureau of Investigation, to determine whether a barrier crime exists for the individual who is the subject of the criminal history check.

(c) If, after reviewing all available information described in (a) and (b) of this section, the department determines that a barrier crime or condition does not exist, the department will notify the entity or provider that submitted the request, and the individual who was the subject of the criminal history check, that the individual passed the criminal history check. The department will include in the notification the following:

(1) the period during which the criminal history check is valid, unless revoked or rescinded under this section;

(2) a statement that the valid criminal history check is conditioned upon the individual continuing to meet the applicable standards of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990;

(3) a statement that, if the individual ceases to be associated with the entity or provider in a manner described in 7 AAC 10.900(b),

(A) the individual's continued compliance with the applicable standards of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 must be verified by the department in accordance with 7 AAC 10.910(e) before that individual may become associated with another entity or provider, or re-associated with the same entity or provider; and

(B) a time period during which the individual is not associated with an entity or provider that is 100 days or longer is subject to (g) of this section.

(d) If, while conducting a criminal history check, the department determines that a barrier crime or condition exists, the department will notify the

(1) entity or provider that submitted the request under 7 AAC 10.910; the department will include in the notification the following statements:

(A) that the department has determined a barrier crime or condition exists; the department will not identify the crime or condition, but will identify the applicable barrier time under 7 AAC 10.905 or 7 AAC 10.955, as applicable;

(B) that the individual who was the subject of the criminal history check has been given an opportunity to challenge the department's determination under 7 AAC 10.950 if the individual believes the determination was based on erroneous information, or if the individual has additional information for the department to consider;

(C) that if the individual is willing to disclose the barrier crime or condition to the entity or provider, and if the entity or provider continues to desire a valid criminal history check for that individual, the entity or provider may request a variance, if allowed under 7 AAC 10.930; and

(2) individual who was the subject of the criminal history check; the department will include in the notification the following:

(A) the reason for the determination, including identification of the barrier crime or condition and the applicable barrier time under 7 AAC 10.905;

(B) a statement that if the individual wishes to disclose the barrier crime or condition to the entity or provider that submitted the request, the entity or provider may be able to obtain a variance, if allowed under 7 AAC 10.930;

(C) a statement that if the individual believes there is an error in the information relied upon by the department, or if the individual has additional information for the department to consider, the individual may submit a request for reconsideration under 7 AAC 10.950.

(e) For each request for a criminal history check processed under this section, the department will mark in APSIN the name of the individual who was the subject of the criminal history check. If the department receives notification under APSIN of law enforcement activity for an individual, the department will review the information. If the department determines that the activity creates a barrier under 7 AAC 10.905, the department will immediately notify the entity or provider and the individual. The department will include in the notification information advising the entity or provider and the individual that

(1) the department intends to revoke the valid criminal history check in accordance with 7 AAC 10.945; the department will not identify the barrier crime or condition in the notice to the entity or provider, but will identify the crime or condition in the notice to the individual;

(2) the individual may request reconsideration under 7 AAC 10.950 if the individual believes there was an error in the information relied upon by the department; and

(3) if the individual wishes to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930.

(f) Except as provided otherwise in this subsection, an entity or provider must, within

24 hours after receiving notification under (d) or (e) of this section, terminate association with the individual in accordance with 7 AAC 10.960. If the entity or provider requests a variance under 7 AAC 10.930, or if the individual requests reconsideration under 7 AAC 10.950, the individual may remain associated with the entity or provider, pending a decision on the request, if

(1) the individual is removed from direct contact with recipients of services; and
(2) the entity or provider ensures that the individual is provided with direct supervision if the individual is present in any area where services are provided, during hours of operation.

(g) If an individual remains out of association with an entity or provider for 100 days or longer, the department will revoke a valid criminal history check without prior notice. A new criminal history check is required if the individual wishes to become associated with any entity or provider in a manner described in 7 AAC 10.900(b).

(h) If an individual with a valid criminal history check ceases to be associated with an entity or provider, and wishes to have the individual's name unmarked in APSIN, the individual shall submit a written request to the department that the valid criminal history check be rescinded. The department will send a written acknowledgment of the rescission to the individual and to the entity or provider with whom the individual was most recently associated. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.920. Provisional valid criminal history check. (a) The department may issue notification of a provisional valid criminal history check after screening the individual under 7 AAC 10.915(a) and reviewing the criminal justice information supplied by the Department of Public Safety, if a barrier crime or condition is not discovered in that screening and review and if

(1) the department determines that its further review time might unduly delay the process;

(2) an entity or provider has requested an expedited review and has
(A) included justification for the expedited review;
(B) submitted, at a minimum, the documents required under 7 AAC 10.910(b)(1) and (2); and
(C) agreed to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) – (6) that were not included with the request; or

(3) a request for a criminal history check does not include the required sets of fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the entity or provider agrees to submit within 30 days the fingerprints required under 7 AAC 10.910(b)(3) and any items required under 7 AAC 10.910(b)(4) – (6) that were not included with the request.

(b) Notification of a provisional valid criminal history check issued under this section is valid until the results of a fingerprint-based criminal history check are processed under 7 AAC 10.915, unless revoked under this section. If the entity or provider fails to submit fingerprints and other required items within 30 days, or the individual does not pass the criminal history check, the provisional valid criminal history check is automatically revoked, and the entity or provider must terminate association with the individual in accordance with 7 AAC 10.960. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.320 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030

7 AAC 10.925. Monitoring and notification requirements. (a) An entity or provider shall monitor to ensure that all individuals associated with the entity or provider in a manner described in 7 AAC 10.900(b) continue to meet the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990. The entity or provider shall require each individual for whom a criminal history check is required to report to the entity or provider within 24 hours, or the next business day if the individual is

(1) charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(2) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry.

(b) In addition to the reporting requirements of 7 AAC 10.955(c) for the centralized registry, the entity or provider shall notify the department by telephone, by electronic mail, by facsimile, by letter, or in person within

(1) 24 hours, or the next business day, after the entity or provider has knowledge that an individual associated with the entity or provider has been

(A) arrested for, charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(B) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry; or

(2) 14 days after any change in association with the entity or provider for an individual who has a valid criminal history check or is the subject of a provisional valid criminal history check, including a change that involves an individual

(A) whose association described in 7 AAC 10.900(b) has been terminated; or

(B) who has not been associated with the entity or provider for 61 days or more, but becomes re-associated within 100 days.

(c) Failure to notify the department as required under this section may result in an enforcement action, including suspension or revocation of the license, certification, approval, or finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS 47.05.340

AS 47.32.030 AS 47.05.320

7 AAC 10.930. Request for a variance. (a) Except for a crime or condition listed in (g) of this section, an entity or provider notified under 7 AAC 10.915(d) that a barrier crime or condition exists may request a variance under this subsection. The request must be submitted to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted no later than 30 days after the entity or provider receives notice under 7 AAC 10.915(d), or, if the individual who was the subject of the criminal history check submits a request for reconsideration as allowed under 7 AAC 10.915(d)(2)(C), no later than 30 days after the department issues its decision on reconsideration under 7 AAC 10.950(b)(3), whichever date is later. The request must be submitted on a form provided by the department, and must include the following:

(1) a comprehensive rationale for granting a variance;

(2) a demonstration of how the health, safety, and welfare of recipients of services will be adequately protected;

(3) copies of all known information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected, including the following information regarding the individual for whom a variance is sought:

(A) a copy, as applicable, of that individual's record of

(i) protective orders issued or filed under AS 18.66 (Domestic

Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction;

- (ii) conviction;
- (iii) indictment or presentment, or of charging by information or complaint;
- (iv) having been charged with a crime, without subsequent conviction;
- (v) having been charged with a crime that was reduced to a lesser charge;
- (vi) having been charged with a crime for which a suspended imposition of sentence was granted by the court; and
- (vii) any circumstance that led to a barrier condition under 7 AAC 10.955;

(B) if the individual was incarcerated, that released the individual from incarceration;

- (i) a copy of the order from the local, state, or federal jurisdiction;
- (ii) the date of release from incarceration; and
- (iii) any terms and conditions of parole;

(C) if the individual was sentenced and, as a part of that sentence, the individual was placed on supervised or unsupervised probation, a copy of the terms and conditions of probation;

(D) the extent, nature, and seriousness of the following:

- (i) the individual's offense and past criminal record;
- (ii) a behavioral health problem if it exists;
- (iii) a domestic violence problem if it exists;
- (iv) any circumstance that led to a barrier condition under 7 AAC 10.955;

(E) the age of the individual at the time of the offense, problem, or circumstance;

(F) the amount of time that has elapsed since the most recent offense, problem, or circumstance;

(G) evidence of rehabilitation, prevention, or treatment efforts;

(H) other evidence of the individual's present fitness, including at least two letters of recommendation from credible persons who are aware of the individual's criminal and civil history, behavioral health problem, or domestic violence problem, and who recommend that a variance be granted; any letters must be from persons who are unrelated to the individual for whom the variance is requested and who are not associated with the entity or provider that submitted the request for a variance; nothing in this subparagraph precludes the entity or provider from submitting additional letters of recommendation;

(I) if the individual is an employee or volunteer, or a potential employee or volunteer, information related to job responsibilities that would be performed, hours and days of service, whether the individual would be in contact with recipients of services, and plans for supervision, including whether the individual would be subject to direct supervision while on the premises during hours of operation.

(b) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for the entity or provider seeking a variance will review each request for a variance received by that office and will

- (1) make a written recommendation to the variance committee appointed under 7 AAC 10.935 to grant or deny the request;
- (2) include the reasons for the recommendation; and
- (3) recommend any conditions that should be placed on any variance issued.

(c) If the individual was convicted of a lesser charge, in the department's review under (b) of this section, the department will consider information regarding the original charge in making its recommendation to the variance committee, including whether the original charge was a permanent barrier crime or condition for which a variance would be

prohibited under (g) of this section.

(d) If the department granted a variance for an offense revealed in a fingerprint-based criminal history check conducted six or more years before February 9, 2007, and if the offense for which the variance was granted is not a permanent barrier under 7 AAC 10.905, the entity or provider must submit a new request for a variance, if allowed under this section, at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments. Except as provided in (h) and (i) of this section, if the offense for which the department granted the variance is a permanent barrier under 7 AAC 10.905, the variance is void and the entity must terminate association with the individual in accordance with 7 AAC 10.960.

(e) If the department granted a variance for a barrier condition described in 7 AAC 10.955 six or more years before February 9, 2007, the entity or provider must submit a new request for a variance at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments.

(f) The department will not grant a variance from the requirement in AS 47.05.310 for conducting a criminal history check for an individual who has regular contact with recipients of services. For any other individual subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, an entity or provider may request a variance from the requirement to conduct a criminal history check by submitting a written request to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted on a form provided by the department and must include a comprehensive rationale for the request and demonstrate that the health, safety, and welfare of recipients of services will be adequately protected.

(g) Except as provided in (h) - (j) of this section, the department will not grant a variance for a

(1) conviction for an offense that is a permanent barrier under 7 AAC 10.905; or
(2) crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier period set by federal law for that crime or civil finding; for the purpose of this paragraph,

(A) "federal law" includes an offense described in

(i) 42 U.S.C. 670 – 679b (secs. 470 – 479A of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(ii) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(iii) 45 C.F.R. 1356.30, revised as of October 1, 2005, and adopted by reference; and

(iv) another applicable federal statute or regulation; and

(B) the prohibition applies to all entities and providers subject to 7 AAC 10.900 – 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of those entities or providers.

(h) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed in (i) of this section, if

(1) a behavioral health problem was a factor in the commission of the crime; and

(2) the individual

(A) is associated in a manner described in 7 AAC 10.900(b) with an entity that provides a treatment program to individuals with a behavioral health problem;

(B) has completed any treatment required by a court; and

(C) has demonstrated a sustained self-directed program of recovery for at least five years, as determined through the assessment of a mental health professional clinician or a substance abuse counselor with at least three years of experience; for purposes of this subparagraph,

(i) "mental health professional clinician" has the meaning given in 7

AAC 43.1990;

(ii) "substance abuse counselor" means a counselor providing services for a substance abuse treatment facility or program certified under 7 AAC 29; and

(iii) "recovery" includes, as applicable, absence of symptoms, stabilization in life domains, compliance with any medical orders, and abstinence from substance use.

(i) For the purpose of (h) of this section, the department may grant a variance for the following permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

- (1) AS 11.41.200 (Assault in the First Degree);
- (2) AS 11.41.210 (Assault in the Second Degree);
- (3) AS 11.41.220 (Assault in the Third Degree);
- (4) AS 11.41.320 (Custodial Interference in the First Degree);
- (5) AS 11.41.460 (Indecent Exposure in the Second Degree);
- (6) AS 11.41.500 (Robbery in the First Degree);
- (7) AS 11.41.510 (Robbery in the Second Degree);
- (8) AS 11.41.520 (Extortion);
- (9) AS 11.46.400 (Arson in the First Degree);
- (10) AS 11.46.410 (Arson in the Second Degree).

(j) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual adjudicated as a delinquent for a permanent barrier crime under 7 AAC 10.905(b). (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.935. Review of request for a variance. (a) The commissioner will appoint three or more department employees to serve as a variance review committee to review requests for variances submitted under 7 AAC 10.930. The commissioner will include at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments, but will not include an employee substantively involved in any recommendation to the committee made under 7 AAC 10.930(b).

(b) In its review of a request for a variance, the review committee shall determine whether a variance is prohibited under 7 AAC 10.930(f) or (g). If a variance is prohibited, the review committee shall deny the variance.

(c) In its review of a request for a variance, the review committee shall

- (1) consider the recommendations made by the department office under 7 AAC 10.930(b);
- (2) consider the information supplied with the request and any other relevant information available to the department;
- (3) determine whether the individual charged with a crime was subsequently convicted;
- (4) if the individual was convicted of a lesser charge, determine whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under 7 AAC 10.930(g);
- (5) determine whether any suspended imposition of sentence is still in effect, and review the nature of any applicable conditions;
- (6) verify, as applicable, that
 - (A) conditions of parole or probation were met;
 - (B) court-ordered restitution has been made, or payments are current;

and

(C) treatment, if required by the court, has been completed;

(7) if the crime committed related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, verify that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services;

(8) if the barrier condition related to the abuse, neglect, or exploitation of a child or vulnerable adult, verify that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services; and

(9) consider mitigating factors, including whether the individual has been employed by the entity or provider for a substantial period, has performed duties in a responsible and trustworthy manner, and has not been the subject of any complaint from a recipient of services or a representative of a recipient of services.

(d) The review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(e) If the review committee, after its review of available information, determines that the health, safety, and welfare of recipients of services will be adequately protected, the review committee shall recommend that the commissioner grant the request for a variance. If the committee determines that the health, safety, and welfare of recipients of services will not be adequately protected, the review committee shall recommend that the commissioner deny the request for variance.

(f) The commissioner will consider the recommendation of the review committee and will issue a decision on a request for a variance within 30 days after receiving all information required under 7 AAC 10.930. The commissioner will deliver a copy of the decision to grant or deny the request for a variance to the requesting entity or provider by mail or facsimile. The commissioner will include in the decision to deny a request the reasons for the denial, and will advise the entity or provider of the right to request reconsideration of the decision under 7 AAC 10.950. A copy of the decision will be provided to the department office responsible for conducting criminal history checks, the department office responsible for maintaining the centralized registry established under 7 AAC 10.955, and the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

(g) In a variance granted under this section, the department will not identify the individual for whom the variance was requested, but will specify the barrier crime or condition for which the variance was granted, and will set out the terms and conditions of the variance, including an expiration date not to exceed the expiration date of the license, certification, approval, or finding of eligibility to receive payments applicable to the entity or provider that requested the variance.

(h) A variance may not be transferred to another entity or provider. If the individual for whom the department granted a variance under this section remains associated with the entity or provider that requested the variance, and the variance is not revoked under (i) of this section, the entity or provider need not submit a new variance request each time it submits its application for renewal of its license, certification, approval, or finding of eligibility to receive payments, but must request a new criminal history check for that individual with each application.

(i) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for an entity or provider will, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the department learns that it granted the variance based on false information provided by the individual to whom the variance applies or by the entity or provider that requested the variance; or

(2) the individual to whom the variance applies

(A) violates a term or condition of the variance;

(B) subsequently becomes subject to AS 47.05.310(c), or is charged with,

convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in 7 AAC 10.905, or a similar crime in another jurisdiction; or
(C) ceases to be associated with the entity or provider that requested the variance. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.940. Posting of variance decision required. If the department grants a variance under 7 AAC 10.935, the entity or individual service provider shall post a copy of the variance decision with the copy of the license, certification, approval, or finding of eligibility to receive payments that was issued by the department, in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the entity or provider. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.945. Revocation of valid criminal history check or variance. (a) Subject to AS 47.32, if the department decides to revoke a valid criminal history check issued under 7 AAC 10.900 – 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider, and to the individual for whom the criminal history check was conducted. The notice will include the reasons for the department's decision and will advise the individual of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the individual unless a request for reconsideration is submitted.

(b) Subject to AS 47.32, if the department decides to revoke a variance issued under 7 AAC 10.900 – 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider to whom the variance was issued, and to the individual who was the subject of the variance. The notice will include the reasons for the department's decision and will advise the entity or provider of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the entity or provider unless a request for reconsideration is submitted.

(c) Nothing in this section precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of a recipient of services is threatened. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.950. Request for reconsideration. (a) A request for reconsideration of a department decision under 7 AAC 10.900 – 7 AAC 10.990 must be submitted within 30 days after the requestor receives the notice of the decision. The request for reconsideration must include

- (1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;
- (2) a clear description of the department's decision to be reviewed; and
- (3) a clear and concise statement of the reason for the request, including
 - (A) a statement of the nature and scope of the requestor's interests, and

an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and any proposed alternatives; and

(C) copies of any documents or other information that would assist the department in its review.

(b) After reviewing a request for reconsideration of the

(1) commissioner's decision to deny a request for a variance under 7 AAC 10.935(f), the commissioner will notify the requestor of the commissioner's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision;

(2) department's decision to revoke a valid criminal history check under 7 AAC 10.910(g) or 7 AAC 10.915(e), or a variance under 7 AAC 10.935(i), the department office that made the decision to revoke will notify the requestor of that office's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision; or

(3) department's determination under 7 AAC 915(d) that a barrier crime or condition exists, the department office responsible for conducting criminal history checks will, within 30 days after receiving the request, notify in writing the

(A) requestor of that office's decision on reconsideration and state the reasons for that decision; and

(B) entity or provider that submitted the request for a criminal history check under 7 AAC 10.910 that, if the decision on reconsideration confirms the determination that a barrier crime or condition exists, and if the individual is willing to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930, within 30 days after receiving notice under this subparagraph.

(c) A decision under (b)(1) and (b)(2) of this section is a final agency decision for purposes of seeking judicial review. A decision under (b)(3) of this section is a final agency decision unless the department grants a variance under 7 AAC 10.935.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting criminal history checks, and to the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS 47.05.340

AS 47.32.030 AS 47.05.320

7 AAC 10.955. Centralized registry. (a) A centralized registry is established in the department to accomplish the purpose of AS 47.05.330 as that purpose relates to an individual

(1) who seeks to be or to remain associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b); and

(2) whose name appears on the centralized registry because of a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult.

(b) An individual whose name appears on the centralized registry may not be associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b) unless a variance is granted under 7 AAC 10.935.

(c) An entity or individual service provider that is subject to AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 shall, using a form prescribed by the department, submit to the department reports as required or allowed under AS 47.05.330 for any matter described in (a)(2) of this section.

(d) Upon receipt of a report required under (c) of this section, the department will enter the information on the centralized registry as required by AS 47.05.330(b).

(e) Separately or in conjunction with an investigation or audit under AS 47.05.200, AS 47.10, AS 47.24, or AS 47.62, the department will investigate a report of abuse, neglect, or exploitation submitted under (c) of this section. If, after its investigation, the department makes a substantiated finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or individual service provider that made the report, and the individual who is the subject of the investigation, that the department has made a substantiated finding, and that it intends to place the finding in the centralized registry. In the notice, the department will

- (1) describe the nature of the substantiated finding;
- (2) identify each statute or regulation that supports the finding;
- (3) state the effective date for placement in the registry; and
- (4) advise that the individual who is the subject of the investigation may request a hearing under (f) of this section.

(f) An individual who is the subject of an investigation that results in a substantiated finding against the individual may request a hearing from the department within 30 days after receipt of the notice described in (e) of this section. A request under this subsection must be submitted to the department's office responsible for maintaining the centralized registry. The request must be in writing, must include the individual's reasons for believing the department's finding to be in error, and must be accompanied by any relevant documentation to support those reasons.

(g) If the department determines that questions of material fact, if any, raised in a request for hearing under (f) of this section and relevant to the department's substantiated finding, were previously decided in a civil or criminal court action, or in an administrative hearing conducted in accordance with AS 44.62.330 – 44.62.630 (Administrative Procedure Act), and that under the facts as previously decided, the individual committed abuse, neglect, or exploitation, the department will send the individual written notice that the department intends to issue a summary decision to dismiss the individual's claim. The individual may submit a written objection to the department's proposed dismissal, identifying any issue of material fact that the individual believes still to be in dispute, providing reasons why the individual disagrees with the department's proposed dismissal, and providing any relevant documentation to support those reasons. If the department does not receive a written objection within 30 days after the individual received notice of the department's proposed dismissal, or if the department rejects the individual's objection,

(1) the department's substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry; if the previous court action or hearing resulted in a decision, order, judgment, or adjudication that the individual committed abuse, neglect, or exploitation, the department will also enter the information in the centralized registry; and

(2) the department will give notice as required in (k) of this section.

(h) If a hearing is requested under (f) of this section,

(1) the department will hold the hearing within 45 days after receiving the request; and

(2) the entity or provider may allow the individual to remain associated with the entity or provider, pending a decision on the request, if

(A) the individual is removed from direct contact with individuals receiving services; and

(B) the entity or provider ensures that the individual has supervised access if present in any area where services are provided, during hours of operation.

(i) If a hearing is requested under (f) of this section, the department will conduct the hearing in accordance with AS 44.62.330 – 44.62.630 (Administrative Procedure Act). The hearing officer shall issue a decision within 30 days after the hearing is concluded.

The decision is a final department decision for purposes of judicial review. If the hearing officer finds by a preponderance of the evidence that the individual who is the subject of the hearing committed abuse, neglect, or exploitation, the hearing officer shall submit this information to the department office responsible for maintaining the centralized registry. The department will enter the information on the centralized registry and give notice as required in (k) of this section.

(j) If the individual who is the subject of the investigation does not request a hearing within 30 days after receipt of the notice described in (e) of this section, or waives the right to a hearing, the substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry. The department will give notice as required in (k) of this section.

(k) If a hearing or waiver of hearing under this section results in a finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or provider that made a report under (c) of this section, and the individual who is the subject of the hearing, of the hearing or waiver results and of the entry of the information on the centralized registry. The department will notify the individual of the right to request that the department delete or modify the information on the centralized registry to correct an inaccuracy in accordance with AS 47.05.330(j).

(l) If, after an investigation in accordance with AS 47.05.330(j) to determine whether there is an inaccuracy related to information on the centralized registry, the department determines that the information is correct, the department will notify the individual who made the request that the department has denied the individual's request to delete or modify the information.

(m) The department will remove from the centralized registry information regarding a finding that an individual has committed abuse, neglect, or exploitation if the department receives notice that the individual has died.

(n) For purposes of this section, "substantiated finding" means a determination made by the department after an investigation that, based on available information, it is more likely than not that abuse, neglect, or exploitation occurred. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
47.05.340
AS 47.32.030 AS 47.05.320

7 AAC 10.960. Termination of association. (a) Except as provided in (b) and (c) of this section, if an entity or provider is required to terminate association with an individual, the entity or provider shall

(1) notify the individual that the individual's employment, volunteer services, or other association with the entity or provider under 7 AAC 10.900(b) is ended, effective immediately, unless the entity or provider takes immediate action under (2) of this subsection; the entity or provider must notify the individual under this paragraph

(A) immediately, if the individual is present at the entity or premises where the provider is providing services; or

(B) before or upon the individual's next arrival at the entity; or

(2) if the entity or provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that individual so that the individual

(A) does not have contact with recipients of services;

(B) cannot access personal or financial records maintained by the entity or provider regarding recipients of services;

(C) has no control over or impact on the financial well-being of a recipient of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions; and

(D) is provided with direct supervision if present in the entity or premises where the provider is providing services during hours of operation.

(b) If the entity or provider is required to terminate association with an individual who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the entity or provider shall, within 24 hours after receiving notice to terminate association, deliver a copy of the relevant language of the agreement or contract to the department. The entity or provider shall cooperate with the department in developing an appropriate termination plan for the individual that includes the measures set out in (a)(2)(A) – (D) of this section during the notice period mandated by the agreement or contract.

(c) If the individual for whom termination of association is required is a relative of the operator, administrator, or provider, and resides in the entity or premises where services are provided, termination of association must occur within 24 hours, and the entity or provider shall ensure that the individual

(1) does not have contact with recipients of services; and

(2) is provided with direct supervision if, during that 24-hour period, the individual is present in the entity or premises where the provider is providing services during hours of operation. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS 47.05.340

AS 47.32.030 AS 47.05.320

7 AAC 10.990. Definitions. (a) In 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise,

(1) "APSIN" means the Alaska Public Safety Information Network;

(2) "barrier time" means the length of time a barrier crime under 7 AAC 10.905 bars an individual from association with an entity or provider under 7 AAC 10.900(b);

(3) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;

(4) "centralized registry" means the centralized registry established in 7 AAC 10.955;

(5) "certification" has the meaning given "certified" in (b) of this section;

(6) "commissioner" means the commissioner of health and social services;

(7) "condition" means a barrier to association under 7 AAC 10.900(b) that results from

(A) a matter described in AS 47.05.330(b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and

(B) the entry of that information in the centralized registry;

(8) "co-occurring disorder" has the meaning given in 7 AAC 57.990;

(9) "crime" means barrier crime under 7 AAC 10.905;

(10) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(11) "criminal justice information" has the meaning given in AS 12.62.900;

(12) "department" means the Department of Health and Social Services;

(13) "direct supervision" means that the administrator, or a care provider who is at least 18 years of age,

(A) is within sight or sound of the individual being supervised;

(B) has received the training required under applicable department

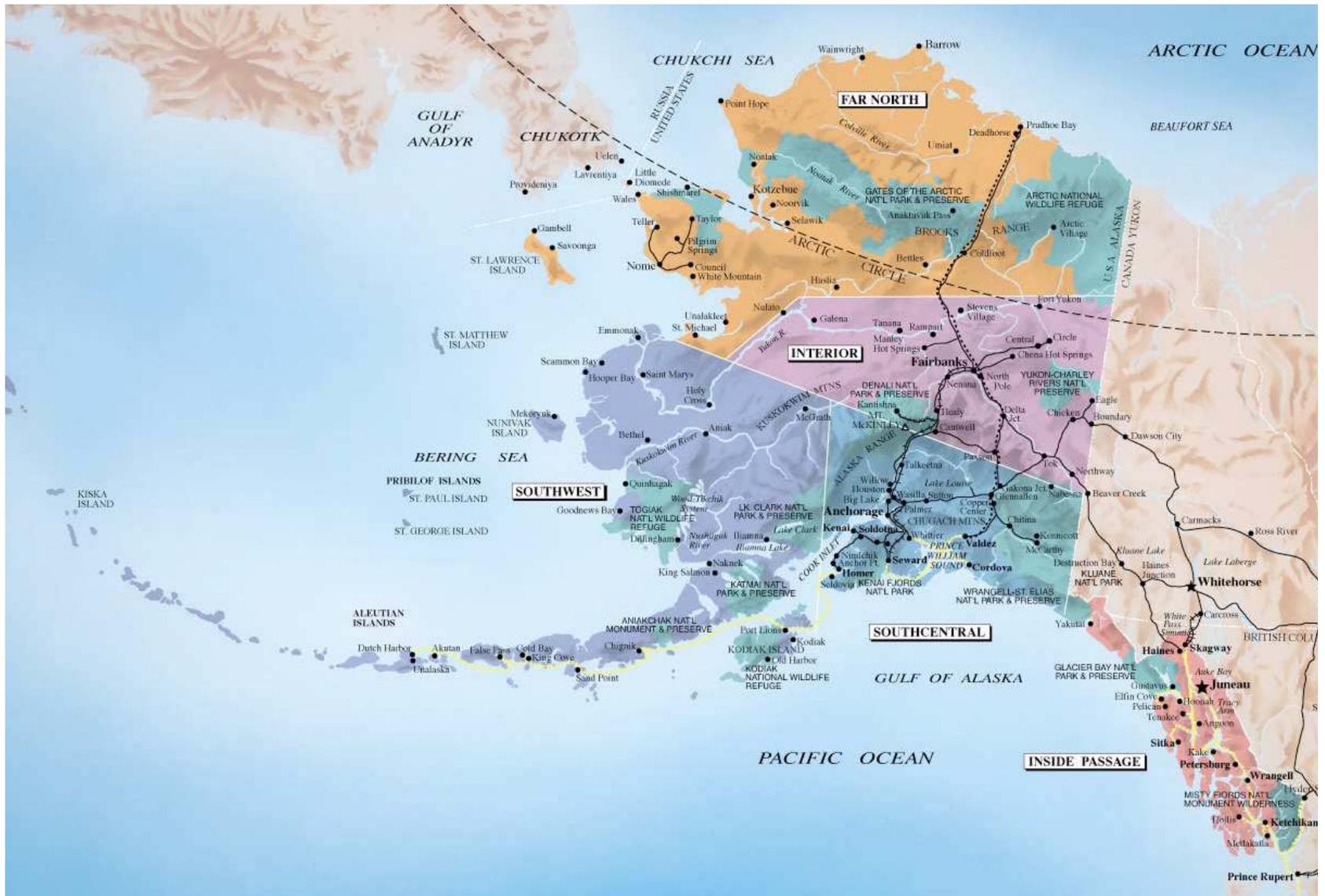
- regulations;
- (C) is present to observe the individual; and
 - (D) is available to the individual for consultation or assistance;
- (14) "domestic violence problem" means the individual
- (A) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime involving domestic violence listed in AS 18.66.990(3); or
 - (B) is or has been subject to a protective order issued or filed under AS 18.66 or a substantially similar law or ordinance of another jurisdiction;
- (15) "eligibility to receive payments" means eligibility to receive payments that are used for the direct provision of services for the health, safety, and welfare of persons who are served by programs administered by the department; "eligibility to receive payments" does not include payments used solely for administrative costs;
- (16) "individual service provider" has the meaning given in AS 47.05.390;
- (17) "provider" means an individual service provider;
- (18) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;
- (19) "substance use disorder" has the meaning given in 7 AAC 57.990;
- (20) "supervised access" means that the entity or provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of recipients of services;
- (21) "terminate association" means to sever an individual's association under 7 AAC 10.900(b) with an entity or provider;
- (22) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of an entity or provider.
- (b) Notwithstanding 7 AAC 10.9990, in 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise,
- (1) "entity" has the meaning given in AS 47.05.390;
 - (2) "recipient of services" means an individual receiving services from an entity or provider.
- (c) In AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990, unless the context requires otherwise, "regular contact" means direct interaction with a recipient of services that occurs daily, or less frequently but on a recurring basis.
- (d) In AS 47.05.300(a),
- (1) "certified" means certified under 7 AAC 43.1090;
 - (2) "eligible to receive payments" has the meaning given "eligibility to receive payments" under (a) of this section. (Eff. 2/9/2007, Register 181)

Authority: AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310 AS
 47.05.340
 AS 47.32.030 AS 47.05.320

Rural Areas Supported by State Live Scan Equipment

Location and Number of Scan Units	Area Serviced by Location
Aniak – 1	Aniak and surrounding communities
Barrow – 1	Barrow and surrounding communities
Bethel – 2	Bethel, Aleknagik, and surrounding communities
Craig – 1	Craig and surrounding communities
Dillingham – 1	Dillingham and surrounding communities
Delta Junction – 1	Delta Junction, Tok, and surrounding communities
Galena – 1	Galena and surrounding communities
Glenallen – 1	Glenallen and surrounding communities
Homer – 1	Homer and surrounding communities
Kenai/Soldotna – 1	Kenai, Soldotna, Kasilof, Sterling, and surrounding communities
Ketchikan – 1	Ketchikan, Metlakatla, Wrangle, and surrounding communities
King Salmon – 1	King Salmon and surrounding communities
Kodiak – 1	Kodiak and surrounding communities
Kotzebue – 1	Kotzebue and surrounding communities
McGrath – 1	McGrath and surrounding communities
Nome – 1	Nome and surrounding communities
Petersburg – 1	Petersburg and surrounding communities
Seward - 1	Seward and surrounding communities
Sitka – 1	Sitka and surrounding communities
St. Mary’s – 1	St. Mary’s and surrounding communities
Unalaska – 1	Unalaska and surrounding communities
Valdez – 1	Valdez, Cordova, and surrounding communities
Wrangell – 1	South Prince of Wales Island

Appendix D
Alaska State Road Map



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IDAHO'S BACKGROUND CHECK PILOT PROGRAM
FINAL REPORT

IDAHO'S BACKGROUND CHECK PILOT PROGRAM
FINAL REPORT
(JANUARY 1, 2005 – SEPTEMBER 30, 2007)
by Mond D. Warren, Bureau Chief
Federal Project Officer: Susan Larsen
Idaho Department of Health and Welfare,
Bureau of Audits and Investigations
Federal Grant 11-P-93032/0
December 2007

The statements contained in the report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services. The awardee assumes responsibility for the accuracy and completeness of the information contained in the report.

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SUMMARY

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (PL 108-173) established the framework for a program to evaluate national and state background checks on prospective employees with direct access to individuals in long-term care settings. The grant provided funding to operate a federal pilot project for select states to implement background check requirements on those who had access to individuals in long term care settings. The federal pilot project was administered by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and was designed to provide information for Congress to evaluate the feasibility of implementing a national background check requirement.

The Idaho Department of Health and Welfare is the umbrella agency responsible for oversight of the majority of human services programs in Idaho and has conducted criminal history and background checks on individuals providing care or services to vulnerable adults and children in many of its programs. The Idaho Department of Health and Welfare applied for this grant opportunity and in January 2005 it was one of seven states selected to participate in the federal pilot project and was awarded \$2,072,026 in federal grant dollars.

Idaho modified regulations and statutory authority to require background checks on individuals who had access to vulnerable adults and children in certain long term care settings. These settings included skilled nursing facilities, intermediate care facilities for the mentally retarded, residential and assisted living facilities, home health, hospice, and hospitals with swing beds. Idaho regulations for mandatory background checks for employees and contractors who had access to vulnerable adults and children in those settings went into effect on October 1, 2005 with a sunset of September 30, 2007 at the end of the pilot project.

In Idaho, the criminal history and background checks prior to the federal pilot project were conducted using a paper intensive process with an antiquated system. Approximately 15,000 criminal history and background check applications were processed each year. The system involved paper applications, fingerprints rolled on paper hard cards and mailed to the State Police for processing, and it took an average of six to eight weeks to receive background check clearances. The Idaho Criminal History Unit utilized the grant funding to upgrade its systems. A web-based system was implemented allowing individuals to go to the Internet to complete and submit a background check application, schedule a fingerprint appointment, and check on the status of their application. This new web-based system was implemented in August, 2005. Live scan technology was also implemented to allow fingerprints to be collected and transmitted electronically. This reduced the timeframe for application clearances and 73 percent of the applications were finalized and cleared within three days of fingerprinting.

With the new web-based system, Idaho was able to reduce the number of staff for processing applications and placed eight full time staff in the field for fingerprint collection and provider training. With the pilot project the number of criminal history and background check applications increased to over 28,000 applications.

During the federal pilot project Idaho processed 20,117 applications for those individuals working in long term care settings. Of those applications, 3.2 percent or 648 individuals were denied access from working with vulnerable adults or children due to information found during a criminal record or other record search. Of those, 408 were denied a background check clearance and 240 individuals withdrew their applications due to the background check requirement. It is not known how many individuals were deterred from applying for employment in a long-term care setting due to the background check requirement.

Idaho evaluated the success of the requirements for background checks in long term care settings and implemented regulations to continue with this requirement after the federal pilot project. These new regulations went into effect on October 1, 2007.

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INTRODUCTION

The Idaho Department of Health and Welfare (IDHW) conducted background checks on many different classes of individuals within its programs to include various Medicaid providers, adoption and foster care applicants, child care providers, and others who provided care or services to vulnerable adults and children. These background checks were conducted by the Criminal History Unit within the Bureau of Audits and Investigations. Also within IDHW is the Bureau of Facility Standards which is the state survey and certification agency responsible for licensing and certification of long term care providers.

In 2004, long-term care provider stakeholders requested IDHW to consider application for the federal pilot project to conduct fingerprint-based background checks on those who had access to patients and residents in certain long-term care settings. Since the Criminal History Unit was already conducting background checks on human service agency providers and licensees, it was decided this unit would be the lead and utilize those current systems as the base for the Idaho background check model. Once selected, IDHW would modify those systems to incorporate newer technology to accommodate the anticipated increase in the number of applicants for the federal pilot project.

IDHW was one of seven states accepted to participate in the federal pilot project to conduct background checks on employees who had access to individuals in long-term care settings. IDHW modified the existing background check processes to accommodate the requirements to participate in the federal pilot project. IDHW developed one system and processes which included the long-term care providers required for the federal pilot project.

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PROJECT IMPLEMENTATION

STAKEHOLDER COLLABORATION

Successful implementation of this pilot project was a result of key stakeholder involvement to outline requirements, processes and timelines. The IDHW Division of Information and Technology played a key role in project requirements gathering and in-house system design, build, and maintenance. The Idaho State Police, as the single state agency allowed to submit fingerprints to the FBI, provided necessary information relating to background check processes, technology for electronic fingerprint submission, and the development of the necessary statutes and regulations. The Bureau of Facility Standards, the Idaho facility survey and licensing agency provide support in development of regulations and program compliance and oversight. Provider input played a vital role in ensuring public and legislative support for the pilot project. Provider stakeholders included the Idaho Health Care Association; the Idaho Assisted Living Association; the Idaho Hospital Association; the Idaho Hospice Association; and representatives from home health agencies and long-term care facility operators and administrators.

STATE AUTHORITY

State regulations for background checks are found within the Idaho Administrative Procedures Act (IDAPA). Specific programs which require background checks detail those requirements in various program regulations. A separate section of regulations detail the background check processes or protocols. These are found under IDAPA 16.05.06 Criminal History and Background Checks. In order to participate in the federal pilot project and require background checks for long term care providers it was necessary for IDHW to modify its regulations and statutes to include those classes of individuals in the requirements.

Idaho Code Section 56-1004A was adopted by the 2005 Idaho Legislature and went into effect July 1, 2005. This legislation allowed Idaho to participate in the federal pilot project and required background checks for providers, employees and contractors who had access to individuals in certain long-term care settings. The legislation also provided immunity for employment decisions based upon the background check results. This legislation included a sunset clause ending these requirements after September 30, 2007, at the conclusion of the federal pilot project.

Regulations were developed under IDAPA 16.05.05 Criminal History and Background Checks in Long Term Care Settings, for the pilot project requiring background checks on providers, employees and contractors who had access to individuals in long-term care settings. These settings included nursing homes; residential or assisted living facilities; home health; hospices; intermediate care facilities for persons with mental retardation (ICFs/MR) and hospitals with swing beds. The regulations became effective on October 1, 2005, and required the background check to be in accordance with the processes spelled out in IDAPA 16.05.06 Criminal History and Background Checks. These regulations included a sunset of September 30, 2007, at the conclusion of the federal pilot project.

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SYSTEM MODIFICATIONS

Prior to the federal pilot project, the IDHW background process involved paper fingerprint applications and fingerprints were rolled on paper cards to be mailed to the State Police. Average times for background check results were six to eight weeks. Information from the background check applications was imported into the criminal history database utilizing an optical character recognition (OCR) software which required manual interventions and corrections. Prior to the federal pilot project, IDHW processed approximately 15,000 background check applications. It was anticipated that due to the federal pilot project, and the addition of other classes of individuals, the background check applications would double to approximately 30,000 a year. As a result, and due to the large amounts of paper and manual processes, it was necessary to streamline background checks and transition the fingerprinting processing into current technology.

IDHW designed and implemented a web based system which allows on-line processing of applications. With this system, an applicant can find the requirements for a background check on the Internet, submit a background check application, schedule a fingerprint appointment at a location nearest to them, and track the status of their application. The system also sends notices to applicants and their employers informing them of the status of each application as it goes through the process and allows them to print a clearance letter if necessary. IDHW also implemented live scan technology to collect and transmit fingerprints electronically to the State Police. Both the web-based system and the live scan technology reduced much of the paper and manual processes and increased the timeframe for applicant clearances to as little as two days for those without criminal records. With the number of required registry checks, IDHW included workflow screens identifying which registry checks needed to be completed on applications and where possible, integrated certain registries into the system to allow automatic comparisons of an applicant against the registry.

STAFFING

The changes in systems and the anticipated increase in applications necessitated a review of staffing. The manual efforts of processing paper, and mailing applications and clearance letters would be automated however there needed to be an increased availability to the public for electronic fingerprint collection. Prior to the federal pilot project and the new system, IDHW employed five full time positions and one temporary staff to process the background checks. This included a full time unit supervisor. One of the staff members, in addition to numerous additional part time positions around the state, was responsible for collecting fingerprints on hard paper cards. Three of the staff and the temporary staff were responsible for processing the paper applications and researching crime disposition.

IDHW reorganized the Criminal History Unit into eleven full time positions. This included one supervisor, eight staff to collect electronic fingerprints, and two staff in a central location responsible for researching disposition information and handling the criminal history help desk. Personnel assigned to collect fingerprints were responsible for a regional area and often had several different fingerprint locations in each regional area. Field personnel are also responsible for provider and applicant training in their area.

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BACKGROUND CHECK COMPONENTS

REQUIRED ENTITIES

The Criminal History Unit processes criminal history and background check applications for numerous classes of individuals. For the purposes of the federal pilot project, Idaho included limited classes of long-term care settings into the requirement for background checks. These include:

- Nursing Facilities
- Assisted Living or Residential Care Facilities
- Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)
- Home Health
- Hospice
- Hospitals with Swing Beds

Although the federal pilot project included personal care attendants as part of the required entities, Idaho already had existing regulations requiring personal care attendants to have a background check therefore they were not included in the pilot project.

Idaho regulations required criminal history and background checks on providers, employees, and contractors who had access to individuals in those long term care settings. Volunteers in those settings were excluded from background check requirements and were prohibited as part of the federal grant funding for background checks.

APPLICATION FOR BACKGROUND CHECKS

Idaho regulations require each individual requesting a criminal history and background check to complete an application disclosing crimes or other relevant information in their background. The individual must sign the application and disclosure and have it notarized attesting to the information and its accuracy. The application authorizes the criminal history unit to complete the background check, obtain information, and release it in accordance with applicable laws. Applications may be completed on the criminal history website and submitted electronically, or an individual may complete a paper application and mail it to the criminal history unit.

To complete an application on-line, an individual must go to the criminal history website site at www.chu.dhw.idaho.gov and register as a new user. The individual creates their own identification and password which allows them to log-on to the website and submit an application and check on the status of their application. The application asks the individual a series of questions relating to their employer, the services they will be providing, and information about their background. An applicant can submit the application to the criminal history unit on-line. This automatically updates the criminal history database reducing the manual effort inputting applicant information into the system. An individual also has the option of printing their application, having it notarized, and bringing it to their fingerprint appointment

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or mailing it to the criminal history unit with a set of ten-rolled fingerprints. Kiosks or computers with the criminal history application are set up around the State in local offices where applicants who do not have access to the internet are able to utilize these computers to complete and submit an application.

PROVISIONAL WORK PERIOD

During requirements gathering for the pilot project stakeholders expressed concerns relating to facilities being able to hire staff pending the outcome of the background checks. Stakeholders voiced concerns of high employee turnover with some positions and due to the staffing requirements for patient/staff ratios there was a need to get staff trained and working quickly. As a result, Idaho regulations allow a provisional work period for employees of providers pending the completion of the background check. In order to allow an employee a provisional work period, the employer must ensure the individual has completed the application and it has been notarized, and the employer must review the information and no disqualifying offenses are disclosed. If a disqualifying offense is disclosed the individual is not allowed to work in the environment which requires the criminal history and background check. The individual must be fingerprinted within twenty-one days of completing the application. Once fingerprinted, the applicant may continue to work until the completion of the background check. Those individuals who are licensed or certified by the State are not available for licensure or certification until the background check is completed.

FINGERPRINTING

Idaho has fourteen fingerprint locations throughout seven regional areas where criminal history unit personnel roll fingerprints electronically utilizing live scan technology and transmit the fingerprint images to the State Police for processing. A few remote locations utilize part time staff who capture applicant fingerprints on hard cards and mail them to the nearest fingerprinting location.

Once an individual completes the application on-line and it is submitted, the system provides them the option to schedule a fingerprint appointment at one of the locations. The individual can select the location nearest them and available appointment times are displayed allowing the person to select one. Once selected, the system provides them verification of the appointment location, time and date, and any applicable fees.

At the fingerprint appointment, the Criminal History Unit staff retrieves the application from the on-line system and reviews the information disclosed by the applicant. The application is then printed and the applicant's signature is notarized. The applicant's fingerprints are collected using live scan technology and transmitted to the Idaho State Police for processing. Applicants who do not schedule a fingerprinting appointment may have their ten rolled fingerprints collected by law enforcement or their employer, and mailed to the Criminal History Unit with the notarized application.

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APPLICATION FEES

Idaho law requires the applicants to pay the cost of the background check unless otherwise designated by regulations. The current cost for a background check in Idaho is \$48.00. This includes the cost per application for the State and FBI checks and the operating and personnel costs of the Criminal History Unit. The federal grant dollars paid the cost of the background checks for the long-term care providers included in the federal pilot project so no fee was collected at fingerprinting.

REGISTRY CHECKS

The Criminal History Unit staff completes the required registry checks, often before or during the fingerprinting appointment, to identify any concerns relating to an applicant before processing their fingerprints. These registry checks include:

- Idaho Child Protection Registry
- Idaho Adult Protection Registry
- National Sex Offender Registry
- Office of Inspector General List of Excluded Individuals and Entities
- Nurse Aide Registry
- Idaho Department of Motor Vehicles Driving Records

The criminal history system includes a work flow engine which lists all applications where registry checks still need completion. The applicants are displayed from the oldest received to the most recent by each registry. This allows a registry check to be completed by any of the Criminal History Unit staff around the State, not just for applicants at their fingerprint locations. The application also includes screens to document the completion of each registry check and if any information was found.

STATE AND FEDERAL CRIME RECORDS

The criminal history and background check includes a ten-rolled fingerprint comparison against State and federal crime records. The fingerprints are transmitted to the Idaho State Police who conducts a comparison of the fingerprints against Idaho crime records. The Idaho State Police then forwards the fingerprints electronically to the FBI for comparison against national crime records. The FBI returns the results of the match to the Idaho State Police who in turn sends a “hit” or “no hit” electronic notice to the Criminal History Unit for each applicant. This information is put into the criminal history database and automatically updates each applicant record with the results of the State Police and FBI criminal record search indicating whether information was or was not found. If no criminal record is found, the criminal history database looks at the applicant’s records in the database and if no registry information is found then the system automatically changes an individual’s background check status to “cleared”. If a “hit” is indicated, the Idaho State Police forwards a hard copy of the crime record for those applications and the criminal history system records that information was found during the State Police and FBI crime record search. The Criminal History Unit must wait for the hard copy crime results in order to review the crime(s) found and complete the processing of the application.

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DISPOSITION OF CRIME INFORMATION

Crime information received by the Idaho State Police and FBI is often returned showing arrests with no disposition of the incident to identify if the individual was convicted of the offense(s). When this occurs, the Criminal History Unit must contact the originating entity reporting the incident, or the courts, to determine the disposition of the incident. Often this is completed by phone calls or by sending a fax request to the courts. Sometimes a payment is required for the information and a letter request and payment must be sent through the mail. Once the final disposition of the incident is received the Criminal History Unit updates the applicant's record in the system with the correct disposition information.

DISQUALIFYING OFFENSES

The criminal history and background check regulations found at IDAPA 16.05.06 define a disqualifying offense as a crime listed in the regulations which result in an unconditional denial. An individual is not able to provide direct care or services, or have access to vulnerable adults or children when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime. The regulations have two sections which list disqualifying offenses. One section requires a denial for anyone who has a conviction for the listed offenses and the other section lists five year disqualifying offenses where the unconditional denial will be issued if the conviction is within five years from the date of the background check application. A conviction is defined in regulations to include:

- When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court;
- When there has been a finding of guilt against the individual by any federal, state, military, or local court;
- When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; or
- When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld including when the individual has entered into participation in a drug court; or the individual has entered into participation in a mental health court.

The disqualifying crimes listed in Idaho regulations include the following crimes or the equivalent in other state law:

- Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code;
- Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code;
- Crimes against nature, as defined in Section 18-6605, Idaho Code;
- Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code;
- Incest, as defined in Section 18-6602, Idaho Code;

- Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code;
- Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code;
- Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code;
- Mayhem, as defined in Section 18-5001, Idaho Code;
- Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code;
- Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code;
- Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code;
- Rape, as defined in Section 18-6101, Idaho Code;
- Robbery, as defined in Section 18-6501, Idaho Code;
- Felony stalking, as defined in Section 18-7905, Idaho Code;
- Sale or barter of a child, as defined in Section 18-1511, Idaho Code;
- Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code;
- Video voyeurism, as defined in Section 18-6609, Idaho Code;
- Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code;
- Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code;
- Any felony punishable by death or life imprisonment;
- Attempt, conspiracy, or accessory after the fact, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying designated crimes.

Unconditional denials are issued to individuals who have committed the following crimes within five years from the date of the application:

- Aggravated assault, as defined in Section 18-905, Idaho Code;
- Aggravated battery, as defined in Section 18-907(1), Idaho Code;
- Arson in the third degree, as defined in Section 18-804, Idaho Code;

- Burglary, as defined in Section 18-1401, Idaho Code;
- A felony involving a controlled substance;
- Felony theft, as defined in Section 18-2403, Idaho Code;
- Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 and 18-3124, Idaho Code;
- Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code;
- Grand theft, as defined in Section 18-2407(1), Idaho Code;
- Insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code;
- Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; or
- Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying five (5) year crimes.

OTHER RELEVANT RECORDS

Idaho regulations define a relevant record as a record from criminal records or registries that may result in a conditional denial. A conditional denial is a denial issued by the Criminal History Unit which allows the applicant to request a further review of the crimes or incidents to determine the suitability of the individuals to provide care or services to vulnerable adults or children. For individuals who are licensed or certified by the IDHW, a relevant record may include:

- A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license;
- A substantiated child protection complaint or a substantiated adult protection complaint;
- The Department determines there is a potential health and safety risk to vulnerable adults or children;
- The individual has falsified or omitted information on the application form;
- The individual is listed with a finding on the Nurse Aide Registry; or
- The Department determines additional information is required.

For employees of providers or contractors a relevant record may include:

- A substantiated child protection complaint or a substantiated adult protection complaint;
- The individual is listed with a finding on the Nurse Aide Registry; or
- The Department determines additional information is required.

Idaho regulations allow the Criminal History Unit to consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one of the following:

- A withheld judgment;
- A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required;
- An order according to Section 19-2604, Idaho Code, or other equivalent state law; or
- A sealed record.

FITNESS DETERMINATION

An individual who receives a conditional denial may request an exemption review within fourteen days from the date of the issuance of a conditional denial. The review is completed by the Criminal History Unit supervisor who serves as the exemption review hearing officer. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the hearing officer determines is necessary. Upon receipt of a request for an exemption review, the hearing officer will determine the type of

review and conduct the review within thirty days from the date of the request. Where an in-person review is appropriate, the hearing officer will provide the individual

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at least seven days notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual is notified by the hearing officer that he is able to bring witnesses and present evidence during the review.

The hearing officer considers the following factors or evidence during the exemption review:

- The severity or nature of the crime or other findings;
- The period of time since the incident under review occurred;
- The number and pattern of incidents;
- Circumstances surrounding the incident that would help determine the risk of repetition;
- Relationship of the incident to the care of children or vulnerable adults;
- Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation;
- Granting of a pardon by the Governor or the President;
- The falsification or omission of information on the application form and other supplemental forms submitted.

The hearing officer determines the individual's suitability based upon the information provided during the exemption review. The hearing officer issues a notice of decision within fifteen business days of the close of the review. The review decision is effective for three years from the date of the notice of decision.

APPEAL OF DENIALS

Exemption review decisions may be appealed under Idaho regulations IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the denial action. These appeals are heard by an independent contract hearing officer and the individual who files an appeal must establish that the Department's denial was arbitrary and capricious. An individual may appeal the decision of the independent hearing officer to District Court.

An exemption review is not available for those applicants who receive an unconditional denial for a disqualifying offense. The individual may challenge the denial within thirty days of the issuance of the denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the issuance of the unconditional denial is incorrect. The criminal history unit supervisor reviews this information and must issue a decision within thirty days from the receipt of the challenge. The individual may appeal this decision to District Court.

CRIMINAL ACTION PENDING

When the applicant is identified as having a pending criminal action for a crime that may disqualify him from receiving a clearance for the criminal history and background check, the Criminal History Unit may issue a notice of inability to proceed. The applicant is not available to provide service or have access to vulnerable adults or children when a notice of inability to

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proceed is issued. The applicant can submit documentation that the matter has been resolved to the Criminal History Unit for reconsideration. When the documentation is received that the matter has been resolved the Criminal History Unit will notify the applicant of the reconsideration and issue a clearance or denial.

NOTICE TO APPLICANTS AND EMPLOYERS

Applicants and employers are notified of events occurring with each application through automated e-mail notifications. They also have the ability to look up information on the criminal history website. Every applicant for a criminal history and background check has either an employer or licensing entity attached to their record. Prior to an individual being able to submit a background check application, their employer must register with the Criminal History Unit by logging onto the website and entering the business or entity information to include the contact person(s) and their telephone number and e-mail address. The employer or licensing entity is then assigned an employer identification number to give each of their employees to use when applying. The individual enters this employer number on their application which allows the system to attach the applicant to the employer. An applicant may have multiple employers and contact persons attached to their application.

At each stage of the application process, the system sends e-mail notifications to the employer and applicant informing them of any application status changes. For example, when an applicant completes an application on-line and submits it to the Criminal History Unit, the application status becomes “Pending Fingerprinting – Not Available”. An e-mail notice is sent to the applicant and employer identifying the status and notifying them the individual has submitted a background check application and is pending fingerprinting. If the employer elects to have the individual work during the provisional period, the employer must have the application printed, signed by the applicant, and have the applicant’s signature notarized. The employer must review the application to ensure no disqualifying offense or other relevant information is disclosed. Once the individual is fingerprinted by the Criminal History Unit, or hard paper fingerprint cards are received, the application status is changed to “Pending Background Checks in Process – Available” and a notice of this new status is e-mailed to the employer and applicant ensuring they know the applicant has completed the fingerprinting process. If the individual does not show for the fingerprint appointment, the application status is changed to “Missed Fingerprint Appointment” and e-mail notification is sent notifying the employer the employee missed the fingerprint appointment.

Applicants are allowed to withdraw their application at any time. There are instances where an individual discloses a disqualifying offense during the fingerprint appointment. If the individual elects to withdraw their application the status is changed to “Applicant Withdrew – Not Available” and notice is e-mailed to the employer. If a denial is issued at any time during the application process or an applicant withdraws their application, not only is an e-mail notice sent to the employers and the applicant but the Criminal History Unit calls the employer to ensure they are aware of the denial or withdrawal. A hard copy letter or notice of the denial is mailed to the applicant and employer.

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If an individual receives a background check clearance and no crimes or relevant incidents are found, the application status is changed to reflect the clearance and e-mail notifications are immediately sent to the applicant and employer. The applicant has the ability to log-on to the criminal history website and view their application status at any time. If a clearance is received the individual may print a clearance letter. Employers also have the ability to log-on to the criminal history website and may look up, or search the names of applicants who have used their employer identification number. The employer may also verify the application status and print a clearance letter for their records.

The criminal history system produces two different clearance letters if crimes or incidents are found relating to the applicant. One letter is a notice to the applicant and the other letter is a notice to the employer. All crimes and incidents are published on the letter to the applicant providing them an opportunity to review and dispute the information found. This applicant letter is accessed by the individual logging on to the criminal history system, or a unique number is assigned to each application which may be used by the individual to access their information from the website.

When an employer logs on and accesses the clearance letter, all crimes and incidents found are published on the employer's copy of the clearance letter unless the crime or incident was solely learned through the FBI records search. Since the employer letter does not notify the employer of any crimes solely from the FBI information, the letter does tell the employer that FBI crimes were found and they need to discuss the information with their prospective employee. If the applicant previously disclosed the FBI crime then it is published to the employer as a self disclosed crime.

EMPLOYER RESPONSIBILITIES

Employers are responsible for ensuring those individuals who are required to have a criminal history and background check receive a clearance before providing any services to vulnerable adults or children, or for long-term care providers, before individuals have access to those in the long-term care setting. If the employer needs to have the individual working on a provisional basis the employer must ensure the application is signed and notarized and no disqualifying offenses are disclosed.

While individuals must receive a criminal history and background check clearance to work in a setting which requires the background check, Idaho regulations specify background check clearance is not a determination of suitability for employment. The background check clearance means that an individual was found to have no disqualifying crimes or relevant record. Employers are responsible for determining the individual's suitability for employment. The employer must screen applicants prior to initiating a criminal history and background check to determine suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening by the employer. The employer is also responsible to ensure the required time frames are met for completion and submission of the application and fingerprints to the Criminal History Unit. If the criminal history and background check reveals

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any incidents which do not result in a denial, the employer is responsible for reviewing any crimes or incidents and making a determination as to the ability of the individual to provide care or services or risk to children or vulnerable adults.

TIMEFRAME FOR BACKGROUND CHECKS

Idaho regulations allowed a background check to be transferable between employers for up to one year if the individual changed employment. This is primarily to curb unnecessary checks and costs and due to the high employee turnover. The Criminal History Unit maintains a website for employers to look up prospective employees to verify the individual has had a criminal history and background check clearance within one year from the date of hire. Employers have the discretion of requiring prospective employees to have a criminal history and background check at any time. In January 2007, Idaho regulations expanded this timeframe to allow a criminal history and background check to be transferable to another employer for a period of three years. The regulations also required that if an employer elected to utilize a previous fingerprint-based background check completed within three years, the employer must complete a name based state only check on the individual as an update to the fingerprint based check.

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STATE EVALUATION OF THE PILOT PROGRAM

APPLICATIONS AND RESULTS

The Idaho Criminal History Unit began accepting applications from long-term care providers for the federal pilot project on a voluntary basis on August 29, 2005. The date for mandatory submission for long-term care providers was October 1, 2005 through the end of the federal pilot project on September 30, 2007. During this time period the Criminal History Unit received 20,117 applications for background checks from individuals working in long-term care settings. Of those applications there were 408 individuals denied background check clearances for disqualifying offenses or registry findings. An additional 240 individuals withdrew their application at the fingerprinting and interview stage where they disclosed a disqualifying offense or other incident which would have likely resulted in a denial. This represents 3.2 percent of the total applicants who were either denied access or not allowed to work in a setting where the individual had access to a vulnerable adult or child in a long-term care setting. It is not known how many individuals were deterred from applying for employment in a long-term care setting or picked up an employment application however did not return due to the background check requirement.

The majority of the fingerprints were collected utilizing live scan technology however the Criminal History Unit also accepted paper applications and fingerprints rolled on hard paper cards. This primarily occurred with providers in remote locations. Of the 20,117 applications 88 percent of those applications were collected utilizing live scan and 12 percent were received on hard paper cards. The hard cards are mailed to the State Police where they are scanned utilizing a card scanner to allow them to submit them to the FBI electronically. All Idaho transmissions were submitted to the FBI electronically. Occasionally, the FBI is unable to read the fingerprints due to poor quality and the State is asked to submit re-prints for the applicant. Of the fingerprints submitted, only 2.5 percent required re-print submissions.

Prior to the implementation of the new system and live scan technology many applications in Idaho were six to eight weeks to process. With the new technology, 73 percent of the applications submitted were cleared within three days from fingerprinting.

As of January 1, 2007, Idaho's regulations allowed discretion for employers to update a criminal history background check with a State name-based check if the individual had a previous fingerprint-based background check within three years. Providers and employers were surveyed regarding employees where they elected to utilize this discretion. The survey identified 416 individuals hired from January 1, 2007 through September 30, 2007, in long term care settings where the employer utilized its discretion and allowed the applicant to transfer their fingerprint based background check to a new employer.

PROGRAM COSTS

The costs incurred by Idaho to conduct criminal history and background checks during the period of the federal pilot project were funded by both the state and the federal grant. This is primarily due to the State already conducting background checks therefore the costs charged to

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the grant were limited to those expansions for the federal pilot project where it could be determined. This included system development, additional staff hired for fingerprint collection, the cost of the background check charged by the Idaho State Police and FBI, travel or other operating costs, and the indirect costs associated with the federal pilot project. Idaho estimated a total budget for the federal pilot project in an amount of \$2,072,026. The total expenditures charged to the federal grant for the covered activities as of the date of this report were \$2,004,071.

The Criminal History Unit operated with eleven staff. This included a unit supervisor, two support staff to research disposition information and answer phones, and eight fingerprinting staff. The eight fingerprinting staff were added to the existing criminal history unit functions to support the added efforts of the federal pilot project therefore only those personnel costs were charged to the grant. The personnel costs for those eight staff from July 1, 2005, through September 30, 2007, were \$649,967. System requirements and development of the new web-based criminal history system began as soon as the State was notified of being awarded the grant for the federal pilot project. Although the system was implemented in August 2005, maintenance and enhancements to the system were necessary as business processes were adjusted and feedback on the system was received. System development, enhancement and maintenance costs for the federal pilot project were \$330,171. Live scan equipment was implemented however the equipment costs were incurred by the State and not charged to the federal pilot project. Total equipment costs for acquiring live scan technology paid by the state was \$149,515 which included eight portable live scan devices and a store and forward server, to include the annual maintenance.

The Criminal History Unit charges \$48 for criminal history and background checks. This amount includes the \$10 cost by the Idaho State Police for the state records check, the \$34 cost from the FBI for the national records check, and the personnel and operating costs of the Criminal History Unit. Since the federal pilot project paid for the cost of the eight Criminal History Unit personnel, the federal grant was not charged the personnel and operating cost of the unit but was only charged the direct cost for the pilot project applicants from the Idaho State Police for the state and FBI records check. The total costs charged to Idaho by the Idaho State Police, and charged to the federal grant for the cost of criminal history and background checks were \$545,844.

Indirect costs incurred on behalf of the federal pilot project include motor pool, attorney, accounting support, management, human resources, office space and other indirect costs. The total indirect costs incurred for the federal pilot project were \$450,593. Other operating costs directly charged to the federal grant included travel expenses to the annual grantee conferences. Those operating expenses were \$27,496.

IDAHO FEDERAL PILOT PROJECT GRANT COST	
Personnel	\$649,967
Travel/Operating	27,496
Criminal History Checks	545,844
IT System Development/Maintenance	330,171

**ILLINOIS
BACKGROUND CHECK
PILOT PROGRAM
FINAL REPORT**

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PILOT PROGRAM
FINAL REPORT**

By Jonna Veach, Project Director

Federal Project Officer: Susan Larsen

Illinois Department of Public Health

CMS Grant No. 11-P-93038/5

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The statements contained in this report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services. The grantee assumes responsibilities for the accuracy and completeness of the information contained in this report.

ACKNOWLEDGMENT

The Illinois background check pilot would not have been possible without the cooperative efforts of all the stakeholders involved. Special thanks are extended for the original efforts of Illinois Department of Public Health employees Patricia Heidenreich, Project Director and Enrique Unanue, Deputy Director of the Office of Health Care Regulations. When Patricia retired in the spring of 2005, the pilot was sustained by Naomi Dunn and Debra Bryars, until a new project director could be hired in November of that same year. All of these individuals are credited with laying the foundation for the pilot and for gaining the legislative authority required.

The Illinois Department of State Police has been a very critical stakeholder in this pilot. Several individuals were extremely helpful in providing their expertise and assistance. The principal supporters were Tammi Kestel, Maureen O'Donnell, John Jesernik, Sherri Anderson-Martin, Karen Levy McCanna and Darrin Turner. Particular credit goes to Marcel Reid, Executive Officer of the Bureau of Identification, who has devoted a tremendous amount of time and energy toward the success of this pilot from the very beginning and consistently until the end.

The Illinois Department of Human Services played a vital role in providing the information for one of the mandated provider types. Many thanks go to Connie Sims and Dawna Weyant for their help in collecting the data needed from that agency.

The livescan services during the pilot were provided by Accurate Biometrics, who happened to be on the statewide contract. However, Jim and Peggy Critchfield, who head up that organization, have gone above and beyond the requirements of the state contract to promote the success of the pilot.

The long-term care provider associations in Illinois were extremely helpful in disseminating information to the health care providers that were affected by the pilot. Their positive opinion toward the pilot aided the efforts put forth to obtain the needed legislative amendment.

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EXECUTIVE SUMMARY

Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directed the Secretary of Health and Human Services, in consultation with the Attorney General, to establish a pilot program to identify efficient, effective and economical procedures to conduct background checks on prospective long-term care direct patient access employees. Illinois was one of seven states selected by the Centers for Medicare & Medicaid Services (CMS) to participate in the CMS Background Check Pilot Program.

The scope of the pilot in Illinois originally included the entire state and all the requested provider types but was negotiated down to include only ten counties in the northern part of the state and only five of the mandated provider types. The smaller scope allowed grant funds to be used to subsidize the cost of the fingerprint background checks. The reduced scope retained a true representation of the geographic, social and economic structure of the entire state. Illinois consists of an extraordinary amount of border counties where workers can live in one state and work in another. Eight of the ten counties bordered another state. The scope captured enough rural area to be characteristic of the plan states. Illinois has one of the most concentrated metropolitan areas in the United States; therefore, one of the counties included in the pilot was a highly populated urban area.

The principle lessons learned from the pilot are as follows:

- The name-based background checks that Illinois required prior to the pilot do not provide the needed accuracy of identification, while the fingerprint background checks do.
- Requiring the entire background check to be electronically processed reduced the average result time to about 48 hours, while the name-based checks could take up to two months to get a result.
- By having a governmental entity request the fingerprint background checks, the state police could provide notifications to the original requestor of future crimes associated with the fingerprints on file. This prevented redundant background checks through the state police and still allowed the background check to be continually up-to-date.
- The national background check does reveal additional convictions from other states but is cost prohibitive because it must be conducted at the time of each new hire. In Illinois the national check eliminated only one third of one percent (00.3%) that the state police did not disqualify.
- By having the background check results first reported to a governmental entity, a few trained people were able to make disqualifying conviction determinations and

take the responsibility off of the facility. This also allowed the revocation of a waiver of the prohibition to work quicker if the applicant had a new disqualifying conviction.

- Waiver applications were processed faster because the fingerprint background check results were already available.

The process used in Illinois to participate in the pilot allowed better protection for the residents in the participating facility. It also allowed the facility to conduct the background check quickly enough to have the results returned either before the hire date or while the applicant was still in orientation. The health care employers who participated in the pilot expressed their satisfaction with the fingerprint process and were quite concerned about going back to the required named-based background check after the pilot. Illinois listened to their concerns and was able to pass an amendment that will require fingerprint background checks through the state police.

INTRODUCTION

Pilot Program Background

To have the legislative authority for Illinois to participate in the pilot program, it was necessary to amend the Health Care Worker Background Check Act (Act). House Bill 2531 was filed in February, 2005. The bill had multiple sponsors in both the House and the Senate. In May the bill passed both houses and became a Public Act in August 2005.

During the summer the Illinois Department of Public Health (IDPH) communicated with all the various stakeholders. Many conversations and meetings were held with the Illinois State Police (ISP) learning about the background check process. The livescan fingerprint process was investigated. Equipment and staffing were examined along with other budget needs.

By October it was becoming painfully clear that an enormous cost would be involved in the redundant Federal Bureau of Investigation (FBI) background checks that would be required under the pilot design. ISP had implemented a “rap back” system that notifies a governmental requestor of any future convictions once a set of fingerprints are on file, which meant that a direct access worker only had to have one ISP fingerprint background check. However, the FBI does not have that capability and a new FBI check would be required every time a direct access worker was hired. The turnover rate is approximately 100 percent for many health care workers (e.g., nurse aides, personal care workers, etc.) in Illinois. The Act only required health care employers to pay the background check fees for CNAs. All other workers could be required to pay the background check fees themselves. The health care industry felt that the cost to the low paid direct access workers in Illinois would make the project prohibitive.

In November 2005, Illinois started negotiating with CMS to reduce the scope of the pilot to a few representative counties instead of the entire state, saving costs in order to use the grant funds to pay for the background checks. Those negotiations continued into the New Year. On February 17, 2006, an agreement on a new scope that included 10 counties and five provider types was reached. Those counties include: Boone, Carroll, Jo Daviess, Lake, Lee, McHenry, Ogle, Stephenson, Whiteside and Winnebago (see Appendix B).

The provider types are skilled nursing facilities/nursing facilities; intermediate care facilities for persons with mental retardation, home health agencies, long-term care hospitals/hospitals with swing beds and home-and-community-based service (HCBS) facilities over eight beds. Statistics were obtained by CMS from the CMS Online Survey Certification & Reporting (OSCAR) regional office databases. Their calculations showed total pilot county facilities (see Table 1) to be 188 (including an estimate of 28 HCBS facilities) ($188 - 28 = 160$)

Table 1 Provider Types

	SNF DUAL	SNF DIST PART	SNF	NF	ICF/ MR	HHA	LTC HOSP	SWING BEDS	COUNTY TOTAL
Boone	2	1		1					4
Carroll	1			1	1				3
Jo Davies				3	1	1			5
Lake	7	13	4	5	10	5			44
Lee	1	2	1	1	12	1			18
McHenry	1	6	2		1	5			15
Ogle	3	2		1	1				7
Stephenson	2	2		1	2	1			8
Whiteside	4	3	5	5	3				20
Winnebago	4	12		2	11	6		1	36
	25	41	12	20					
Grand Totals		98			42	19	0	1	160
									+ HCBS Pilot Estimate
									28
									188

- skilled nursing facility/nursing facility, dually certified (SNF DUAL)
- skilled nursing facility/nursing facility (SNF DIST PART)
- skilled nursing facilities (SNF)
- nursing facilities (NF)
- home health agencies (HHA)
- intermediate care facility for persons with mental retardation (ICF/MR)
- long term care hospitals (LTC HOSP)
- hospitals with swing beds (SWING BEDS)

CMS also agreed to increase the grant funds awarded from \$2,551,628 to \$3 million, so the funds were sufficient to cover the additional costs related to the implementation of the Illinois background check pilot:

- Fees related to ISP checks for non-nurse aide applicants
- Livescan vendor fees for the collection of fingerprints
- FBI background checks for all direct access patient staff
- Fingerprint transmission processing for repeat checks.

System Infrastructure Prior to the Pilot

The system infrastructure was made up of the Legacy MVS Mainframe platform using Nomad as the database and programming language. It had 375 cylinders and was 85 percent full. There was a Visual FoxPro database and application that was used for the Voice Response application; however, that system was very old (MS DOS operating system) and was not going to be supported much longer. There was a DB2 database with an ASP front end that was used for the web application. Each night records from the legacy Nomad application that had been updated within the previous 3 days were pulled and loaded into both the Visual FoxPro and DB2 databases so all three systems remained synchronized.

Registry Prior to the Pilot

Illinois' registry for nurse aides was staffed by only two individuals who were to process all the equivalency evaluations, maintain the database and respond to all inquiries. All procedures were done through manual processes which caused entries that were delayed, inconsistent and error prone. In addition, many of the manual procedures had not been updated to fully meet current state and federal regulations.

Before the pilot the Act required a new name-based background check from ISP at the time of a new hire if the background check was over a year old. Fingerprint checks were only done when there were multiple results from a name search, when an applicant or employee challenged the results of a name search and when the name search revealed disqualifying convictions if a waiver of the prohibition of work was requested. Disqualifying conviction determinations were made by the health care employer and copies of the background check results were mailed in to the registry for nurse aides for manual entry. The background check process could take up to two months to complete (see Appendix C).

PROGRAM DISCUSSION

Authorizing Legislation

In the fall of 2005, the Act was amended to add the provisions for Illinois to participate in the CMS Background Check Pilot Program. Under the pilot provisions the amendment required a fingerprint background check submitted as a fee applicant request for all workers with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. This included licensed and unlicensed personnel. Physicians (who are generally not an employee of the long-term care facility) and volunteers were omitted from the background check requirements for the pilot.

Web Link to Act and Rules

Health Care Worker Background Check Act [225 ILCS 46]

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1303&ChapAct=225%26nbsp%3BILCS%26nbsp%3B46%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Health+Care+Worker+Background+Check+Act%2E&Print=True>

Health Care Worker Background Check Code (77 Ill. Adm. Code 955)

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1303&ChapAct=225%26nbsp%3BILCS%26nbsp%3B46%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Health+Care+Worker+Background+Check+Act%2E&Print=True>

Disqualifying Offenses

The following offenses are disqualifying under the Act and this Part. Offenses marked with an asterisk (*) were added to the Act effective January 1, 2004. Offenses marked with a double asterisk (**) were added to the Act effective July 24, 2006.

Violations under the Criminal Code of 1961:

- Solicitation of murder, solicitation of murder for hire [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2);
- Murder, homicide, manslaughter or concealment of a homicidal death [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);
- Kidnapping or child abduction [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386);
- Unlawful restraint or forcible detention [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4);
- Indecent solicitation of a child, sexual exploitation of a child, sexual misconduct with a person with a disability, exploitation of a child, child pornography [720 ILCS 5/11-6, 11-9.1, 11-9.5**, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104);
- Assault; aggravated assault; battery; battery of an unborn child; domestic battery; aggravated domestic battery*; aggravated battery; heinous battery; aggravated battery with a firearm; aggravated battery with a machine gun or a firearm equipped with a silencer*; aggravated battery of a child; aggravated battery of an unborn child; aggravated battery of a senior citizen; or drug-induced infliction of great bodily harm [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-3.3*, 12-4, 12-4.1, 12-4.2, 12-4.2-5*, 12-4.3, 12-4.4, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b);
- Tampering with food, drugs, or cosmetics [720 ILCS 5/12-4.5] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-4.5).
- Aggravated stalking [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4);
- Home invasion [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11);
- Criminal sexual assault; aggravated criminal sexual assault; predatory criminal sexual assault of a child; criminal sexual abuse; aggravated criminal sexual abuse [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491);

- Abuse and gross neglect of a long-term care facility resident [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19);
- Criminal abuse or neglect of an elderly or disabled person [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21);
- Endangering the life or health of a child [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95);
- Ritual mutilation, ritualized abuse of a child [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33);
- Theft; theft of lost or mislaid property*; retail theft; financial identity theft*; aggravated financial identity theft* [720 ILCS 5/16-1, 16-2*, 16A-3, 16G-15*, and 16G-20*] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1, 16-2, and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496);
- Financial exploitation of an elderly person or a person with a disability [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3);
- Forgery [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286);
- Robbery, armed robbery, aggravated robbery [720 ILCS 5/18-1, 18-2, and 18-5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2);
- Vehicular hijacking, aggravated vehicular hijacking [720 ILCS 5/18-3 and 18-4];
- Burglary, residential burglary [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501);
- Criminal trespass to a residence [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4);
- Arson, aggravated arson, residential arson* [720 ILCS 5/20-1, 20-1.1 and 20-1.2*] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238);
- Unlawful use of weapons, unlawful use or possession of weapons by felons or persons in the custody of Department of Corrections facilities*; aggravated discharge of a firearm; aggravated discharge of a machine gun or a firearm equipped with a silencer; reckless discharge of a firearm; aggravated unlawful use of a weapon*; unlawful discharge of firearm projectiles*; unlawful sale or delivery of firearms on the premises of any school* [720 ILCS 5/24-1, 24-1.1*, 24-1.2, 24-1.2-5*, 24-1.5, 24-1.6*, 24-3.2*, and 24-3.3*] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1, 24-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-1.6, 24-3.2, and 24-3.3; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g);

- Armed violence [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2).

Violations under the Wrongs to Children Act:

- Endangering life or health of a child [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354);
- Permitting sexual abuse of a child* [720 ILCS 150/5.1*] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2355.1).

Violations under the Illinois Credit Card and Debit Card Act:

- Receiving a stolen credit or debit card* [720 ILCS 250/4*] (formerly Ill. Rev. Stat 1991, ch. 17, par. 5917);
- Receiving a lost or mislaid card* [720 ILCS 250/5*] (formerly Ill. Rev. State. 1991, ch. 17, par. 5918);
- Sale or purchase of card without user's consent* [720 ILCS 250/6] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5919);
- Prohibited use of a credit card* [720 ILCS 250/8*] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5921);
- Fraudulent use of electronic transmission* [720 ILCS 250/17.02*] (formerly Ill. Rev. Stat. 1991, ch. 17, par. 5930.2).

Violation under the Criminal Jurisprudence Act: Cruelty to children (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368).

Violations under the Cannabis Control Act: Manufacture, delivery, or trafficking of cannabis; delivery of cannabis on school grounds or delivery to person under 18; violation by person under 18; calculated criminal cannabis conspiracy [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 ½, pars. 705, 705.1, 705.2, 707, and 709).

Violations under the Illinois Controlled Substances Act: manufacture, delivery or trafficking of controlled substances, calculated criminal drug conspiracy [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 ½, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1).

Violation under the Nursing and Advanced Practice Nursing Act: practice of nursing without a license* [225 ILCS 65/10-5*] (formerly Ill. Rev. Stat. 1991, ch. 111, par. 3506).

Waiver of the Prohibition of Work

An applicant may request a waiver of the prohibition against employment by submitting a completed Waiver Application and the results of a fingerprint background check. Illinois has a committee of individuals comprised of representatives of the legal department, the Health Care Worker Registry (HCWR) and the complaints investigation. This committee reviews the completed application giving consideration to whether fines, restitutions, rehabilitation and parole have been successfully completed. Additionally the committee evaluates the mitigating circumstances involved which include:

- The age of the individual when the crime was committed;
- The circumstances surrounding the crime;
- The length of time since the conviction;
- The criminal history since the disqualifying conviction;
- The work history;
- The current employment references;
- The character references;
- The record on other state's registries for nurse aides; and
- Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant does not pose a threat to the health or safety of residents, which may include, but is not limited to, the applicant's participation in anger management or domestic violence prevention programs.

Waivers will not be granted to individuals who have not met the following time frames.

- Single disqualifying misdemeanor conviction – no earlier than one year after the conviction date;
- Two to three disqualifying misdemeanor convictions – no earlier than three years after the most recent conviction date;
- More than three disqualifying misdemeanor convictions – no earlier than five years after the most recent conviction date;
- Single disqualifying felony convictions – no earlier than three years after the conviction date;
- Two to three disqualifying felony convictions – no earlier than five years after the most recent conviction date;

- More than three disqualifying felony convictions – no earlier than ten years after the most recent conviction date.

IDPH attempted to lengthen the time periods before granting a waiver but the rules that would have accomplished that met with a serious political challenge just before they were adopted and were put on hold.

Offenses that May Not be Waived

Waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses:

- Solicitation of murder, solicitation of murder for hire [720 ILCS 5/8-1.1 and 8-1.2];
- Murder, drug induced homicide, involuntary manslaughter and reckless homicide, intentional homicide of an unborn child, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide of an unborn child, or concealment of a homicidal death [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3];
- Kidnapping or aggravated kidnapping [720 ILCS 5/10-1 and 10-2];
- Indecent solicitation of a child, sexual exploitation of a child, sexual misconduct with a person with a disability, exploitation of a child, child pornography [720 ILCS 5/11-6, 11-9.1, 11-9.5, 11-19.2, and 11-20.1];
- Aggravated domestic battery, aggravated battery, heinous battery, aggravated battery with a firearm, aggravated battery with a machine gun, aggravated battery of a child, aggravated battery of an unborn child, aggravated battery of a senior citizen, or drug induced infliction of great bodily harm [720 ILCS 5/12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.2-5, 12-4.3, 12-4.4, 12-4.6, and 12-4.7];
- Criminal sexual assault or aggravated criminal sexual assault [720 ILCS 5/12-13, 12-14, and 12-14.1];
- Criminal sexual abuse, aggravated criminal sexual abuse or predatory criminal sexual assault of a child [720 ILCS 5/12-15 and 12-16];
- Abuse and gross neglect of a long-term care facility resident [720 ILCS 5/12-19];
- Criminal abuse or neglect of an elderly or disabled person [720 ILCS 5/12-21];
- Financial exploitation of an elderly person or a person with a disability [720 ILCS 5/16-1.3];
- Armed robbery [720 ILCS 5/18-2];

- Aggravated vehicular hijacking [720 ILCS 5/18-4]; and
- Aggravated robbery [720 ILCS 5/18-5].

The Director of IDPH may grant a waiver to an individual who does not meet the above stated requirements.

IDPH attempted to make several other convictions always disqualifying but the rules that would have accomplished that met with a serious political challenge just before they were adopted and were put on hold.

State Agency and Stakeholder Collaboration

While the Act does affect many different state agencies in Illinois, only IDPH and Illinois Department of Human Services (IDHS) were involved in the pilot program. IDHS' state owned operations are not legally subject to the Act but it is used as a guideline in their hiring processes. That agency already used both state and national fingerprint-based background checks for all of their employees as part of their normal business practices and had developed their own fitness determination and waiver process as well. An intergovernmental agreement was processed to allow IDHS to participate in the pilot and provide the data elements required for reporting during the pilot.

Illinois is rich in long-term care provider associations as there are approximately 2500 long-term care facilities in Illinois that IDPH license, not to mention all that are licensed by other state agencies. The provider associations were very responsive to this pilot. They supported and encouraged IDPH's participation. They were instrumental in getting information about the pilot out to the health care employers and assisted in creating a positive atmosphere toward the pilot.

Restructuring and Automation of Data Processes

IT Technical Assistance

IT technical assistance was provided to Illinois through CNA Corporation (CNAC), the CMS contracted technical assistance agency. After a thorough review of the current process, the entire system design was changed to one of minimal manual entry and as much automation as possible. The Illinois project director conducted a full systems analysis on IDPH's processes. A determination was made on what policies and procedures would need to be changed to automate the processes. Use cases and work flowcharts were created by IDPH to present to CNAC. The work flowcharts were the principal tool that drove the discussions between CNAC, ISP and IDPH. IDPH wrote detailed descriptions of each process indicated in the flow charts. CNAC analyzed all the information that was provided and developed a cost proposal and timeline to install a server database with a web applicant interface. CNAC developed a timeline that included the following stages and tasks within each stage:

- Initiation Phase
 - Assess target environment
 - Define external data conversion and transformation
 - Develop Concept document
- Definition and Design Phase
 - Functional definition & design
 - Technical Definition and Design
- Implementation Phase
 - Facility & FP vendor input
 - Public Facing for New HCWR
 - Validate Authentication and data conversion
 - BG Check Review & Decision
 - Waivers
 - Implement data transmittal into database
 - IDPH Facing
 - ISP Facing
- Test & Deployment Phase
 - System Testing

- System Deployment
 - Configure FTP Sites
 - Deploy, Migrate Production Data & Train

The projected time of completion was the end of August 2006.

Creating a New Database

IDPH made a concerted effort to reduce the number of records that were stored on the mainframe before moving those records to the new server based tables. No records had been physically deleted since the beginning of the registry. These records were used to populate the new database:

- All the IDHS employees
- All individuals who had an administrative finding for abuse, neglect, or theft
- All individuals who had a disqualifying offense
- Records of individuals that were known to be actively working in as certified nurse aides/assistants (CNA).

All the above records were then compared to those individuals who had a background check within the previous three years and anyone not already included in the dataset was added.

New Procedures, Forms and Letters

A thorough analysis of all the manual procedures used in the HCWR was conducted. In many cases it was determined that procedures had not been updated to be fully in compliance with the current governing federal and state statutes. A total of 54 procedures had to be documented and updated, including:

- Modifying twelve letters previously created manually to be automatically generated in the new web application.
- Updating all forms through a formal IDPH communications department approval process for posting on the web site to increase accessibility and reduce workload.

Additional Letters and Reports

As CNAC provided only the basic database and web-application, IDPH developed the ability to create automated reports and additional letters that are generated by a Microsoft Access database from the same tables with which the web-application interfaces.

The Access application allows HCWR staff to sort the training programs by name of program, county, zip code and city to help callers find training programs in their area. It also contains all the written procedures that are used in the HCWR for quick and easy reference. This application is used to process all of the requests for equivalencies, to record HCWR staff's productivity, to create registry verifications from the data in the web-applications that can be mailed to callers, to have pre-worded email responses to commonly asked questions, to collect all the waiver processing information, to create template letters relating to the previously named processes as well as specific-needs letters requesting additional information.

Background Check Process under the Pilot

The following is the process that was used in the pilot (also see Appendix D).

- The human resource worker at a facility logged into the HCWR through a secure portal to use the web application.
- A search was done on the new applicant to determine if the applicant was on the registry. If the individual was on the registry the profile was checked to determine if the applicant met certain requirements to be considered for hire. The registry shows certain training; administrative findings of abuse, neglect or theft; disqualifying convictions; waivers that have been granted; and if there is an employment history the registry shows the type of position the applicant held.
- If the most recent background check in the profile screen was a "FEE_APP" or a "CAAPP" background check, the background check had been completed under the pilot and another ISP background check was not required, but a new FBI check was required. The pilot applied only to new hires. Any applicant that went through this process had the results of their background check displayed on the HCWR.
 - The background check was requested by IDPH to make it a fee applicant request (FEE_APP).
 - This type of request allowed ISP to store the fingerprints in their repository.
 - ISP put a flag on the file that indicated that IDPH was the original requestor of the background check.
 - Not only was a background check result sent to IDPH at the time of the request but, if there were any future convictions associated with those fingerprints, ISP

sent additional no cost notifications to IDPH. This meant that the background check from ISP was always up-to-date and the applicant was not required to have another ISP fingerprint background check during the pilot.

- IDPH used the information that the facilities entered into the work history portion of the web application to notify the current employer(s) of any future convictions.
 - The notices that went to the current employer(s) were in the form of an automatic email. Therefore, as soon as a disqualifying conviction determination was made the facility received an email.
 - If the conviction was disqualifying any waivers that had been granted were revoked if it was a new conviction.
 - A CAAPP background check was one that was sent by ISP as a part of the Rap Back as a revised background check result.
- The facility had the applicant sign an authorization and disclosure form (see Appendix E), which the facility kept in the applicant's employment records.
 - The facility updated or, if not already in the registry, created a new record for the applicant and initiated a background check either before hire or within 10 days of hire. Initiating a background check required that the facility check certain other registries (links were provided).
 - Health and Human Services Office of Inspector General Exclusions List.
 - Illinois Sex Offenders Registration.
 - Illinois Department of Corrections Sex Registrant, Inmate Search and Wanted Fugitives.
 - National Sex Offender Public Registry.
 - The web application allowed the health care employer to document the date that these registries were checked. It is suggested that the facility print this web page as proof of compliance.
 - The facility printed out a Livescan Request Form (see Appendix F), which the applicant took to a contracted livescan vendor.
 - The livescan vendor collected the fingerprints electronically and, within one business day, electronically transmitted them to ISP and sent IDPH an electronic file with a Transaction Control Number (TCN) in it.
 - ISP sent the results to IDPH electronically and the web application matched it to the TCN number. The results were put on the HCWR denoting that this was a "FEE_APP" background check.

- If the background check was a “No Hit” record (no convictions), the facility received an email that was automatically generated by the application and sent as soon as the data was transmitted from ISP and processed.
- If there was a conviction on the background check, an IDPH reviewer looked at the results report to determine if the conviction(s) was disqualifying.
- If the conviction was not disqualifying, the facility got an email stating that the applicant had no disqualifying convictions.

The facility entered the employment information for the new hire (date of hire and position) and annually entered a date into the employment verification field of the employment record to verify that the employee was still employed at that facility. This kept the employee "Active" on the registry.

Staffing Issues

Due to increases in the retirement of state employees and an ongoing state hiring freeze, there was a backlog of data to be entered on the HCWR. Approval was provided to hire several temporary workers to help enter the data and work the phones. While the temporary staff did help to reduce the backlogs, retention was an issue. This required a continual staff training program to be in place.

Fingerprint Collection

Livescan Vendor Contract

Since IDPH was allowed to use grant funds to pay for most of the background check and livescan vendor fees, IDPH was required to use the master contract that the Illinois Department of Central Management Services had in place with a statewide livescan vendor. Therefore, multiple vendors were not used, permitting IDPH to work and train only one vendor for the pilot. IDPH also decided to only use livescan fingerprint collection with electronic transfer of data files to ISP and IDPH, to allow for the automatic processing of background checks.

Livescan Vendor Criteria during the Pilot

IDPH established some basic goals in addition to the criteria stated in the statewide contract for the vendor in collecting the livescan fingerprints:

- The applicant should not have to travel more than 35 miles to have their fingerprints collected.
- Even in the most rural areas the vendor should have mobilized units available to collect fingerprints at least once every two weeks.
- In the more populated areas the vendor should have permanent offices in the county where fingerprints could be collected on a walk-in basis.
- In the more populated areas, if the permanent office was more than 35 miles from a facility, the vendor should have mobilized units that would be available at least once every two weeks.

- Mobilized units must locate themselves in a neutral location so that applicants from one facility were not going to another facility to have their fingerprints collected.

Background Check Fees

Table 2 describes the fees associated with the Illinois Background Check Pilot Program:

Table 2 Cost of a Single Fingerprint-Based Background Check

Illinois State Police Fingerprint Background Check	\$15.00
FBI Fingerprint Background Check	\$24.00
Fingerprint Collection Cost from Contracted Livescan Vendor	<u>\$ 7.95</u>
	\$46.95

Training Users from Facilities that Participated in the Pilot

IDPH provided three training sessions for those selected facilities that were to participate in the pilot. Due to the location of the pilot counties, two of the training sessions were held at Northern Illinois University's satellite location in Rockford, Illinois and a third session was held in a metropolitan area north of Chicago.

PowerPoint presentations that displayed the screens the facility would use in the application were offered along with detailed user instructions, which were provided to each user.

The facility users have proven to be very capable even though many thought of themselves as technology challenged. The web application was particularly easy to learn and the flood of phone calls that was anticipated did not occur.

Implementation Problems

The first version of CNAC's web application did not allow a role for non-pilot users to be able to use the application. The non-pilot facilities required access to the web application to enter employment history but not initiate fingerprint background checks. In addition, the first version of the application would only permit the pilot facilities to initiate both FBI and ISP fingerprint background checks. Since ISP had established a rap back process, this caused unnecessary grant dollars to be spent. Finally, the initial version of the application provided no means for the facilities to voluntarily withdraw an applicant, if the hiring process was stopped for some reason.

The second version of the application was implemented in the middle of January 2007. It allowed the pilot facilities to initiate an FBI only background check and permitted non-pilot facilities to access the system to enter employment information. The second version also allowed the pilot facilities to withdraw the application; however, many did not go back and do this. Often, due to the location of where a user prints out a livescan request form, many unneeded background checks were initiated to just reprint that form. People that should be withdrawn are those who went elsewhere for employment, didn't pass the drug test, didn't want to have their fingerprints taken, etc.

IDPH has had more technical difficulty than expected. Due to a variety of challenges, it took IDPH's information technology (IT) staff close to a month to bring data over from the old main frame system into the new database. The second version of the application still would not allow an individual to be deleted off the registry or to initiate an ISP only background check. Because Illinois' database uses Social Security numbers (SSN) as the principal unique identifier many people were entered into the database more than once, mainly due to typing errors or wrong information on background checks that were submitted for manual entry. CNAC provided a third version of the application within days of the pilot ending that allowed a person to be deleted and to initiate ISP only background check. Additionally, to meet the federal background check dissemination requirements, the third version did not display the fitness determination results based on the FBI background check information.

Our contracted livescan vendor's technical affiliate left without notice. As a result they were prevented from transmitting a daily file to IDPH and ISP for about three weeks.

ISP had two major upgrades to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and one to the criminal history record information (CHRI) system that lead to a 6,000 background check back log throughout the State of Illinois. While the upgrades helped increase efficiencies in the long run, it caused another three-week delay in the pilot background check processing that we would have preferred to avoid.

IDPH's IT department is very understaffed, which created a backlog in web portal access requests submitted by the pilot facilities to access the web application through IDPH's secure intranet. It took three months to get all the facilities the needed access.

IDPH was required to use state contracts for purchasing equipment. Even though there was grant funds to use for the equipment the state contract would not allow new purchases until shortly before we were to implement the new process. IDPH has had to share an SQL server with other priority programs and our IT staff has shut down the processing of incoming files from ISP and the livescan vendor except for a short period of time once a day at 5 PM. IDPH used grant funds to purchase a very large SQL server to be used as a dedicated server for the HCWR but due to a variety of internal challenges, the new server is not functioning during the pilot.

Data Results from the Pilot

Data collected during the pilot program (see Table 3).

Table 3 Data Elements

Employee Type	CountOfRecord ID	State Disqualified	Federal Disqualified	Number Disqualified	Final Determinations	No Determinations	Withdrawals
All Other Types	1				1	0	0
Certified Nurse Aide	387	6	4	7	281	122	68
Cleaner	2520	63	44	74	1605	1012	561
Clerical	217	7	4	8	150	75	50
Cook	131	1		1	98	40	28
DD Aide	110	9	7	12	77	40	23
Dietitian	146	4	1	4	119	34	21
Director/Business Manager	5				4	1	1
Feeding Assistant	25	1		1	22	3	2
Janitor	5				4	1	1
Kitchen Worker, Food Preparer	57	1		1	43	17	9
Laboratory Technician	543	19	12	23	395	205	122
Licensed Practical/Licensed Vocational Nurse	13				11	2	2
Maid	409	13	8	16	278	149	91
Medical Director	67	1		1	43	28	19
Medication Aide/Technician	1				1	1	0
Mental Health Professional	6				6	0	0
Miscellaneous duties	3				3	0	0
Nurse Aide in Training	46	3	2	3	35	12	5
Nursing Home Administrator	162	8	5	9	119	50	24
Occupational/Vocational Therapist	12				9	3	3
Occupational/Vocational Therapy Aide	24				23	2	0
Occupational/Vocational Therapy Assistant	12				10	2	2
Orderly, Attendant	1		1	1	1	1	0
Other	7				5	2	2
Personal Care Worker	289	7	3	7	222	71	34
Pharmacist	372	11	15	17	314	68	40
Physical Therapy Aide	2				2	0	0
Physical Therapist	4				3	1	1
Physician Extender	25				20	6	3
Radiology Technician	2				1	1	0
Registered Nurse	1				1	0	0
Social Worker	14				12	3	2
Speech/Language Pathologist	442	3	1	4	316	144	87
Unknown	10				8	3	2
Waiter, Waitress	158	2	2	3	126	35	22
	6315	164	112	197	4391	2161	1242

Federal Fitness Determination	Number
Determined Qualified	158
Disqualified	4121
	112

State Fitness Determination	Number
Determined Qualified	108
Disqualified	4119
	164

Disqualified by FBI but ISP was Okay	13
Disqualified by ISP but FBI was Okay	85

Formal Appeal Decision	Number
Denied	20
Granted	142
Not Required	5
Pending	19
Revoked	1

Month	Number of Applications
10 / 2006	147
11 / 2006	266
12 / 2006	322
1 / 2007	550
2 / 2007	521
3 / 2007	626
4 / 2007	585
5 / 2007	678
6 / 2007	679
7 / 2007	683
8 / 2007	717
9 / 2007	541

PROGRAM COSTS AND USE OF FUNDS

Illinois was fortunate enough to have a livescan vendor that offered their services through the statewide contract for a rather inexpensive cost. Also we did not have to do redundant ISP background checks due to the rap back feature of a fee applicant request. This resulted in Illinois spending less than half of the grant funds provided.

Table 4 Grant Funds Expended

State Personnel	
Salaries	\$456,370
Fringe Benefits	\$209,300
Temporary Employees	\$140,045
General Expenses	\$144,428
Equipment	\$123,488
ISP and FBI Background Checks	\$124,574
Livescan Vendor	\$ 39,954
Software	\$ 32,437
Travel	\$ 9,646
Phones	\$ 7,030
Supplies	<u>\$ 3,142</u>
Total	<u>\$1,290,414</u>

ACTIONS TO SUSTAIN BACKGROUND CHECK PROGRAM

From the training sessions forward through the pilot, health care employers expressed their concerns about having to go back to just a name-based background check after the pilot. Illinois listened to their concerns and has been able to get the Act amended to require fingerprint background checks statewide. We are facing many of the same problems now trying to implement the amendment. Knowing that we were going to face these difficulties would have been a justifiable reason to not seek the amendment; however, the pilot has demonstrated that the fingerprint background check is by far the best background check for health care workers. The benefit that we have seen through the pilot makes this arduous effort worth it.

Additional Legislative Amendment to the Act

As a direct result of the lessons learned in the pilot, the Act was again amended in the fall of 2007 to require fingerprint-based background checks submitted as a fee applicant request through IDPH (see Appendix G). This amendment is only for an ISP background check because of the burden of cost that the FBI background check would cause. With the ISP rap back a health care worker will only be required to have one background check that will remain continually up-to-date as long as the worker stays active on the HCWR. The Uniform Conviction Information Act (UCIA) law used in the Act before it was amended did not allow ISP to store the fingerprints in their repository. Those background checks were only for a picture of time.

Healthcare employers affected by this Act that IDPH licenses are as follows:

- assisted living and shared housing establishments
- community living facilities
- children's respite homes
- freestanding emergency centers
- full hospices
- home health agencies
- hospitals
- life care facilities

- long-term care facilities
- post-surgical recovery care facilities
- sub-acute care facilities

There are additional health care providers that are affected by this Act that are regulated by the Illinois Department of Labor, Illinois Department on Aging, Illinois Department of Healthcare and Family Services and the Illinois Department of Human Services.

Rehabilitation Waiver

In the current proposed rules IDPH may consider the results of a fingerprint-based criminal history records check for a rehabilitation waiver, if specified criteria has been met. The rehabilitation waiver may be granted without a waiver application being submitted by the student, applicant, or employee. In cases where a rehabilitation waiver is granted, a letter shall be sent to the applicant notifying the applicant that he or she has received a waiver automatically.

To be considered for an automatic waiver IDPH will have received a criminal history records check.

A waiver without a waiver application shall be denied unless the student, applicant, or employee has met the following time frames:

- Single disqualifying misdemeanor conviction – 5 years after conviction date;
- Two disqualifying misdemeanor convictions – 7 years after conviction date;
- Three or more disqualifying misdemeanor convictions – 9 years after conviction date;
- Single disqualifying felony conviction – 7 years after conviction date;
- Two disqualifying felony convictions – 9 years after conviction date; and
- Three or more felony convictions shall not be considered for an automatic waiver.

A waiver without a waiver application may be granted to an individual who has been convicted of committing or attempting to commit one or more of the following offenses if the time frames have been met:

- Unlawful restraint, aggravated unlawful restraint, child abduction, or aiding and abetting child abduction [720 ILCS 5/10-3, 10-3.1, 10-5, and 10-7];

- Assault, battery, domestic battery (as a misdemeanor and if not preceded by a violation of an order of protection) [720 ILCS 5/12-1, 12-3, 12-3.2];
- Theft (as a misdemeanor), Theft of mislaid property, offense of retail theft (as a misdemeanor) [720 ILCS 5/16-1, 16-2, 16A-3];
- Criminal trespass to a residence [720 ILCS 5/19-4];
- Reckless discharge of a firearm [720 ILCS 5/24-1.5];
- Practice of nursing without a license [720 ILCS 65/10-5];
- Violations under the Criminal Jurisprudence Act (formerly Ill. Rev. Stat. 1991, ch.23, par. 2368);
- Receiving a stolen credit card or debit card [720 ILCS 250/4];
- Receiving a lost or mislaid credit or debit card with intent to use, sell or transfer [720 ILCS 250/5];
- Sale or purchase of a credit card without user's consent [720 ILCS 250/6];
- Use of a credit or debit card with the intent to defraud [720 ILCS 250/8; and
- Fraudulent use of electronic transmission [720 ILCS 250/17.02].

Upon receipt of the results of a criminal history records check that meets the requirements, a review of any convictions reported will be made by a reviewer at IDPH. The reviewer will determine whether the convictions are disqualifying. The reviewer shall further determine if the circumstances of the conviction(s) meets the criteria. If the criteria are met the reviewer may grant an automatic rehabilitation waiver to the applicant. In cases where a rehabilitation waiver is granted, a letter shall be sent to the applicant notifying the applicant that he or she has received a waiver automatically. The waiver will be recorded in the HCWR. If a rehabilitation waiver is not granted the individual may still apply for a waiver by submitting a completed waiver application for full committee review.

Livescan Vendor Criteria in the Amended Act After the Pilot

In proposed rules for the amendment to the Act that resulted from Illinois having participated in the pilot, a contracted vendor is defined as one or more vendors awarded a contract who provides statewide livescan services at an established price. The authorized vendor is defined as one or more private corporations or associations that offer livescan vendor services only to applicants, employees or students of its members and who meets the requirements stated in a written contract.

Contracted and authorized vendors shall meet the following requirements:

- The livescan vendor(s) shall only use equipment that has been certified by ISP to collect inkless fingerprints and software that is up-to-date and meets the requirements for fee applicant submissions.
- The vendor(s) shall electronically transmit fingerprints and required data to ISP in a manner prescribed by ISP.
- The vendor(s) shall electronically transmit the fingerprints to ISP within one business day of when the fingerprints are collected.
- The vendor(s) shall comply with all standards published by ISP and the FBI.
- The vendor(s) shall electronically transmit a daily file of required data successfully to ISP in a manner prescribed by IDPH. All records of prints from one business day must be transmitted in one data file to IDPH in the prescribed format.
- The vendor(s) shall store the fingerprints transmitted to ISP until the end of the contract or authorization, so that IDPH can follow-up at a later date to verify that a specific print was submitted or get the print resubmitted.
- The vendor(s) shall respond to any follow-up inquiries in a timely manner and provide any reporting required by IDPH.
- The vendor(s) shall effectively demonstrate that the vendor has 2 or more years of successful experience transmitting fingerprints electronically to ISP.
- The vendor(s) shall provide non-criminal fingerprinting services, including the collection of demographic data.
- The vendor(s) and the technicians that it employs shall meet any licensing requirements imposed by State of Illinois regulations.
- Only technicians trained and employed by the vendor(s) shall be used to collect fingerprints and transmit the data files electronically to the vendor(s).
- In cases where the health care employer or training program feels that it is in their best interest to have permanent livescan equipment in their facility, the equipment must be under the full control of the vendor(s).
- The vendor(s) shall provide a means where individuals, educational entities, staffing agencies, or health care employers (hereafter in this paragraph referred to as user) may pay the vendor(s) the amount due to ISP for any livescan fingerprints submitted for criminal history background checks.
 - The vendor(s) shall act as designee for the user in paying fees into the State

Police Services Fund. The vendor(s) shall allow the user to deposit lump sums into a prepaid account that the vendor(s) maintains. Charges for the vendor's livescan services and the amount due to ISP shall be charged against this prepaid account. Either an on-line accounting or a paper accounting of these account transactions shall be made available to a user no less often than on a monthly basis. The amount of prepaid balance to be kept in the account by the user shall be determined by the vendor(s) based upon factors that may indicate the frequency in which the user may have charges against the account.

- The vendor(s) shall be allowed to charge an additional amount per fingerprints processed over and above the rate of the livescan services to compensate the vendor(s) for the maintenance of these accounts. The vendor(s) shall be allowed to hold up transmitting any prints to ISP if there are not enough funds in the user's account to pay for the prints being submitted. The vendor(s) shall notify ISP, IDPH and the educational entity, staffing agency, or health care employer when a fingerprint transition is held up due to lack of funds in the user's account.
- Only individuals presenting a livescan request form generated out of the HCWR web application shall be allowed to be printed under the terms of the contracts for the contracted or authorized vendor. The vendor(s) shall be allowed to charge an additional amount over and above the rate of the livescan services to compensate the vendor(s) for credit card fees.
- The vendor(s) shall only collect livescan prints not card scan prints.
- If an individual's fingerprints are rejected by ISP the vendor(s) shall collect a second set of prints. The vendor(s) shall not charge for the collection of the second set of prints.
- The vendor(s) shall comply with any other terms set forth in the contracts for the contracted or authorized vendor.
- The statewide contracted vendor shall provide service within 35 miles of the facility where the applicant is to be employed at least once every 10 working days.

CONCLUSION AND RECOMMENDATIONS

At a time in our nation's history when many of our citizens fit into the commonly called "baby boomer" age group, the need for good health care and a safe environment within the health care system has never been more prevalent. Illinois would like to commend those who worked diligently in establishing this pilot program to evaluate the effectiveness of conducting fingerprint background checks on prospective employees with access to residents within the long-term care setting. It has been a privilege for Illinois to have the opportunity to participate in this pilot program. Illinois certainly had its problems in becoming a participant and rolling out a program that would be beneficial to both those gathering data and the populace of the State of Illinois. Anytime there is such a large undertaking as this pilot program, those involved should never expect it to be easy. If it were easy then change would not be taking place. In this particular situation the need for change is clearly apparent.

This pilot may have been just a project for some but we in Illinois have tried to absorb it into our social consciousness and truly realize the importance that the results of this pilot may play on individual lives. Most of the health care employers selected to participate in the pilot rallied around this effort with an exceptional enthusiasm. The procedures were drastically different than what they had used before. The requirement to use a computer and a web application was intimidating for some. All the employers demonstrated a genuine concern for those that reside within the realms of their responsibility and because of this the majority was willing to take a positive attitude toward the pilot. Many could clearly see how the automation would help them to quickly get results that were accurate either before the applicant started working or while the new hire was still in orientation training.

The value of the pilot program is indisputable. The theory that all health care workers should have a fingerprint background check is undeniable. The challenge is in how this should be done.

Illinois' law has specific criminal offenses that are to be considered disqualifying. There is merit in this approach in that it makes it fairer to all potential employees. If there is a judgment call made by each health care provider as they hire new workers, there is a potential that their judgment is influenced by their need for staff. If the employer is in an area where it is hard to recruit workers the bar may be lowered. If the bar is lowered enough, how effective is it to require a background check in the first place. The bar should be placed at a reasonably stringent level that legislatures are comfortable with on a national level for all employers to have to meet those requirements. States and employers could make stronger conditions of employment if they so desire.

A waiver program which eliminates workers who have recently been convicted of certain crimes should be available and outlined by law. Some may believe that once a convicted criminal then that person always has the propensity of committing similar offenses. The law should recognize that some do change their lives even though the law

cannot determine the nature of any one's character. Laws can set the minimum requirements and establish criteria that most individuals fall within. If an individual did not commit a heinous crime and it has been several years since he or she has committed any crime, that person may not be a risk to the safety of a patient, long-term care resident or health care client. A process of further reviewing that individual's situation should be in place.

During the pilot Illinois did not use its normal practice of having the health care employers make the determination as to whether a conviction was disqualifying. During the pilot all the determinations of disqualifying crimes were made by trained state employees that work with those crimes daily in the waiver program. After discussing this point in many training sessions with health care employers, it is more than apparent that employers are fearful of making a mistake and will just not hire individuals with convictions. This is their choice but not their preference. Their fear of a surveyor issuing a deficiency is stronger than their desire to be fully staffed. The pilot facilities remarked that they were especially happy for the determinations to be made by the department before receiving the background check results. Since everything in the pilot process was automated the result was back to the employer, on the average, within 48 hours of when it was electronically submitted by the livescan vendor to ISP. The work load was no heavier on IDPH because, outside of the pilot, the health care employers are required to mail a copy of the background check result to IDPH. That result is manually entered into the database and a determination made on those that have convictions. At least for the facilities that participated in the pilot IDPH's manual work load was reduced.

If the practices of this pilot are expanded to a national program the following recommendations are suggested:

- All direct access workers be required to have a fingerprint background check. Illinois did not include physicians and volunteers. An individual's status should not preclude them from being required to meet the same requirements as others. Volunteers and health care students should also be required to have the background check. If the entire process is electronic the results can come back in approximately two days, which is timely in nature for volunteers as well as workers and students.
- To help states to standardize the background check process and to obtain state rap backs in all states, a national non-profit association with federal government participation should be established. Each state would be invited to have a representative participate at the association so that all concerns could be addressed. As we found in the pilot, there are certain circumstances that cannot be legislated away, such as the rugged terrain of the State of Alaska. These circumstances are not always apparent to those from another state. This association should offer guidance on how a rap back system can easily and economically be developed with the various state police data systems. The association could also offer model laws to help states enact the required legislation for the rap back system and other efficiencies, such as centralizing all state required background checks through one

state agency. The association could offer guidance on the establishment of a health care worker registry where the background check results, training information, license information, administrative findings, disqualifying offenses, etc. can be located. Through this association, recommendations could be implemented for standardizing state registries so information could be shared between the states, which in effect would establish a national registry with state background check rap back results. The FBI might find it easier to develop a rap back for the health care industry if they only reported back to one entity, the association. Due to many state's having some of the same constraints that Illinois experienced with purchasing equipment, hiring staff, working under contract limitations and extremely limited budgets, some states might want to outsource their registry to the association.

- No health care worker registry should have a SSN look-up on the registry. No background checks or training test results should have a unique identifier of a Social Security number (SSN), as identity theft is running rampant across the nation. A health care worker's identity should be centered on a biometric identifier such as a combination of his or her fingerprints and picture rather than a SSN. A card that includes a worker's picture and holds certain electronic data about the worker is often referred to as a "smart card." The worker should be provided a smart card at the same time they have their fingerprints taken and submitted for a background check. This card would become the workers identification card to be used in any health care facility. At the time of hiring the smart card could be used in a card reader to access a secure internet web site for current background check results and training information. In the hiring process the employer would enter a smart card at the same time as the worker and make indication that the worker is now employed at that facility and in what type of position. This would provide the necessary information to notify the current employer of future crimes committed by the worker. Upon the worker ending their employment at a facility, the employer would have the capability of entering only the employer's smart card and indicating that the worker is no longer employed. Annual employment verifications could be made either manually or through an automatic upload by the employer to assist in verifying the certification of CNAs and keep workers active on the registry. Once a worker had a state and federal rap back background check, no additional background check would be required and the worker would be eligible for hire at any time.
- Consistency between the various registries and training requirements for CNAs or health care workers is of utmost importance. It is suggested that the legislation for a national registry be expanded to include requirements for the CNA testing program. If one state is to recognize the training of another state, which is crucial for the worker, there needs to be some assurance that a worker, such as a CNA, has received substantially the same training. Specific criteria should be established.
 - Require a fingerprint background check of a student or someone applying to be considered equivalent to a CNA before they attend class or participate in the equivalency evaluation.

- Standardize the type, number and level of manual skills.
- Standardize the requirements for a trainer.
 - What credentials a trainer must have;
 - What process an individual must go through to be authorized as a trainer;
 - How long that authorization should last; and
 - What has to be done to renew that authorization.
- Standardize the competency test from state to state.
 - Automate the competency test so that the student knows the results as soon as the test is taken;
 - Have the results electronically transmitted to the registry within 48 hours (if not instantly) of the student taking the test to assist the student in seeking faster employment instead of the one to two month wait that sometimes happens;
 - Have the test available in most of the popular languages used in the United States; and
 - Automated tests should be proctored but through a national test bank that can only be accessed by a proctor's smart card and the test taker's smart card.
- The requirements for a manual skills evaluator.
 - What credentials an evaluator must have;
 - What process an individual must go through to be authorized as an evaluator;
 - How long that authorization should last; and
 - What has to be done to renew that authorization.
- Standardize the number of skills and level of ability.
 - Specify the number of skills that must be tested, and
 - Specify the minimum level of the skill acceptable.
- Provide consistent information from an on-line source for all individuals seeking to be trained as a CNA.
- Provide an adequate amount of testing facilities and manual skills evaluators in reasonable convenient locations.

Illinois considers the pilot project to have been a success. Even though there were major difficulties involved in participating there were even more rewards. When comparing the pilot to the process before the pilot Illinois did the following:

- Trained a group of facilities, which had never participated in an effort of this nature before, to successfully initiate background checks and enter employment histories of workers through a web application.
- Took a completely manual process of facilities mailing in background checks to electronically processing background checks with automatic email notifications sent to facilities.
- Removed the burden of determinations from the facilities and placed it with trained professionals.
- Decreased the background check result time to approximately 48 hours or less.
- Changed from name-based background checks that were only for a picture of time to a continually up-to-date state fingerprint background check.
- Established written policies and procedures for all aspects of the HCWR.
- Automated letters and created professional forms.
- Amended the law to require all health care employers subject to that law to initiate fingerprint background checks.
- Accomplished all of the above and spent less than half of the grant funds awarded.

APPENDIXES

- A.** Definitions
- B.** Illinois' Pilot Counties
- C.** Background Check Process Prior to the Pilot
- D.** Work Flowcharts
- E.** Comparison of Legislative Amendments
- F.** Authorization and Disclosure Form
- G.** Livescan Request Form

Appendix A

Definitions

CAAPP – This a revised response background check that is provided as a result of a conviction that has been matched to fingerprints that are stored in the state police repository. This revised response is sent to governmental entities that requested a background check previously on that same set of fingerprints.

Direct Access Workers – All individuals employed or retained by a health care employer as home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, or an individual working in any similar health-related occupation where he or she provides direct care or has access to long-term care residents or the living quarters or financial, medical, or personal records of long-term care residents; individuals licensed by the Department of Financial and Professional Regulation, such as nurses, social workers, physical therapist, occupational therapist and pharmacists; individuals who provided services on site, through contract; and non-direct care workers, such as those who work in environmental services, food service and administration. It did not include physicians or volunteers.

Fee Applicant Submission – By routing the background check requests through a government entity, ISP is legally allowed to store that fingerprint in their repository and notify that government entity of any future crimes associated to the fingerprints submitted. This practice is commonly called a “rap back.” This type of background check is noted on the registry as a “FEE_APP” background check.

Health Care Worker Registry – The registry is Illinois’ registry for nurse aides/assistants as well as the registry for other types of health care workers. It contains information about background checks, disqualifying convictions, waivers, training, administrative findings and work history.

UCIA – The Uniform Conviction Information Act is a statute that allows any public or private entity to request a background check on an individual in the State of Illinois. It allows both a name-based check and a fingerprint check. The name-based check is conducted by trying to match the submitted name to one or more of over 30 million names that are in the data files. This statute does not allow the state police to retain a copy of the fingerprints in their repository.



	Population
Boone	41,786
Carroll	16,674
Jo Daviess	22,289
Lake	644,356
Lee	36,052
McHenry	260,077
Ogle	51,032
Stephenson	48,979
Whiteside	60,653
Winnebago	278,418
Total	1,460,316

Included border counties; metropolitan and rural areas.

Background Check Process Prior to the Pilot

Prior to the pilot, the Act required name-based background checks through ISP on new hires that provided direct care. The Act applies only to non-licensed employees. Following are the requirements before amendments were made as a result of Illinois participating in the pilot.

- Required a Uniform Conviction Information Act [20 ILCS 2635] (UCIA) name-based background check for a new hire if the record of their last background check on the NAR was more than a year old.
- Required a UCIA fingerprint background check if there were multiple common names that were retrieved from a name-based check. ISP has over 30 million names in the database which they search for name checks, so it is frequent that multiple common names are found.
- Required a UCIA fingerprint background check if the name-based check revealed disqualifying convictions.
- Required a UCIA fingerprint background check if the applicant challenged the results of a name-based check.
- Required a UCIA fingerprint background check to request a waiver.
- As long as a worker stayed at the same facility, no additional background check was ever required.
- Name-based checks could be submitted by form or, if set up to do encrypted email, by email to ISP. Forms took anywhere from two weeks to a month to process. Emailed requests took about a week, but to get set up to have encrypted email takes at least an intermediate computer skill level.
- UCIA fingerprint checks could be submitted by form (ink and role) or by livescan vendor (electronically). Forms took anywhere from two weeks to a month to process. Livescan checks are generally processed within 48 hours.
- All background checks were requested by the health care employer and the results of the check went back to the employers. The employer had to make the determination as to whether any convictions were disqualifying. The employer was responsible for mailing IDPH a copy of the results. IDPH had to manually enter each of the results into a computer system to be displayed in the on-line NAR.
- Each agency affected by the Act was responsible for processing waivers for the entities they license. Agencies did not always accept the waiver processed by another agency.

- There was no requirement to check any other registry than the NAR.

Work Flowcharts

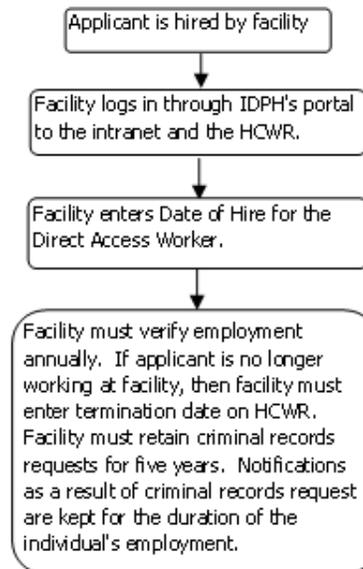
Direct Access Worker Checks the Internet to Verify Their Data on the Web Site

Direct Access Worker signs onto the internet and accesses the IDPH web site.

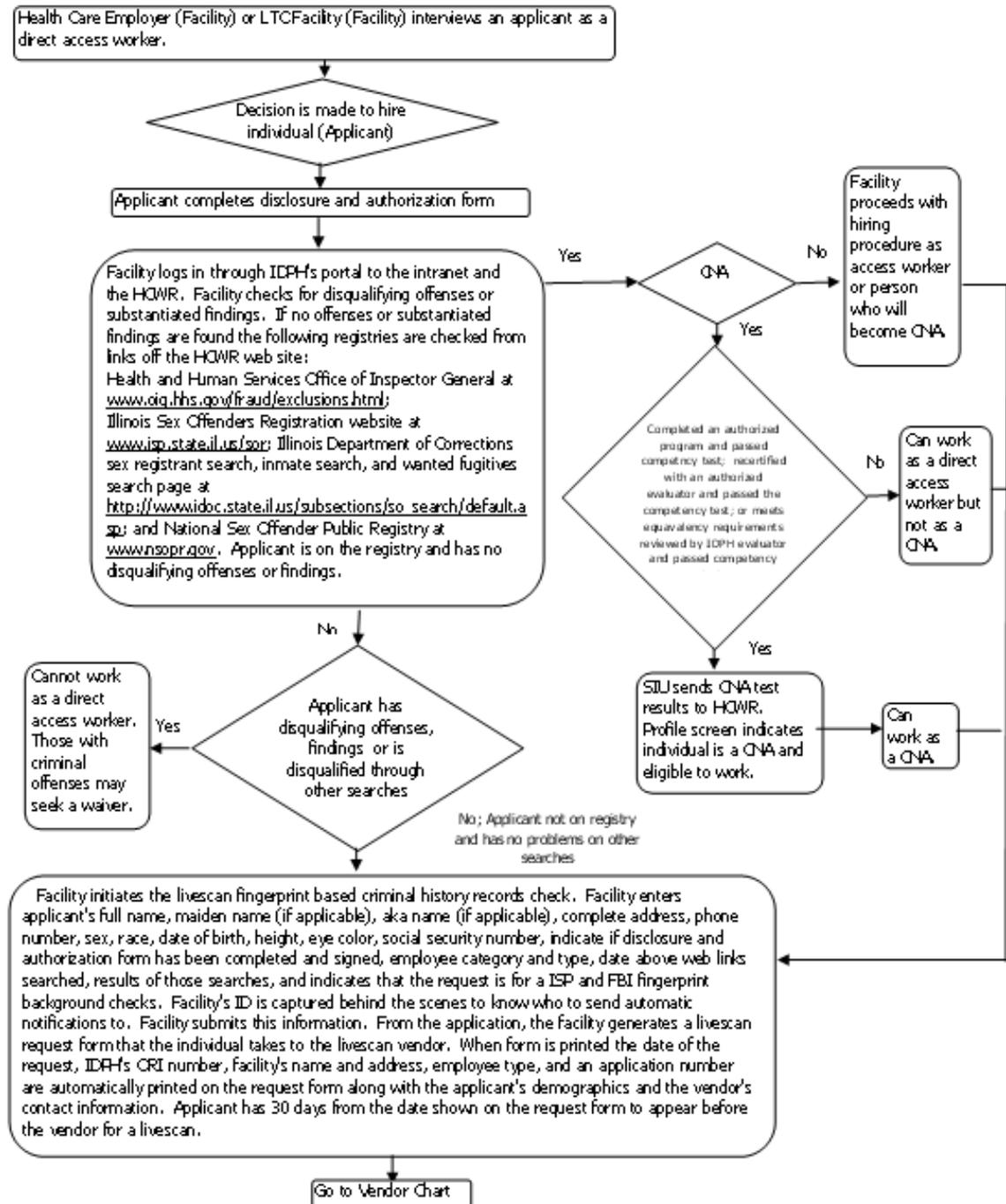


The application allows the Direct Access Worker to search by his or her name to bring up his or her own information. The worker can identify themselves by the application displaying: name, race, sex, and date of birth. The screen should show if the worker has any substantiated findings and their type, and a statement as to whether the worker has any convictions that would disqualify him or her from working as a direct access worker. If the worker is a CNA the educational programs that the CNA has completed and their completion date, and the results of any competency testing.

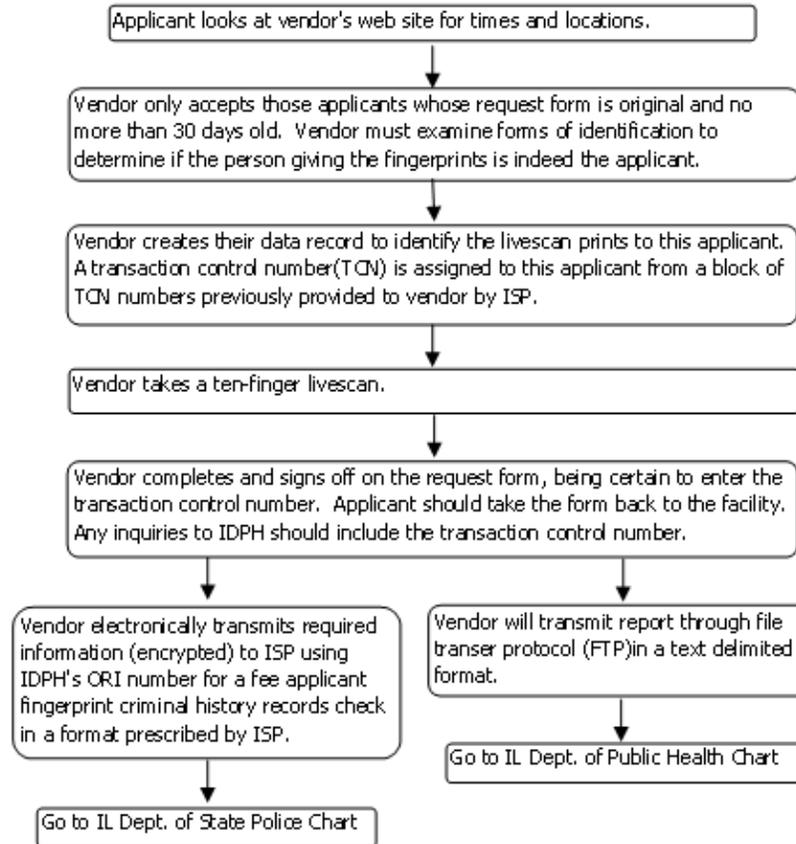
Facility Keeps HCWR Registry Updated



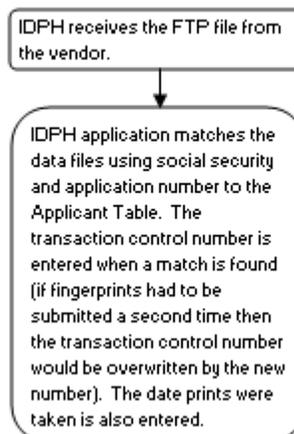
Health Care Employer or LTC Facility Initiates Livescan Fingerprints



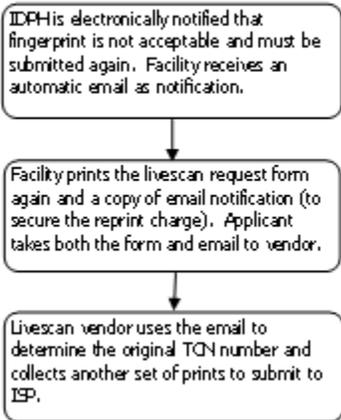
Vendor Collects Livescan Fingerprints



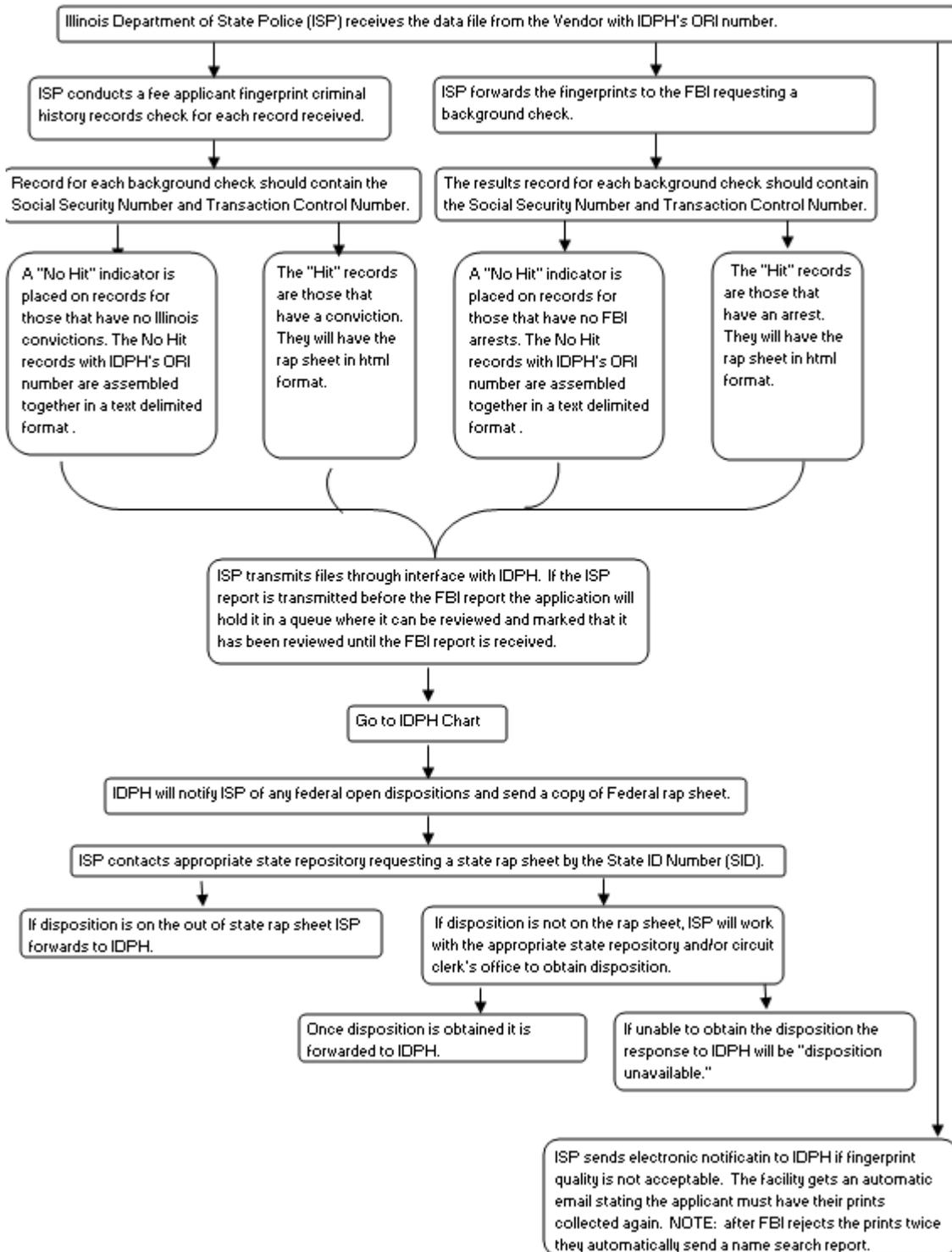
Illinois Department of Public Health (IDPH) Receives Vendor Record



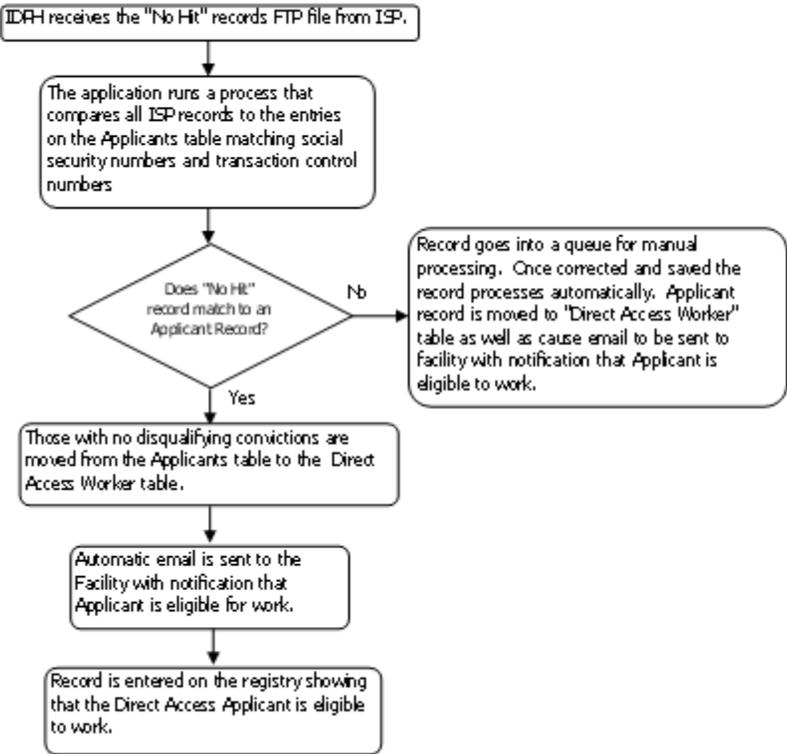
Livescan Vendor Response to Non-Acceptable Livescan



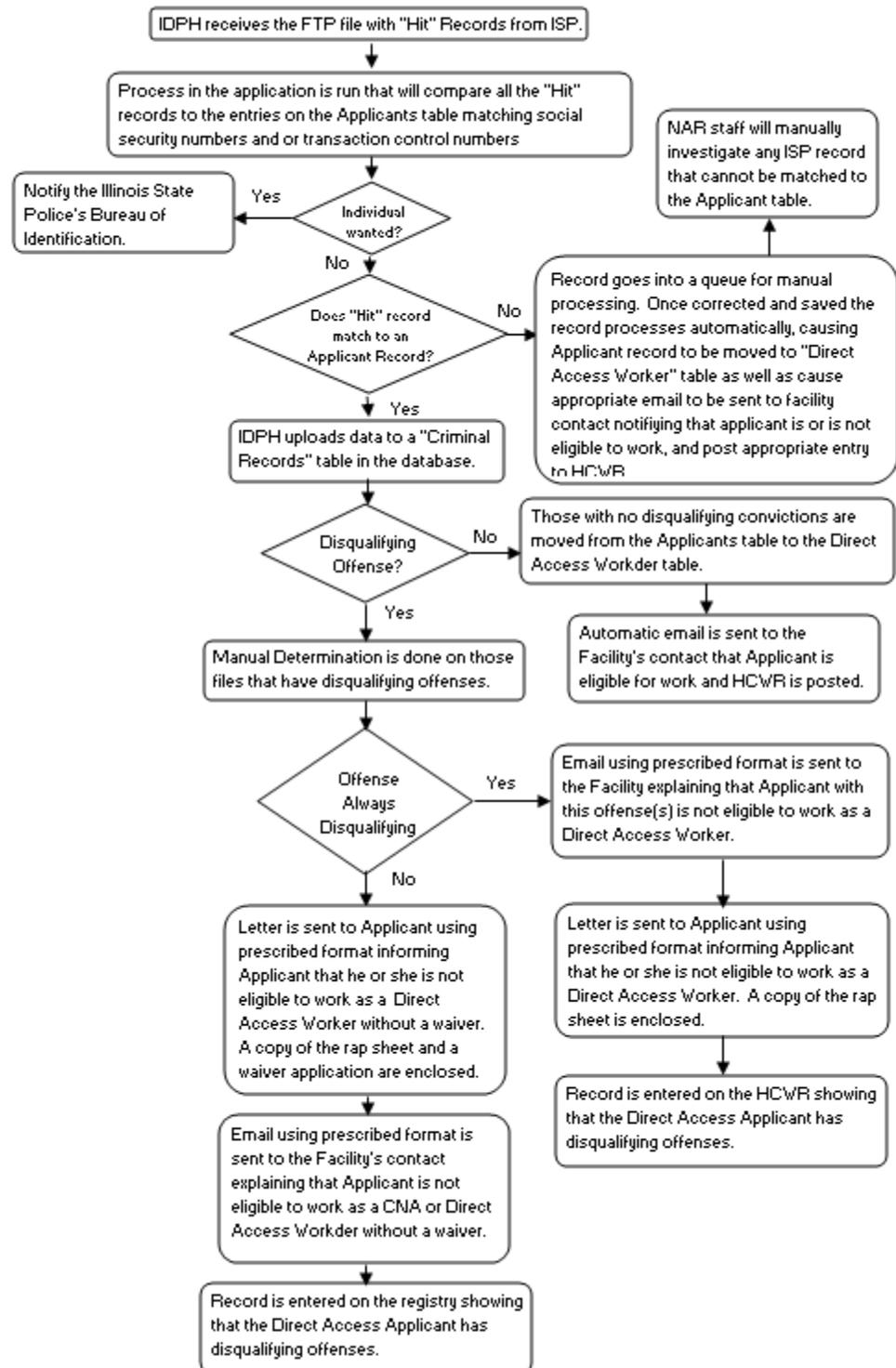
Illinois Department of State Police (ISP) Processes Fingerprints and Forwards a Set to FBI



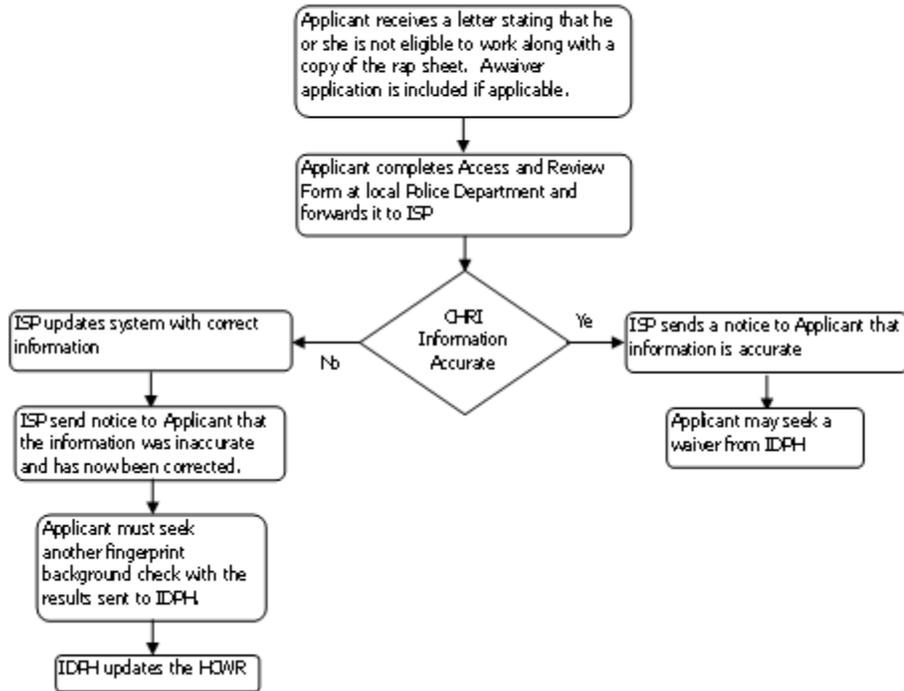
Illinois Department of Public Health (IDPH) Processes "No Hit" ISP Records



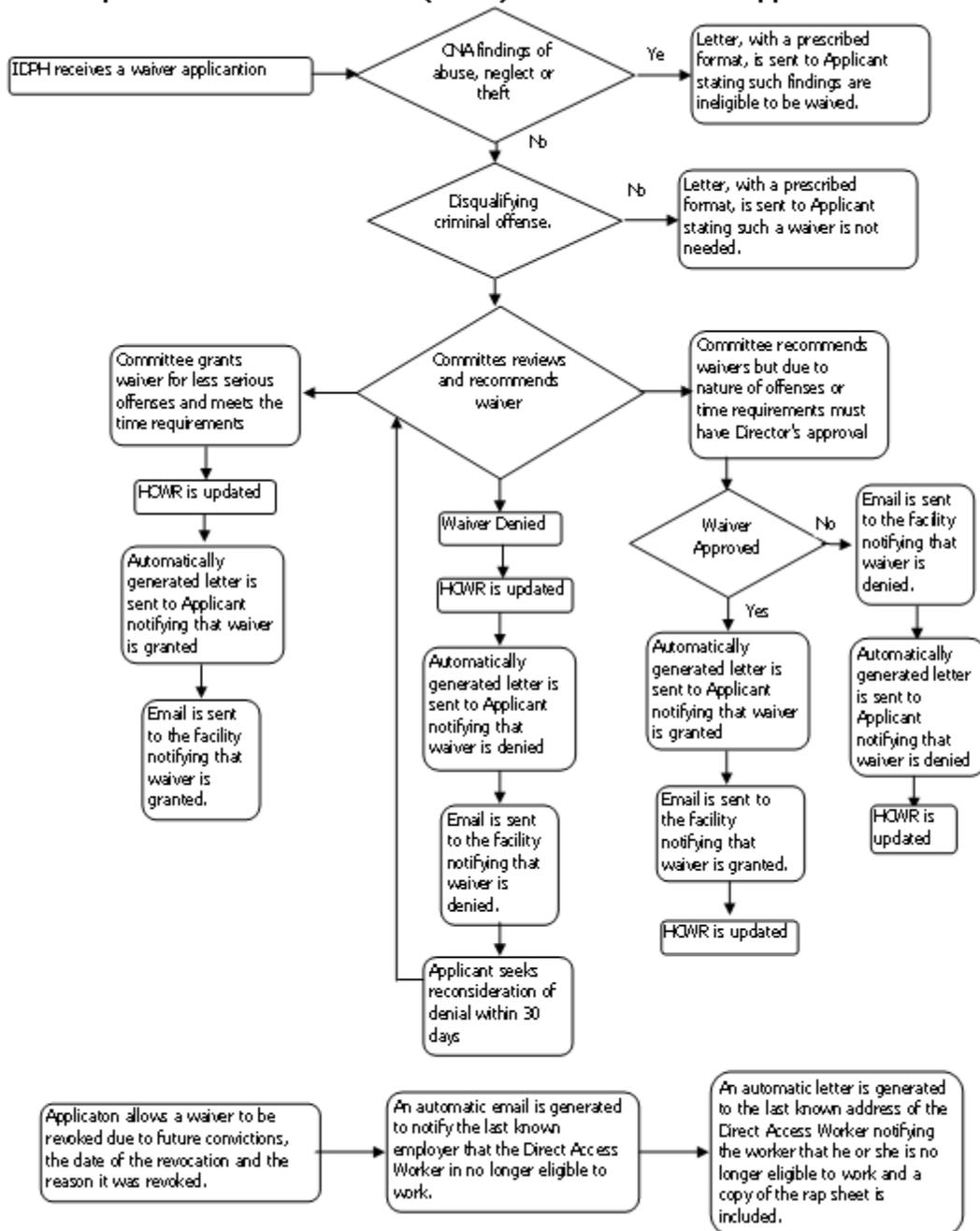
Illinois Department of Public Health (IDPH) Processes "Hit" ISP records



Applicant Seeks an Appeal of Offenses



Illinois Department of Public Health (IDPH) Receives a Waiver Application



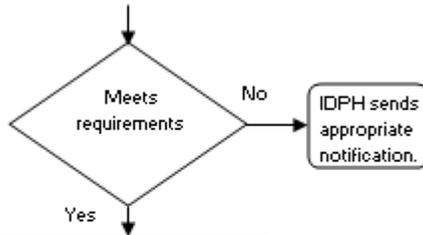
Illinois Department of Public Health (IDPH) Receives Notice of Administrative Finding

HCWR receives an Administrative Order for the Legal Department with a finding against a CWA.

Application allows the HCWR staff to search for an individual by name or social security number, update the Direct Access Worker's record and indicate that there is a finding, the type of finding, the docket number, the case number, the date of hearing (if applicable), the facility from which the finding originated, the notification date, the date notice of the final order was sent, a summary of the finding and a summary of the rebuttal statement the worker submitted (if applicable).

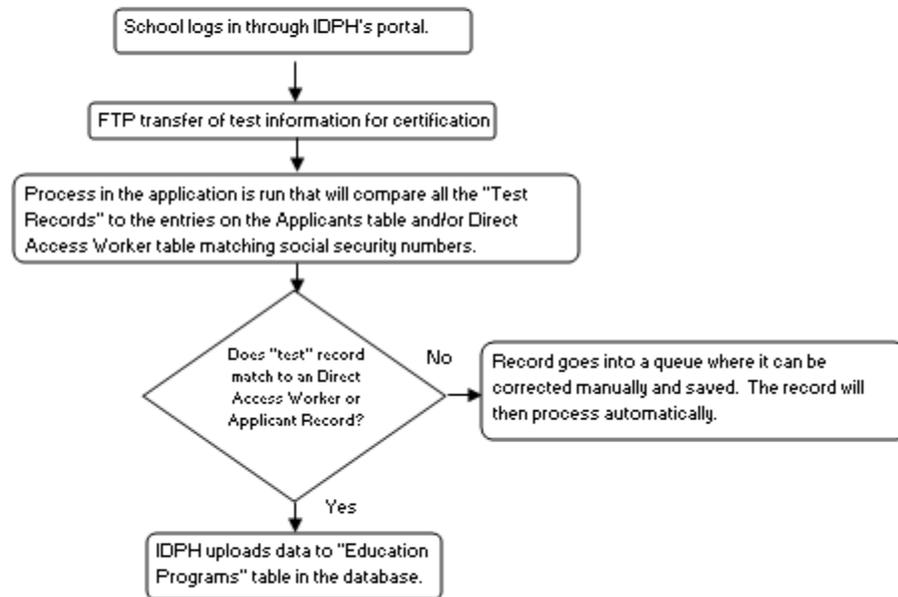
Training Programs

IDPH receives notification of a training program

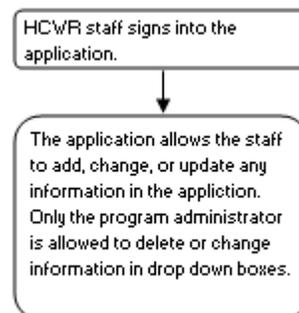


IDPH enters the program number, program name, program coordinator, region number, address, city, state, zip code, telephone with extension (if applicable), email address, status date, status: approved, renewal, reactivated, natcep waiver, active/inactive, restricted, closed, and explanation.

Southern Illinois University (SIU) Submit CNA Test Results



HCWR Staff Wants to Update a Stored Table



Authorization and Disclosure Form



Illinois Department of Public Health
Health Care Worker Registry, 525 W. Jefferson St., Springfield, IL 62761 Phone: (217) 785-5133
Health Care Worker Background Check
Disclosure and Authorization for Criminal History Records Check

I hereby authorize the Illinois Department of Public Health (IDPH), IDPH's designee that train or test health care workers, staffing agency, or the health care employer to request a criminal history records check and I further authorize the Illinois State Police (ISP) to release information relative to the existence or non existence of any criminal record which it might have concerning me to the requestor solely to determine my suitability for employment or continued employment. I further authorize any agency which maintains records relating to me to provide same on request to the ISP or IDPH. I certify that the ISP and any agency, including IDPH, their employees or officers who furnish this information shall be held harmless from any and all liability which may be incurred as a result of releasing such information. I further acknowledge that a health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit one or more of the offenses stated in the Health Care Worker Background Check Act (225 ILCS 46/25)

I understand that any false statements or deliberate omissions on this document may be grounds for disqualification from employment or, if discovered after employment begins, could result in discipline up to and including my termination of employment.

I understand that the information requested below regarding sex, race, height, eye color, and date of birth is for the sole purpose of identification and the gathering of the above-mentioned information about me accurately, and that it will not be used to discriminate against me in violation of the law. I understand that the provision of my social security number is required by law. A facsimile or photographic copy of this authorization will be as valid as the original.

First Name _____ Full Middle Name _____ Last Name _____

Mailing Address _____

Physical Address if different _____

Other Names Used: _____ Telephone _____ - _____ - _____

States Where You Have Lived? _____

[] Male [] Female Date of Birth _____ Height _____ Eye Color _____ Social Security Number _____ - _____ - _____

- Race A Chinese, Japanese, Filipino, Korean, Polynesian, Indian, Indonesian, Asian Indian, Samoan, or any other Pacific Islander.
B Black or African American (Not Hispanic or Latino)
H Hispanic or Latino (Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin)
I American Indian, Eskimo, or Alaskan native, or a person having origins in any of the 48 contiguous states of the United States or Alaska who maintains cultural identification through tribal affiliation or community recognition.
U Of undeterminable race. Of Untold mixture.
W Caucasian (not Hispanic or Latino)

Have you ever had an administrative finding of Abuse, Neglect, or Theft? [] Yes [] No If "Yes", give full details and state. Continue on back if more space is needed.

Have you ever been convicted of a criminal offense other than a minor traffic violation (do not include convictions that have been expunged, sealed or adjudicated delinquent)? [] Yes [] No If "Yes", give full details of each offense and the state in which convicted. Continue on back if more space is needed.

I certify that the above is true and correct and give my consent for my name to appear on IDPH's Health Care Worker Registry as a result of this criminal history records check:

(Signature) _____ (Date) _____

As the parent or guardian of the above named individual, who is under the age of seventeen, I give my consent for this named individual to have a criminal history records check.

(Signature of Parent or Guardian when applicable)

(Date)

Livescan Request Form

Application # _____

ORI # ILNHPP09Z

Date of Request:

**Livescan Fingerprint Request
Illinois Department of Public Health**

Health Care Worker Registry, 525 W. Jefferson St., 4th Fl., Springfield, IL 62761 Phone (217) 785-5133

You received this form because you have applied for a position with a health care employer or have enrolled in a training program. To be eligible to work in that position you must have a fingerprint background check. The livescan vendor can only accept an original fingerprint request form (photocopies will not be accepted). The fingerprints are taken from a digital scan – no ink is involved.

You have only ten working days from the time you signed the authorization form to have you fingerprints collected by the following contracted vendor:

Accurate Biometrics: 866-361-9944 (toll free number)
Website: www.accuratebiometrics.com (to check for schedules and locations)

Applicant _____ SSN _____
Mailing Address _____ Telephone _____
Mailing Address _____
Date of Birth _____ Sex _____ Race _____ Height _____
Eyes _____
Fingerprints to be submitted to: State Police
Employee Type _____

(If the worker is paying for this background check they need to have a money order in the correct amount or be able to pay with a credit card).

TCN _____ Facility ID: _____
Requesting Facility: _____
Address: _____

Return this portion to the facility that gave you this request form.

Full Name _____ SSN: _____

On: _____ In: _____, by Accurate Biometrics
Date City, State

TCN: _____

(Technician's signature)

Appendix G

Comparison of Legislative Amendments

Prior to the CMS Pilot	Changes Made for the Pilot Period	Changes Made as a Result of Lessons Learned in the Pilot
<p>Required health care provider to initiate a name-based background check through the ISP on unlicensed direct care workers who provided nursing care or assistance with feeding, dressing, movement, bathing, toileting, or other personal needs, if their background check on the registry for nurse aides was over a year old. The background check results came back to the health care employer for the employer to make a determination as to whether any convictions were disqualifying. The health care employer was then to mail a copy of the background check to IDPH so that the results of the report could be entered on the registry for nurse aides.</p>	<p>Required each new hire, licensed or unlicensed, seeking employment with a selected long-term care provider in a position having direct access to residents, patients, or clients was required to have his or her fingerprints submitted for a criminal history records check through the ISP and the FBI. Background check results came back from the ISP to the IDPH and were electronically entered into the HCWR. Any convictions went into a queue for a trained employee to make the determination as to whether any convictions were disqualifying. The results of the background check determinations were transmitted electronically to the health care employer that initiated the check.</p>	<p>Required each new unlicensed hire that provides direct care or in a long-term care setting has access to residents or the resident's living quarters, or the resident's financial, medical, or personal records to have a fingerprint-based criminal history record check submitted through the IDPH as a fee applicant submission. The background check is to be done through the ISP. Background check results came back from the ISP to the IDPH and were electronically entered into the HCWR. Any convictions went into a queue for a trained employee to make the determination as to whether any convictions were disqualifying. The results of the background check determinations were transmitted electronically to the health care employer that initiated the check.</p>
<p>Required the health care employer to notify the applicant that a background check is required, that the</p>	<p>Required the health care employer to notify the applicant that a background check is required, that the</p>	<p>Required the health care employer to notify the applicant that a background check is required, that the</p>

Prior to the CMS Pilot	Changes Made for the Pilot Period	Changes Made as a Result of Lessons Learned in the Pilot
<p>applicant has a right to a copy of his or her criminal records report, and if hired conditionally may be terminated if the criminal records report indicates disqualifying convictions unless a fingerprint background check validates that he or she does not have a disqualifying conviction.</p>	<p>applicant has a right to a copy of his or her criminal records report, if hired conditionally may be terminated if the criminal records report indicates disqualifying convictions and, if after originally determined not to have a disqualifying conviction, the employer is later notified of a disqualifying conviction, the employee will be terminated. An applicant has the right to challenge the accuracy of the criminal records report through an ISP established process of Access and Review.</p>	<p>applicant has a right to a copy of his or her criminal records report, if hired conditionally may be terminated if the criminal records report indicates disqualifying convictions and, if after originally determined not to have a disqualifying conviction, the employer is later notified of a disqualifying conviction, the employee will be terminated. An applicant has the right to challenge the accuracy of the criminal records report through an ISP established process of Access and Review.</p>
<p>Required the health care employer to obtain an authorization from the applicant to conduct a criminal history records check. The employer devised their own authorization form.</p>	<p>Required the health care employer to obtain an authorization from the applicant for IDPH to conduct a criminal history records check. A standardized authorization form is printed from a web application. The form also requests applicant to make a full disclosure of convictions and administrative findings. The employer reviews the authorization and disclosure form for disqualifying convictions and checks specified web sites such as sex offender, etc. If the authorization and disclosure form disqualified the applicant or if the websites disqualified the applicant, the hiring process stopped at that point.</p>	<p>Required the health care employer to obtain an authorization from the applicant for IDPH to conduct a criminal history records check. A standardized authorization form is printed from a web application. The form also requests applicant to make a full disclosure of convictions and administrative findings. The employer reviews the authorization and disclosure form for disqualifying convictions and checks specified web sites such as sex offender, etc. If the authorization and disclosure form disqualified the applicant or if the websites disqualified the applicant, the hiring process stopped at that point.</p>

Prior to the CMS Pilot	Changes Made for the Pilot Period	Changes Made as a Result of Lessons Learned in the Pilot
<p>Required the applicant to submit fingerprints for a criminal history records check, if the name-based background check revealed disqualifying convictions or was unable to identify the individual because of several people with a similar name. The submission of prints could be electronic through a livescan vendor or could be on ink and rolled cards.</p>	<p>Required the applicant to submit his or her fingerprints through a livescan vendor in a manner prescribed by the ISP. One Statewide contracted livescan vendor was used during the pilot. The contract with the vendor required that all ten fingerprints be submitted for the background check.</p>	<p>Required the applicant to submit his or her fingerprints through a livescan vendor in a manner prescribed by the ISP. Requires one or more contracted livescan vendors to be used, which allows a daily file to be electronically transmitted to the IDPH as well as transmit the fingerprint requests electronically to the ISP daily. The contract with the vendor required that all ten fingerprints be submitted for the background check.</p>
<p>Required that no health care employer shall knowingly hire, employ, or retain any individual who has a disqualifying conviction in a position with duties involving direct care for clients, patients, or residents.</p>	<p>Required that no health care employer shall knowingly hire, employ, or retain any individual who has a disqualifying conviction in a position with duties involving direct care for clients, patients, or residents and no long-term care facility shall knowingly hire, employ, or retain any individual who has a disqualifying conviction in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. This applied to licensed and unlicensed workers.</p>	<p>Required that no health care employer shall knowingly hire, employ, or retain any individual who has a disqualifying conviction in a position with duties involving direct care for clients, patients, or residents and no long-term care facility shall knowingly hire, employ, or retain any individual who has a disqualifying conviction in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. This applied to unlicensed workers as the IDPH does not regulate the licensed workers.</p>
<p>Required immunity from liability. A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been</p>	<p>Required immunity from liability. A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been</p>	<p>Required the IDPH or an entity responsible for inspecting, licensing, certifying, or registering the health care employer or long-term care facility to be</p>

Prior to the CMS Pilot	Changes Made for the Pilot Period	Changes Made as a Result of Lessons Learned in the Pilot
<p>convicted of committing or attempting to commit any disqualifying offense.</p>	<p>convicted of committing or attempting to commit any disqualifying offense.</p>	<p>immune from liability for notices given based on the results of a fingerprint-based criminal history record check. A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit any disqualifying offense.</p>
<p>Required a health care employer have the right to conditionally hire an applicant for up to three months pending the results of a background check.</p> <p>Found in the rules to another act - The selected health care employer shall provide supervision of the individual during the three-month period.</p>	<p>Required a health care employer have the right to conditionally hire an applicant for up to three months pending the results of a background check.</p> <p>Found in the rules to another act - The selected health care employer shall provide supervision of the individual during the three-month period.</p>	<p>Required a health care employer have the right to conditionally hire an applicant for up to three months pending the results of a background check. During this time the employee shall have adequate supervision, which is the type and frequency of supervision required to prevent the risk of abuse, neglect, or theft regarding patients, clients, or residents.</p>
	<p>During the grant, staffing agency workers had their background checks run by the health care provider.</p>	<p>Required staffing agencies of unlicensed health care workers to conduct the fingerprint background check submitter as a fee applicant request with the IDPH as the requestor. If the staffing agency or contracted entity is unable to have access to the fingerprint process established through the Act, the health care employer may initiate the fingerprint-based criminal history records check for the staffing agency or contracted entity. The health care employer may</p>

Prior to the CMS Pilot	Changes Made for the Pilot Period	Changes Made as a Result of Lessons Learned in the Pilot
		require that the staffing agency or contracted entity reimburse the health care employer for any fingerprinting and background check expenses incurred
Required a waiver process with certain convictions listed as always disqualifying and time limits on those that can be waived.	Required a waiver process with certain convictions listed as always disqualifying and time limits on those that can be waived.	Required a waiver process with certain convictions listed as always disqualifying and time limits on those that can be waived. Introduces an automatic waiver for convictions of a lesser crime and a required amount of time has passed.

Following is a summary of new requirements:

- Centralizes all the waiver processes into IDPH rather than each licensing entity processing their own waivers. A worker is not allowed to work with a disqualifying offense, unless a waiver has been granted. The worker cannot work while they are waiting on the waiver to be processed.
- The Act only requires non-licensed direct care and, in long-term care, the access workers to have the fingerprint background checks, but there is wording that states that the health care employer may use this process for any of its employees. Any student, applicant or employee that has a background check through this system will show up on the registry.
- The livescan vendor(s) is allowed to be the health care employer's designee for paying the ISP charge.
- The health care employer is required to enter the employment category, employment type and the date of hire within 30 days of hire; the termination date (separation date) within 30 days of terminating an employee; and a verification date annually, which is verifying that the employee is still working at that facility. This employment information is the way that IDPH will know where to send any notice of future convictions that are disqualifying. Entering this employment information is how a worker remains active on the registry.
- The amendment is introducing an automatic waiver. If an applicant meets certain criteria when the fingerprint background check is received at IDPH, a waiver may be granted at that time and not require the applicant to submit a waiver application. This will only apply to certain crimes and certain time limits.

- Schools, other than high schools, conducting training (such as a CNA class) will initiate a fingerprint background check prior to entry of an individual into the training program.
- If an individual is inactive on the Health Care Worker Registry, that individual is prohibited from being hired to work as a certified nurse aide if, since the individual's most recent completion of a competency test, there has been a period of 24 consecutive months during which the individual has not provided nursing or nursing-related services for pay. However, if the individual can provide proof of having retained his or her certification by not having a 24 consecutive month break in service for pay, he or she may be hired as a certified nurse aide and the new hire date shall be entered into the Health Care Worker Registry.
- Fingerprints must be collected within 10 working days after the student, applicant, or employee signs the authorization and disclosure form.

MICHIGAN'S WORKFORCE BACKGROUND CHECK PROGRAM
FINAL REPORT

By Orlene Christie, Project Director

Lori A. Post, Principal Investigator

Federal Officer: Susan Larsen

Michigan Department of Community Health

CMS Grant No.11-P-93042

December 2007

The statements contained in this report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services. The awardee assumes responsibility for the accuracy and completeness of the information contained in this report.

Acknowledgements

The Michigan Workforce Background Check team at the Department of Community Health would like to thank the following individuals and organizations for their cooperation, assistance, and support, which have made this report possible.

MDCH, especially Janet Olzewski, Director, and Ed Dore, Chief Deputy Director for their commitment to the background check program, Toni Dennis, program manager and Kelli Todoroff and K. Adam Krajniak, department analysts.

Michigan State University, especially Dr. Sarah Swierenga, Director of the Usability and Accessibility Center, Dr. James Oemhke, Associate Professor, Agricultural Economics Department, and Robert Fulk, Chief Technology Officer, and his staff, for the design, development and support of the Web application at www.miltpartnership.org.

Michigan Department of Human Services, especially Deborah Wood, Division Director, Adult Foster Care/Home for the Aged, Tom McWhorter, Program Specialist, and Russell Misiak and Vickie Stewart, department analysts, for their continued collaboration and efforts to support the background check program.

Michigan State Police, especially Timothy Bolles, manager of the Criminal Justice Information Center for his leadership and cooperation during the process of integrating state databases.

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Executive Summary

Introduction

In September 2005, the Michigan Department of Community Health was awarded a \$3,500,000 grant to implement a pilot program to require background checks for direct access workers in long-term care facilities. The pilot program ran from January 2005 through September 2007.

The pilot program requirements necessitated a change in existing Michigan background check statutes. In order to be in compliance with the pilot program provisions the statute needed to be changed to broaden the scope of the background checks to include hospices, hospitals with swing beds, psychiatric hospitals and home health agencies and to enhance the background check requirements to include a state and national fingerprint-based check on all prospective employees. In addition, the new legislation needed to create an appeals process to dispute incomplete or inaccurate criminal history records. The Michigan Legislature responded by enacting legislation contained in which was signed by Governor Granholm as Public Acts 27, 28 and 29 of 2006.

The long-term care community in Michigan responded to the call for collaborators with interest and enthusiasm. Active participants included state agencies and stakeholders represented by provider membership organizations, advocacy organizations, workers' unions and the research community. Their voices and expertise were instrumental in developing the proposal, developing and passing the legislation, spreading the word about the changes throughout the state, providing statewide informational trainings, and providing a watchful eye over the system and its effects.

Although the various players of the collaborative agreed with the goal of providing greater safeguards for Michigan's vulnerable adults in long-term care, they were not always in agreement about how this should be accomplished, to what degree and to what expense. Meetings were sometimes long, but when they ended consensus had been reached in the interest of moving forward and accomplishing necessary tasks.

The Michigan Workforce Background Check program consists of two major components: a Web-based application that allows employers to search available registries for potentially disqualifying information and a state and federal fingerprint-based criminal history search. The Web-based application, developed by MSU is a state of the art system that is designed to facilitate the background check process by providing a user-friendly interface with a "dashboard" design. The application allows employers to enter demographic information once for all registry checks and fingerprinting documents, which avoids redundant data entry errors. The Web application allows providers to access results, print forms, store and manage applicant records and in a secure environment that is accessible from any computer with Internet access. It provides a systematic process across the multiple health and human service agencies to conduct the checks, to disseminate findings, and to follow through on results.

5

Efficiencies Gained

Previous to the launch of the pilot system, complete background checks were not required of all employees with direct access to long-term care residents. Only applicants who had not lived in Michigan for the previous three years were required to have fingerprint checks. For those checks there was no systematic process across the multiple health and human service agencies to conduct the checks, to disseminate findings, or to follow through on results.

- Michigan laws were enhanced and improved to require all applicants for employment that would have direct access to undergo a background check.
- Additionally, all employees who were hired before the effective date of April 1, 2006, would need to be fingerprinted within 24 months of the enactment of the laws
- Prior to 2006, the background checks were less comprehensive and primarily included a “name-based” check of the Internet Criminal History Tool (ICHAT).
- There was no systematic process across the multiple health and human service agencies to conduct the checks, to disseminate findings, or to follow through on results.
- The scope of the checks was also enhanced to include hospice, psychiatric hospitals, and hospitals with swing beds, home health, and intermediate care facility/mental retardation (ICFs/MR).

Efficiencies of the new system, not previously in place:

- Long-term care facilities use the same Web-based program to process background checks on applicants.
- The same registries are checked in the same order for each applicant. Upon discovery of an exclusionary finding the process stops and fingerprints are not taken.
- All applicants who have no exclusionary findings in the registries must be fingerprinted, and the fingerprints checked against Michigan criminal history records and FBI records.
- Fingerprinting can be scheduled from within the system.
- One fingerprint scanning vendor services the entire state and the contract requires fingerprinting to occur within 10 days of making an appointment and the site must be within 50 miles of the applicant. Most people travel under 25 miles to be fingerprinted.

- All records of “hits” (rap sheets) are sent to the appropriate state agency unit (DCH or DHS) for review and determination of eligibility to work, based on Public Acts 27, 28, and 29.
- State licensing units have specific analysts to review findings, make eligibility determinations and communicate results to employers and applicants.

**NEVADA
CRIMINAL HISTORY BACKGROUND CHECK
PILOT PROGRAM**

NEVADA
CRIMINAL HISTORY BACKGROUND CHECK
PILOT PROGRAM

By Kerry K. McKinney, Program Director,
Jennifer M. Dunaway, Health Facility Surveyor IV

Federal Project Officer: Cindy R. Melanson

Nevada State Health Division
Bureau of Licensure and Certification

CMS Grant No. 11-P-93035-9/04

December 2007

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Table 6. Fingerprint-based Background Checks required by NRS	19

Executive Summary

Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directed the U.S. Secretary of Health and Human Services, in consultation with the U. S. Attorney General, to establish a pilot program to identify efficient, effective, and economical procedures to conduct background checks on prospective long-term care direct patient access employees.

Nevada was one of seven states selected by the Centers for Medicare & Medicaid Services (CMS) to participate in the CMS Criminal History Background Check Pilot Program to improve the efficiency of its fingerprint-based background check process for workers in long-term care facilities. Specifically, Nevada's program was able to:

- Create 37 new fingerprint locations where civil applicants will be able to submit fingerprints electronically.
- Improve the infrastructure at Nevada's Department of Public Safety to allow for electronic submission of civil applicant fingerprints from law enforcement, state agencies, private and commercial fingerprint sites.
- Reduce the incidence of health care job-hoppers, who previously had been able to move from employer to employer about every three months, staying one step ahead of their disqualifying criminal history report. Average background check processing times declined from about 80 days to less than 20 days during the course of the program.
- Reduce the fingerprint rejection rate to less than 4 percent in 2007 from a high of 16 percent in 2005.
- Determine that about 10 percent of facilities subject to the background checks were not conducting those checks on their employees and independent contractors.
- Identify specific statutory changes that might be considered in the next legislative session.

About 1 to 3 percent of applicants are disqualified by the Department of Public Safety under Nevada's statute, a figure that may reflect effective screening by employers prior to the submission of fingerprints or the increased awareness of the statutory prohibitions in this state among potential applicants who are thereby discouraged from applying.

Because Nevada's background check process has been in place since 1997, and the state looks forward to the formal analysis of the data from the seven states participating in the pilot program to determine whether these background checks actually improve the quality of health care in long-term care facilities.

Discussion

Introduction

Section 207 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directed the U.S. Secretary of Health and Human Services, in consultation with the U.S. Attorney General, to establish a pilot program to identify efficient, effective, and economical procedures to conduct background checks on prospective long-term care direct patient access employees. CMS selected seven states to participate in the pilot: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico and Wisconsin. Nevada was awarded grant funds in the amount of \$1,891,018 to cover the costs of the pilot for the period of January 2005 through September 30, 2007.

Nevada has conducted fingerprint-based state and national criminal history background checks on workers in long-term health care facilities since 1997, before the Centers for Medicare & Medicaid Services (CMS) Background Check Pilot Program was initiated, so the state's primary objective in participating in the program was to explore methods to make the on-going program more efficient and effective. The state accomplished this objective primarily through technology improvements, but also by improving procedures and communication flows.

Nevada Authorizing Legislation

The relevant statutory sections are Nevada Revised Statutes (NRS) 449.176 through 449.188, which are available online at <http://leg.state.nv.us/NRS/NRS-449.html>.

Since 1997, chapter 449 of the Nevada Revised Statutes (NRS 449) has prohibited certain licensed health care entities from employing individuals whose fingerprint-based criminal history background checks revealed convictions for specific offenses, requiring those entities to submit fingerprints for such checks at the time of hiring and at least every five years thereafter.

In 1999, independent contractors employed by those entities became subject to the background check requirements of NRS 449.179. At the same time, specific crimes against the elderly were added to the list of disqualifying criminal convictions in NRS 449.188.

In 2005, agencies to provide personal care services in the home were added to the list of entities required by NRS 449.179 to conduct background checks.

In 2007, specific Medicare and Medicaid convictions were added to the list of disqualifying criminal convictions in NRS 449.188.

Table 1 (below) summarizes the statutory provisions.

Appendix A addresses specific statutory considerations that may be evaluated in the next legislative session in 2009.

Table 1. Summary of Background Check Provisions of Nevada Revised Statute 449

NRS	Provisions
449.176	<p>Requires background check of applicant for license to operate:</p> <ul style="list-style-type: none"> • Facility for intermediate care, • Facility for skilled nursing, or • Residential facility for groups.
449.179	<p>Applies to the provider, namely the administrator of or the person licensed to operate:</p> <ul style="list-style-type: none"> • Agency to provide personal care services in the home, • Agency to provide nursing in the home, • Facility for intermediate care, • Facility for skilled nursing, or • Residential facility for groups <p>Requires administrator or licensed operator, within 10 days of hiring an employee or independent contractor, to</p> <ol style="list-style-type: none"> 1. Obtain a written statement indicating whether the individual has been convicted of any crime in NRS 449.188. 2. Obtain oral and written confirmation of that statement. 3. Obtain two sets of fingerprints and authorization from the individual for submission of the prints to the Central Repository for Nevada Records of Criminal History and to the Federal Bureau of Investigation. 4. Submit those fingerprints for the background check. 5. Repeat this process at least once every five years. <p>Allows individuals to avoid this process if they can demonstrate that such a background check was conducted within the preceding six months showing no disqualifying convictions.</p> <p>Requires the Central Repository (at the Department of Public Safety) to determine whether the individual has been convicted of a crime listed in NRS 449.188 and immediately notify the Health Division (Bureau of Licensure and Certification) as well as the administrator or licensed operator whether the individual has such a conviction.</p> <p>Allows the Central Repository to charge a fee to the provider that submitted the prints. Allows the provider to recover up to half of that cost from the individual, and if it so chooses, the provider must allow periodic payments from the individual.</p>
449.182	<p>Providers must maintain records of the information collected under NRS 449.179:</p> <ul style="list-style-type: none"> • The signed criminal history attestation from the individual • A copy of the fingerprints submitted and proof of that submission • A copy of the response from the Department of Public Safety <p>These records must be made available for inspection by the Health Division (Bureau of Licensure and Certification).</p>

NRS	Provisions
449.185	The provider shall terminate the employment of any individual if the provider learns from the Central Repository or any other source that the individual has been convicted of an offense listed in NRS 449.188. If the individual believes that the information used by the Central Repository to disqualify the individual is incorrect and so informs the provider, then the provider must allow the individual at least 30 days to correct the information. Provides for limited criminal and civil liability for the provider.
449.188	<p data-bbox="373 378 1203 410">Disqualifying criminal convictions, whether misdemeanor or felony, include:</p> <p data-bbox="373 427 688 459">A conviction at any time for:</p> <ol data-bbox="426 459 1883 735" style="list-style-type: none"> (1) Murder, voluntary manslaughter or mayhem; (2) Assault with intent to kill or to commit sexual assault or mayhem; (3) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime; (4) Abuse or neglect of a child or contributory delinquency; (5) Abuse, neglect, exploitation or isolation of older persons or vulnerable persons, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive (http://leg.state.nv.us/NRS/NRS-200.html#NRS200Sec5091), or a law of any other jurisdiction that prohibits the same or similar conduct; (6) A violation of any provision of NRS 422.450 to 422.590, inclusive (http://leg.state.nv.us/NRS/NRS-422.html#NRS422Sec450), which address Nevada Medicaid program requirements); <p data-bbox="373 751 1024 784">A conviction , within the immediately preceding 7 years for:</p> <ol data-bbox="426 784 1883 995" style="list-style-type: none"> (7) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS (http://leg.state.nv.us/NRS/NRS-454.html#NRS454); (8) A violation of any provision of law relating to the State Plan for Medicaid or a law of any other jurisdiction that prohibits the same or similar conduct; (9) A criminal offense under the laws governing Medicaid or Medicare, within the immediately preceding 7 years; (10) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property; or (11) Any other felony involving the use of a firearm or other deadly weapon. <p data-bbox="373 1011 1818 1065">The Health Division (BLC) may deny a license to operate or may suspend or revoke the existing license if an employee or independent contractor has any of these convictions or if the provider continues to employ such an individual.</p>

For complete text of the statutory provisions, see <http://leg.state.nv.us/NRS/NRS-449.html>.

Collaboration

The Nevada State Health Division’s Bureau of Licensure and Certification (BLC), part of Nevada’s Department of Health and Human Services, is the agency that licenses and regulates health care facilities and other agencies, and was the awardee of the grant. Working in collaboration with other state agencies, the bureau successfully improved several processes to increase the efficiency of Nevada’s background check process. Table 2 (below) summarizes that collaboration.

Table 2. Primary Collaboration

Agency	Description
Nevada State Health Division, Bureau of Licensure and Certification	CMS program awardee
Nevada Department of Public Safety, Records and Identification Division	Houses the Central Repository. Determines and reports employment status based on criminal history records
Nevada State Board of Nursing	Licenses Certified Nurse Aides and others who represent many of the employees at long-term care facilities
Nevada Department of Health Care Financing and Policy	Nevada Medicaid. Current Federal background check regulations apply to personal care assistants also covered by NRS 449.
Program participants	Installed live scan fingerprint equipment for civil applicants. See Appendix B for complete list
Steering committee	Provided community and other agency input to the program See Appendix C for complete list

BLC worked closely with the **Nevada Department of Public Safety (DPS)**, whose Records and Technology Division houses the Central Repository and which conducts the criminal history background checks. This collaboration resulted in information reporting that was both more comprehensive and more efficient than prior efforts. The program also subsidized technology infrastructure improvements to allow for civil applicant fingerprints to be submitted electronically.

BLC also coordinated with the **Division of Health Care Financing and Policy (DHCFP)** and the Board of Nursing. DHCFP manages the Nevada Medicaid program, and BLC wanted to ensure consistency between Nevada statutory requirements for background checks with the Federal Medicaid requirements for such checks. BLC worked with the Nursing Board to address the issue of job-hopping, where an individual who may be licensed by the board, moves from facility to facility every ninety days or so, staying one step ahead of a disqualifying criminal history report.

BLC collaborated with **law enforcement agencies** throughout the state, as well as several state and private agencies, to establish new fingerprint sites throughout the state. A list of program participants is included in Appendix B.

BLC established a **steering committee** to provide industry and community input to the program. In addition to the state agencies cited above, participants on the committee included

representatives of trade associations, long-term care providers, community service groups, and fingerprint agencies. A list of participating agencies is included in Appendix C.

Nevada's Background Check Program

Nevada's background check program addressed specific limitations of its existing process and was able to overcome many of these limitations by applying technology and modifying some procedures.

Nevada's Background Check Process

Under Nevada statute, the health care provider (the employer) is required to ensure completion of the background check for each employee and independent contractor and to maintain records of those background checks. The provider submits the fingerprints to DPS who conducts the background check search, evaluates the criminal history and notifies the provider and BLC whether the individual is:

- Negative – the individual's criminal history record shows no disqualifying convictions,
- Positive – the individual's criminal history record shows a disqualifying conviction, or
- Undecided – the individual's criminal history record shows an arrest for a crime that will disqualify the individual if, when the case is adjudicated, the individual is found guilty.

BLC sends a compliance notice to the employer for each Positive response, requiring the provider to confirm the employment status of the disqualified individual. BLC also ensures compliance when it conducts periodic inspections of each licensed facility by examining employment records which are required to include a copy of the criminal history attestation by the individual, a copy of the fingerprints submitted to DPS and a copy of the response from DPS.

A comprehensive description of this process is available on the BLC website at www.health.nv.gov. Click on Bureau of Licensure and Certification, then Criminal History Background Check.

Prior to the CMS Background Check Pilot Program, DPS notified BLC only of the Positive responses. During the course of the pilot program, BLC and DPS cooperated to provide reporting of all background checks conducted on health care workers. This change now allows BLC to track which agencies are submitting fingerprints, which prints are rejected and not re-submitted, and system processing times.

System Limitations

In applying for the CMS Background Check Pilot Program, Nevada sought to address several functional limitations in its then-current system: processing time, job-hopping, confusing statutory and regulatory requirements, and system integration.

- **Processing time:** Paper and ink fingerprinting, used for nearly all civil applicants prior to the pilot, significantly increased the processing time for background checks, because hard

cards required additional scanning processing for input into the Western Identification Network Automated Fingerprint Identification System (WINAFIS) used by the Nevada Department of Public Safety, and FBI cards were mailed to the FBI's West Virginia facility for processing into the Integrated Automated Fingerprint Identification System (IAFIS). Processing times of 90 to 120 days or more were not unusual.

Fingerprints rejected for poor quality, not uncommon for paper and ink prints, significantly increased this processing time as notices were sent to providers to have individuals re-fingerprinted.

- **Job-hopping:** individuals could take advantage of the lengthy processing time to move from employer to employer one step ahead of a disqualifying criminal history report.
- **Confusing statutory and regulatory requirements:** licensing boards for health care professionals maintain separate regulations which allow them to issue a license to an individual whose criminal history may prevent that individual's employment at the long-term care facilities subject to the statutory prohibitions. Many providers mistakenly believe that an individual's professional license implies that the individual is not disqualified from employment under NRS 449.
- **System integration:** To the extent that civil applicants could use live scan equipment at third party fingerprinters, such devices were not fully integrated to allow for electronic submission directly into the WINAFIS and IAFIS databases.

The CMS grant funds allowed Nevada to provide significant technology improvements that helped to overcome most of these system limitations.

Program Objectives

To address those functional limitations, Nevada's grant application identified four key objectives⁷⁴:

1. Develop electronic fingerprint capture and transmission for prospective employees of long-term care facilities through an internal network of agencies within the Nevada Department of Health and Human Services.⁷⁵
2. Expand electronic fingerprint capture and transmission for prospective employees of long-term care facilities through an external network of healthcare providers.
3. Develop a statewide database of disqualified prospective employees and develop a process to address incomplete background checks to determine appropriate follow-up.
4. Promote stakeholder involvement to recommend background check process improvement and to address required legislative action for statutory changes, as needed.

⁷⁴ From Nevada's original grant application.

⁷⁵ The Nevada Department of Health and Human Services was named the Department of Human Resources at the time of the grant application.

Live Scan Site Program Results

Objectives 1 and 2 were met by establishing subgrants with a variety of agencies to install live scan fingerprint equipment. Nevada’s program was budgeted for a total of 21 installations, but through careful use of program funds, a total of 37 new live scan sites were established. A complete list of these sites is available in Appendix B Program Participants, which includes:

- Four county agency sites.
- Eleven law enforcement agencies, which added live scan stations for civil applicants. Prior to this program, only criminal bookings had access to live scan equipment. This program provided machines for additional stations for civil applicant fingerprinting.
- Twelve private agencies, including one provider.
- Nine state agency sites.
- One site on tribal lands.

Table 3 (below) ranks Nevada’s counties by population and number of health care facilities subject to the background check statutes, and it shows how the number of new live scan fingerprint sites created in each county closely tracks those figures, except in Clark County. All but two of the new private agency sites were created in Clark County. The table does not include pre-existing sites.

Eleven of Nevada’s 17 counties participated in the live scan subgrant program. Of those that did not, three had already installed live scan equipment for civil applicants, and the other three had no healthcare facilities subject to the statute or insufficient population to justify the equipment. Pershing County received a subgrant because although there are no facilities licensed as agencies subject to the statute, their licensed general hospital has a wing devoted to long-term care, whose employees are subject to the background check requirements.

Table 3. New Live Scan Installations by County

Rank	County	Population	percent Total	Facilities*	percent Total	New Sites	percent Total
1	Clark	1,874,837	71%	390	76%	14	38%
2	Washoe	409,085	16%	82	16%	6	16%
3	Carson City	57,701	2%	11	2%	6	16%
4	Lyon	54,031	2%	5	1%	3	8%
5	Douglas	51,770	2%	5	1%	2	5%
6	Elko	48,339	2%	10	2%	1	3%
7	Nye	44,795	2%	3	1%	1	3%
8	Churchill	27,371	1%	3	1%	0	0%
9	Humboldt	17,751	1%	2	0%	1	3%
10	White Pine	9,542	0%	1	0%	0	0%
11	Pershing	6,955	0%	0	0%	1	3%
12	Lander	5,655	0%	1	0%	1	3%

13	Mineral	4,399	0%	1	0%	0	0%
14	Storey	4,110	0%	0	0%	0	0%
15	Lincoln	3,987	0%	1	0%	1	3%
16	Eureka	1,460	0%	0	0%	0	0%
17	Esmeralda	1,262	0%	0	0%	0	0%
TOTAL		2,623,050	100.00%	515*	100.00%	37	100%

*Does not include approximately 150 agencies to provide personal care services in the home, which are subject to the background check statute but not yet licensed by the state.

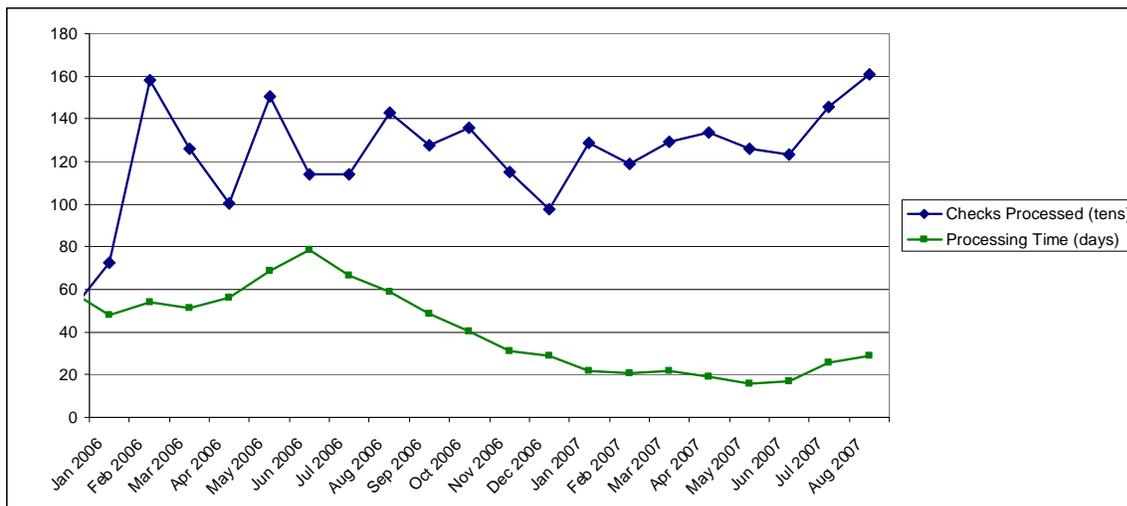
Objective 3 was abandoned in favor of improving processing time for background checks. The original grant application anticipated that a disqualified applicant database, accessible by prospective employers might address the issue of the lengthy processing times for background checks. Since a background check is correct only at the moment it is completed, a database of disqualified applicants was determined to be not effective. Furthermore, because Nevada's statutes only authorize issuing the results of the check to the employer, such a database would have required statutory change.

Nevada's background check pilot program instead focused on the underlying problem of that lengthy processing time, by improving the electronic infrastructure at the Department of Public Safety to accept and process live scan civil applicant fingerprints. At the same time, DPS was able to improve internal procedures to improve the processing time of hard card submissions as shown in Figure 1 (below).

Despite the average monthly volume of prospective health care worker background checks remaining relatively constant at about 1,200 to 1,400 per month, DPS was able to reduce the average processing time from about 60 to 80 days when the program began to an average of 20 days at the end.

Live scan submissions are processed even more quickly, averaging only 12.75 days.

Figure 1. Reduction in background check processing time



This improved processing time substantially reduces the cost associated with employees hired provisionally, who subsequently must be terminated when their background check results prove Positive.

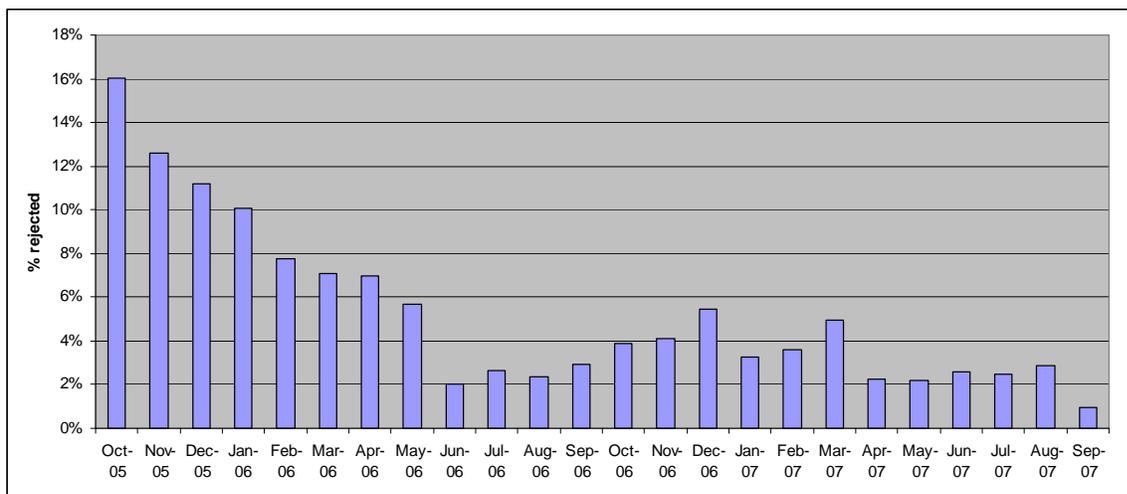
This faster processing time significantly reduces the opportunity for job-hopping. The most egregious example of a job hopper was one certified nurse aide who had worked for 15 different providers over a period of three years, from 1993 through 1996, changing jobs about every 90 days to stay ahead of his disqualifying criminal history report.

In 2006, we identified six individuals operating in a similar pattern, but as processing times improved, we saw fewer incidents of this practice. In 2007, we observed no such cases.

Another factor influencing processing times was fingerprints rejections. Because Nevada allows a provider to employ an individual until the background check is complete, the time it takes to re-fingerprint individuals whose original submission was rejected can significantly increase the delay in identifying unqualified candidates.

We saw substantial progress in reducing these rejections from over 16 percent when the program began to less than 1 percent at the end, as shown in Figure 2, below.

Figure 2. Reduction in percentage of fingerprints rejected



Implementation Issues

Nevada’s initial grant proposal included a plan to install 21 live scan machines throughout the state to include one in each county plus four additional machines in Washoe and Clark Counties, which together represent 87 percent of the state’s population. The plan also included funding for staff to operate these machines. Several questions arose as we started up the program:

- On what basis should the state select a vendor? Would a single machine configuration meet differing local conditions?

- Who would operate the equipment after the termination of the program?
- Should the goal of providing at least one machine to every county take priority over more adequately serving Clark County where 71 percent of the state's population resides and where over 75 percent of the health care providers subject to the statutory background checks are located?
- Could the state justify entering into direct competition with existing commercial fingerprint agencies?

Nevada quickly decided that the best implementation plan was to let the communities being served decide these issues, and modified its program to provide for program rebates to any entity that wanted to install its own live scan fingerprint equipment. In exchange for that subsidy, program participants agreed to provide free fingerprint capture services to the prospective health care workers who were subject to the background checks during the pilot period, that is, through September, 2007. The Department of Public Safety already had in place security regulations that would apply to non-law enforcement entities wishing to take and submit fingerprints, and the program required participant compliance.

As a result of this program change to use rebates, a total of 37 new civil applicant fingerprint sites were established. There was sufficient funding to provide rebates to all entities who agreed to the specific terms of the subgrants. Participants were able to choose the live scan machine of their choice, so long as it conformed to DPS standards, and receive a rebate of up to \$15,800. About half of the participants actually spent more than that for their equipment, to include specific features that they wanted.

The primary advantages of this rebate approach were:

- More sites were created than originally anticipated: 37 instead of 21.
- New sites were created where they were needed most, as determined by local conditions, including five new commercial enterprises that had not previously existed.
- New sites continue to operate after the end of the program.

The program avoided the issue of entering into direct competition with commercial agencies by avoiding setting up state agencies specifically for the purpose of fingerprinting. At the time that the program began, there were three commercial fingerprint sites in Nevada. Two of the three participated in the program. The third was prohibited due to circumstances stemming from a state investigation into misappropriation of state property. State agencies that participated needed fingerprint equipment for their own employees, but agreed to fingerprint long-term care workers as a condition of their subsidy, as a convenience to the community.

By providing rebates to entities setting up as new businesses, the state relied on those individuals to evaluate the current need in their own communities. That evaluation was bolstered by knowing that those entities were investing their own funds to establish or expand their businesses and complete the purchase of their equipment.

Key Pilot Data Results

During the pilot program, Nevada tracked the results shown in Table 4.

Table 4. Nevada Background Check Results

(1)	Data collection period	1/1/2006 – 9/30/2007
(2)	Total applicants screened	27,875
(3)	Excluded by registry checks	n/a
(4)	Excluded by state name-based and/or fingerprint check only	0
(5)	Excluded by FBI fingerprint check only	217
(6)	Excluded by both state and FBI checks	132
(7)	Total excluded by name- and fingerprint checks (state and FBI combined)	349
(8)	Total excluded by all checks (registries, state, and FBI criminal history checks)	349

NOTE: The shaded area on the above table (items 4, 5 and 6) are mutually exclusive and collectively exhaustive variables. The sum of the three variables equal item 7.

Additional notes

(1) Prior to January 2006, BLC only collected information about disqualified applicants. BLC did not track applicant data for those passing the background check.

(2) Counted as total background checks completed, with one background check including both State and FBI checks. One applicant applying at one facility is counted as one record. One applicant applying at two different facilities counts as two records.

(3) Nevada does not exclude by registry check. Nevada checks only the sexual offender registry and flags the background check if there is a positive response, as a back-up to the fingerprint check.

(4) Nevada does not conduct name-based checks, except in the rare instance of an individual having no fingerprints that can be raised. Nevada always conducts both the State and FBI check, regardless of whether the individual is excluded at the state level. We do not track those excluded only at the state level because Nevada reports to the FBI, so anyone excluded at the state level would automatically be excluded by the FBI record.

(5) Nevada does track those individuals excluded by their FBI record only, which would indicate that there is no disqualifying Nevada conviction.

(6) Calculated as the total disqualified minus those disqualified by FBI only.

(7) Includes only those disqualified by fingerprint check. Nevada does not track name check data.

(8) Includes only those disqualified by fingerprint check. Nevada does not disqualify based on registry checks.

Background Check Fees

Nevada's Department of Public Safety charged \$21.00 for the state check plus \$24.00 for the national (FBI) check. The national fee changed after pilot, effective October 1, 2007, to \$19.25 for prints submitted electronically and \$30.25 for prints submitted on cards. The state fee did not change. If the fingerprints are rejected for poor quality, the provider may re-submit new prints twice for no additional charge.

In addition, individual fingerprint agencies, including law enforcement and private fingerprinters, charge their own fees for collecting fingerprints and printing cards or submitting electronically. These fees range from a low of \$5.00 per card to \$15.00 per card or more. About \$10.00 per card is a typical figure. To save this cost, some providers roll their own employee prints.

Nevada's live scan subgrant program required that participants not charge this service fee to health care workers through September 30, 2007.

Nevada's statutes require that providers keep in their files copies of the fingerprints submitted for each employee. Prior to the pilot, providers kept merely a photocopy of the cards that they mailed to DPS, but with the advent of electronic submission, providers must now request a printed card in addition to the electronic submission.

Nevada's statutes require that the provider pay the DPS fee for the background check but are silent about who must pay the cost, if any, of collecting fingerprints and printing the card for their files. The statutes also allow the provider to collect up to half of the DPS fee from the employee; and if the provider chooses to do so, the provider must allow the employee to pay over time. Several providers on Nevada's steering committee indicated that a common practice was to collect this fee from employees only if the employee resigned within 30 or 60 days of hiring.

Information Technology Enhancements

The primary technology enhancements took place at the Department of Public Safety, whose plan to provide for electronic connectivity for civil applicant fingerprints was several years off at the time the program began.

By 2006, all booking agencies in the state were submitting criminal fingerprints electronically, but there was no infrastructure in place to accept civil applicant fingerprints electronically and transmit them to WINAFIS and IAFIS.

The three then-existing commercial fingerprint sites were able to transmit civil applicant fingerprint records electronically to a printer housed at DPS where the records were printed to cards, which DPS then scanned for entry into WINAFIS and IAFIS.

DPS had a plan to install the equipment that would allow such civil applicant records to be automatically received and fed directly into the fingerprint systems, but funding was not available for several years. As a result of the CMS grant funding, DPS was able to accelerate that program to 2007. This installation included:

- Hardware: a live scan store and forward device to which civilian agencies could connect to transmit prints via virtual private networks (VPNs) at their sites.
- Software: to route civil applicant fingerprint records directly to WINAFIS and IAFIS, as appropriate.

Another technology enhancement was the introduction of electronic data transfer between DPS, which evaluates the criminal history records, and BLC, which ensures that providers comply with the disqualifying decisions made by DPS. Prior to the program, DPS merely sent BLC a photocopy each of the disqualifying notices that they sent to providers. For BLC to track these disqualifications meant re-entering all the appropriate data in BLC's tracking system. The electronic data transfer eliminated re-keying the data.

An additional benefit of the electronic reporting is that DPS now provides BLC information on all the NRS 449 background checks, not simply the disqualified results, so that BLC can track other data, such as processing time or number of background checks conducted by each facility. This new information flow revealed that about 10 percent of facilities subject to the statute were not submitting any fingerprints.

Program Costs

Nevada's program was completed using only two-thirds of budgeted funds, as shown in Table 5, which compares the Award budget with Actual expenditures.

Significant variances to the original budget reflect the change in program focus from having the state install, operate and maintain live scan equipment and to contract instead with various agencies to do so at their own expense, with some subsidy from the state. This change moved substantial funding from Personnel, Fringe Benefits, Travel and Equipment categories to the Contractual category.

This methodology also allowed the state to avoid spending the originally anticipated \$200,000 for program advertising (category Other), and instead the state was able to leverage the sales forces of various live scan equipment manufacturers to encourage agencies to participate in the program.

Personnel costs were also substantially lower because the program was able to use a higher skilled contract employee for 20-30 hours per week, rather than the four full-time managerial and administrative employees originally planned. As a result, fringe benefits did not apply.

Table 5. Budget vs. Actual Program Costs

AWARD original budget		Year 1	Year 2	Year 3	Total
A	Personnel	115,485	368,869	368,869	853,223
B	Fringe Benefits	30,175	45,263	45,263	120,701
C	Travel	9,100	31,796	31,796	72,692
D	Equipment	20,954	338,098	47,458	406,510
E	Supplies	4,960	4,960	4,960	14,880
F	Contractual	20,000	40,000		60,000
G	Construction				
H	Other	5,808	136,942	136,942	279,692
Subtotal Direct Charges		206,482	965,928	635,288	1,807,698
I	Indirect Charges	20,830	31,244	31,244	83,318
TOTAL AWARD		227,311	997,172	666,532	1,891,016

ACTUAL expenditures		Year 1	Year 2	Year 3	Total
A	Personnel	23,436	72,364	113,005	208,805
B	Fringe Benefits				
C	Travel	2,468	377	2,908	5,753
D	Equipment	2,319	16,533	102,361	121,213
E	Supplies	472	3,555	3,624	7,651
F	Contractual		65,444	736,880	802,324
G	Construction				
H	Other	3,323	5,134	9,067	17,524
Subtotal Direct Charges		32,019	163,406	967,845	1,163,270
I	Indirect Charges	3,275	12,363	23,711	39,349
TOTAL ACTUAL		35,293	175,769	991,556	1,202,618

VARIANCE [Actual is more/(less) than Award]		Year 1	Year 2	Year 3	Total	percent Variance
A	Personnel	(92,049)	(296,505)	(255,864)	(644,418)	-76%
B	Fringe Benefits	(30,175)	(45,263)	(45,263)	(120,701)	-100%
C	Travel	(6,632)	(31,419)	(28,888)	(66,939)	-92%
D	Equipment	(18,635)	(321,565)	54,903	(285,297)	-70%
E	Supplies	(4,488)	(1,405)	(1,336)	(7,229)	-49%
F	Contractual	(20,000)	25,444	736,880	742,324	1237%
G	Construction					
H	Other	(2,485)	(131,808)	(127,875)	(262,168)	-94%
Subtotal Direct Charges		(174,464)	(802,522)	332,557	(644,428)	-36%
I	Indirect Charges	(17,555)	(18,881)	(7,533)	(43,969)	-53%
TOTAL VARIANCE		(192,018)	(821,403)	325,024	(688,398)	-36%

Sustainability

Because Nevada's program is an existing statutory requirement for long-term care facilities, the state will continue to conduct the fingerprint-based state and national background checks and ensure that facilities remain in compliance by terminating disqualified employees.

The Bureau of Licensure and Certification, which enforces the provisions of the background check statutes, is a fee-based agency. Although BLC does not receive any of the fees associated

with conducting the background checks, the program is supported by agency fees for initial licenses and renewals.

Appendix A addresses various statutory considerations, which may be the subject of legislative action in 2009, after consultations within the Health Division and with the Department of Public Safety.

Conclusion

Nevada has been successful in its ten-year old program of denying employment in the long-term health care industry to individuals with specific criminal convictions. Whether this employment ban results in a higher quality of care in long-term facilities is not something Nevada can measure on its own, but rather needs to compare its data with states who do not conduct such background checks.

If the decision is to apply such employment prohibitions nationally, then the lessons of Nevada's program may be useful. Specific recommendations include:

- Apply technology early by encouraging the use of live scan fingerprint equipment to reduce rejections and to speed up the background check process.
- Allow third-party fingerprinters to take civil applicant fingerprints to relieve the burden of local law enforcement agencies, many of whom have little interest and fewer resources to deal with civil applicants.
- Consider which entities should be subject to the background check: is a hospice the same as a skilled nursing facility in this context?
- Consider which individuals should be subject to the background check:
 - All employees, regardless of whether they provide direct patient care or have access to resident private rooms?
 - Independent contractors, who may be directly supervised, may have no direct resident contact or who may be limited to public places only?
 - Volunteers, students or other unpaid individuals who may or may not be directly supervised by facility staff?
- Consider who should pay for the background check, the individual, the employer or provider, or the state; because in general that decision will determine who owns the results and may communicate them to other providers. This consideration is important to individuals applying with several different employers.
- Consider what criminal history should disqualify an individual: felonies and aging misdemeanors, crimes against persons and property, the lists of convictions that could be the same as other occupations, such as nurses, long-term care administrators, or even

school teachers or volunteers. How many different types of background checks does the state want to conduct?

- Consider who should make the decision about whether to hire an individual despite the criminal history. In any case, the decider should have access to all relevant information, including the criminal history details.

References

Federal Grant Number 11-P-930335/9-01, awarded to Nevada State Health Division December 28, 2004 by Centers for Medicaid and Medicare Services.

Nevada Administrative Code (NAC) Chapter 449, <http://leg.state.nv.us/NAC/NAC-449.html>.

Nevada Revised Statutes (NRS) Chapter 449, <http://leg.state.nv.us/NRS/NRS-449.html> .

Nevada State Health Division, Bureau of Licensure and Certification, www.health.nv.gov

Abbreviations and Acronyms

BLC	Bureau of Licensure and Certification, in the Nevada Department of Health and Human Services, Health Division.
CMS	Centers for Medicare & Medicaid Services
DHHS	Nevada Department of Health and Human Services
DPS	Nevada Department of Public Safety
IAFIS	Integrated Automated Fingerprint Identification System
IT	Information Technology
MMA	Medicare Prescription Drug, Improvement and Modernization Act of 2003
NVHD	Nevada State Health Division
VPN	Virtual Private Network
WINAFIS	Western Identification Network Automated Fingerprint Identification System

Appendix A

Statutory considerations

Considerations for legislative changes at completion of the Criminal History Background Check Pilot Program will take place in anticipation of the next (2009) legislative session. These considerations address confusing or conflicting statutory language and overlapping requirements that may be burdensome to providers.

Evaluation and Enforcement

Under NRS 449.188, BLC “may” suspend or revoke the license of a licensee who continues to employ a person who is disqualified under the statute, but the clear language of the statute is that BLC is not compelled to do so. The problem BLC faces is that the bureau has insufficient information on which to exercise that judgment. Only DPS sees and evaluates the criminal history and is only authorized to release its decision about whether an individual is disqualified to the employer and to BLC.

This procedure varies from the method the state employs with nearly every other agency that enforces background checks, because in nearly every other case, DPS merely prints the relevant criminal history and forwards that record to the board or entity charged with enforcing background check requirements. The Nevada State Board of Nursing and Board of Examiners for Long-term Care Administrators, for example, each receives and evaluates all applicants’ criminal history records to determine whether they will issue a license.

The only basis for challenging the disqualification is if DPS relied on inaccurate information to reach its decision. To challenge a disqualification, the applicant must provide up-to-date court documents to DPS to demonstrate that the criminal history records on which DPS relied were inaccurate.

As a result of the current statutory limitation on release of criminal history information to BLC, the bureau makes no exceptions and instructs all employers that they must terminate anyone who is disqualified or face sanctions against their license to operate.

Waivers And Obsolete Convictions

NRS 449.188, the statute that describes disqualifying criminal convictions, does not distinguish between misdemeanors and felonies. In general, the statute imposes a lifetime ban for crimes against the person, but only a seven-year ban for crimes against property.

BLC has seen several examples of individuals who may have pled guilty to a misdemeanor twenty or more years ago to avoid the cost of a trial, whose plea now permanently bars them from employment in covered facilities. Some examples include:

- A 40-year old guilty plea for solicitation for prostitution from a well-regarded nurse.
- A 30-year old guilty plea for contributing to the delinquency of a minor by a then-21-year old caught drinking in public with his 19-year old girlfriend.
- A 20-year old guilty plea for indecent exposure related to nude swimming on a public beach.

Although most states allow individuals to have records like these sealed and thereby restore their civil rights, in each of these particular cases, the misdemeanor records have been purged from the court files and so the court is unable to or refuses to seal the record.

Several states have record retention policies that authorize the destruction of court records, especially misdemeanor cases, after several years, making it impossible for a disqualified

individual to update his criminal history. For example, Florida’s Rules of Court (Rule 2.075) allow courts to destroy misdemeanor records after five years, and felony cases not adjudicated guilty after ten years.

The consideration is whether a single misdemeanor conviction that is more than, say, seven or ten years old should be a permanent bar to employment in these health care providers.

Overlapping Requirements

Individuals that are associated with the facilities listed in NRS 449.176 and 449.179 may be subject to a variety of fingerprint-based criminal history background checks, each of which is independent of the others, and none of which may be used as a substitute for the others because all of the statutes have different lists of disqualifying criminal convictions. Table 6 identifies these statutes and to whom they apply.

Table 6. Fingerprint-based Background Checks required by NRS

Statute	Background check required for
NRS 118A.335	A person who will work 36 hours or more per week and who will have access to all dwelling units of dwelling units intended and operated exclusively for persons 55 years of age and older.
NRS 449.176	Each applicant for a license to operate a facility for intermediate care, a facility for skilled nursing, or a residential facility for groups.
NRS 449.179	An employee or an independent contractor of an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing or a residential facility for groups.
NRS 654	Administrator of a residential facility for groups and nursing facility administrator.
NRS 632.344	Applicant for nursing license or certificate.

Licensed Employment Service Agencies

Nursing Pools and similar licensed employment service agencies provide caregivers to many types of health care facilities, including those covered by the NRS 449 background check requirements. In Nevada, these pools and agencies cannot, however, conduct background checks on their personnel in advance to determine which ones to send to covered facilities. Each covered facility that they serve must conduct its own background check on individuals sent by the employment agency.

Facilities and other agencies not covered by the statute may conduct background checks under NRS 179A.210, which applies to every employer in Nevada, but information provided under that statute may be insufficient for determining eligibility under NRS 449. In addition, such a check would not relieve the hiring facility of its responsibility to conduct the background check under NRS 449.

The consideration is whether these overlapping statutes could accommodate a single background check that could be used by employment service agencies, to avoid repeating an inquiry for the same individual.

Covered Facilities and Employees

NRS 449 background checks are required for only five of the 33 types of health care providers licensed by BLC. Some facilities, such as hospice or homes for individual residential care, provide services very similar to those subject to the background check.

The consideration is whether all facilities where individuals may reside overnight should be included in the background check, or whether individual residents could conduct their own NRS 449 check on their caregivers.

Another consideration is whether all employees and independent contractors, many of whom, such as dishwashers or gardeners, do not have direct patient contact, need a fingerprint-based background check. From the plumber spending an hour to fix a leaky sink to the pianist hired for a single concert in the main dining hall, all are currently subject to Nevada's requirement.

The consideration is whether providers should incur that extra cost of a background check for such individuals.

Voluntary Registry

It is not unusual for an individual, such as a certified nurse aide or personal care attendant, to simultaneously apply with several facilities or agencies to ensure sufficient work hours. Nevada's law requires each hiring facility to pay for its own background check on the same individual.

NRS 449.179(2) does allow a facility to avoid the background check process if the individual provides proof that he passed an NRS 449 check within the previous six months. The problem facilities face is that the only proof is the Applicant Fingerprint Response that DPS provided to a previous employer, which notice explicitly prohibits the recipient from disseminating it to a second party or entity. Furthermore, there is clearly no incentive for the first employer to provide a copy of that notice to the individual to take to the second employer, thereby allowing the second employer to save the cost of the background check that the first employer incurred.

One proposal under consideration is allowing an individual to submit his own prints to obtain a DPS clearance that he could then take to several employers, subject to the same six-month expiration as current law.

Cost of Applicant Lying

Should an individual be subject to criminal or civil penalties for lying to a potential employer about his criminal record? NRS 449.179 requires the provider to pay for the background check, but it also requires the applicant to sign a statement attesting that he has no disqualifying criminal history. If the applicant lies, it is the provider who incurs the cost of the background check, as well as the training and other costs associated with hiring the individual on a provisional basis only to have to terminate him when the background checks are returned by DPS.

There is a provision that allows the employer to recover up to half the cost of the background check from the employee, and there is anecdotal evidence that employers generally do not

choose to collect that amount unless they terminate the employee within 30 or 60 days of hiring them.

Coordinate NRS 449.176 with NRS 449.179

NRS 449 has different requirements for different individuals in licensed entities for long-term care, a difference that may have been unintentional as NRS 449.179 was updated over time and NRS 449.176 was not addressed.

NRS 449.176 requires a fingerprint-based background check for “each applicant for a license to operate”:

- Facility for intermediate care,
- Facility for skilled nursing, or
- Residential facility for groups

NRS 449.179 requires a fingerprint-based background check for each employee or independent contractor for:

- Agency to provide personal care services in the home,
- Agency to provide nursing in the home,
- Facility for intermediate care,
- Facility for skilled nursing, or
- Residential facility for groups

One consideration is whether the “applicant for a license to operate” personal care and nursing agencies should be subject to the same background check as the employees or independent contractors.

Another consideration is that the “applicant for a license to operate” need not be a “natural person.” A corporation, for example, may apply for a license. It would appear to be possible that an individual could create a corporation to use to apply for a license. Then, if the individual acted only as the owner and not an employee or independent contractor, he could escape the background check entirely.

Appendix B Program Participants

The following entities were awarded subgrants to install new live scan equipment for civil applicants subject to NRS 449 background checks.

Type	Participant	County
County Agency	East Fork Fire and Paramedic Districts	Douglas
County Agency	Lyon County School District (for Dayton High School)	Lyon
County Agency	Lyon County School District (for District Office)	Lyon
County Agency	Lyon County School District (for Fernley High School)	Lyon
Law Enforcement	Boulder City PD	Clark
Law Enforcement	Douglas County Sheriff's Office	Douglas
Law Enforcement	Elko County Sheriff's Office	Elko

Law Enforcement	Humboldt County Sheriff's Office	Humboldt
Law Enforcement	Lander County Sheriff's Office	Lander
Law Enforcement	Lincoln County Sheriff's Office	Lincoln
Law Enforcement	North Las Vegas Police Department	Clark
Law Enforcement	Nye County Sheriff's Office	Nye
Law Enforcement	Pershing County Sheriff's Office	Pershing
Law Enforcement	Reno Police Department	Washoe
Law Enforcement	Washoe County Sheriff's Office	Washoe
Private	A. Doyle, Inc. dba Fingerprinting and More	Clark
Private	B & D Fingerprinting Services	Clark
Private	Boulder City Hospital	Clark
Private	Burton Studio	Clark
Private	Conlon, Jay D.	Clark
Private	Executive Passport Services LLC	Clark
Private	Fingerprinting Express LLC	Washoe
Private	Lend-A-Hand Senior Services	Washoe
Private	Silver State Mobile Fingerprinting Services, Inc.	Clark
Private	The Hunter Shelton Group, LLC, dba Eye On Nevada	Clark
Private	Treasures Angels	Clark
Private	Visiting Angels	Clark
State Agency	Nevada Department of Public Safety personnel	Carson City
State Agency	Nevada Department of Public Safety personnel	Carson City
State Agency	Nevada Legislative Police	Carson City
State Agency	Nevada Office of the Attorney General	Carson City
State Agency	Nevada Office of the Attorney General	Clark
State Agency	Nevada State Board of Nursing	Clark
State Agency	Nevada State Board of Nursing	Washoe
State Agency	Nevada State Emergency Medical Services	Carson City
State Agency	Nevada State Health Division Personnel	Carson City
Tribal	Washoe Tribal Police	Washoe

Appendix C

Steering committee

Nevada's program organized a steering committee to provide community input to the program. In addition to the program participants listed in Appendix B, representatives from the following organizations participated on the steering committee:

- Assisted Living Advisory Committee
- Barton Health
- Eagle Valley Children's Home
- Fingerprinting Pros
- Nevada Board of Examiners for Long-term Care Administrators
- Nevada Department of Aging Services
- Nevada Department of Health Care Financing and Policy (Nevada Medicaid Agency)
- Nevada Department of Public Safety, Records and Technology Division (Central Repository)
- Nevada Healthcare Association
- Nevada Office of the Attorney General
- Nevada Rural Hospital Partners
- Nevada State Board of Nursing
- Nevada State Veterans' Home
- Northern Nevada Adult Mental Health Services
- Park Place
- Pershing General Hospital

South Lyon Medical Center
THI Care

- Analysts receive appeals and investigate the situations to determine if there was an error in the records or the record was expunged. They accept or deny the appeal based on these criteria only.
- All notices of “no hits” are electronically relayed to the Web-based system which automatically and immediately notifies the employer.
- Employers indicate their final hiring decision on the Web-based system.
- All necessary forms (consent and disclosure forms, fingerprint request forms, and notification letters) are generated by the system.

Additional efficiencies include:

- The ability for the two state agencies to request rap sheets from MSP with the click of a button.
- The ability for MSP to indicate rap sheet dispositions with the click of a button
- Long-term care providers can tell the status of an applicant’s fingerprints by looking at the Web-based program.
- State agencies can view facilities’ records and monitor employers’ compliance with background check regulations.

Statistics

Total Fingerprints Taken = 115,651

Total Hits = 27,154 (23.5 percent of fingerprints taken)

Total Exclusions - 5936		
	Number Excluded	Percent Excluded
-Medicare OIG Exclusion List	449	0.22
-Offender Tracking Information System (OTIS)	972	0.47
-Public Sex Offender Registry (PSOR)	333	0.16
-Michigan Nurse Aide Registry (NAR)	372	0.18
-Internet Criminal History Access Tool (ICHAT)	3810	1.8

New Mexico Background Check Pilot Program Final Report

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The statements contained in this report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare & Medicaid Services. The awardee assumes responsibility for the accuracy and completeness of the information contained in this report.

BACKGROUND CHECK PILOT

Final State Report

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I. EXECUTIVE SUMMARY

The New Mexico Department of Health has successfully completed the Centers for Medicare & Medicaid Services (CMS) Background Check Pilot Program. The overarching goal of New Mexico pilot project, Providing Assistance, Communication, and Training (PACT) Project was to improve the effectiveness of the Caregivers Criminal History Screening Program

while increasing provider compliance with the requirements set forth in the Caregivers Criminal History Screening Act and accompanying administrative rule. The New Mexico Department of Health was able to attain this goal by implementing a comprehensive plan that was divided into three key phases. The three phases systematically addressed the issues previously identified by New Mexico Department of Health staff through the thorough examination of internal operations and feedback from stakeholders.

The New Mexico Department of Health pilot project was divided into three essential phases. Each phase was meticulously designed to optimize CMS Background Check Pilot results. The phased approach laced the following major components into a comprehensive plan:

1. Establish a statewide care provider training and technical assistance for application submissions and fingerprinting designed to be delivered to live audiences;
2. Develop an integrated he Consolidated Online Registry for agency and provider use ;
3. Establish methods for monitoring provider compliance as required by the Caregivers Criminal History Screening Act;
4. Obtain necessary software and hardware upgrades for Caregivers Criminal History Screening Program;
5. Expand current program by establishing a crosswalk of other states. disqualifying convictions;
6. Conduct research for statutory and regulatory reform necessary to further improve the Caregivers Criminal History Screening Program client-based application.

The **first phase** of the project involved the development of the statewide training program and curriculum to improve application submissions and fingerprinting techniques. The training was titled, The Providing Assistance, Communication and Training Orientation. Notices and advertisements for the trainings were sent to the care providers and provider associations detailing the goals and schedule of the training. The training schedule was designed to methodically cover the state in regular intervals. The training staff ensured that each of the five New Mexico Department of Health regions were each visited per quarter. This was the minimum requirement set by PACT Project Staff. The training schedule did ensure that the more densely populated regions were visited in higher frequency.

Training materials and resources were designed and crafted for distribution at training sessions conducted by PACT Project Staff. The informational materials received at the Providing Assistance, Communication and Training Program Orientation included: new Caregivers Criminal History Screening Program regulatory changes, newly instituted Employee Abuse Registry requirements, Consolidated Online Registry instructions, proper fingerprinting guides and a Digital Versatile Disc, and the revised New Mexico Department of Health Incident Reporting requirements. This combination of materials was intended to provide a complete library of information to care provider personnel who previously were unaware of the rules and requirements involved with Caregivers Criminal History Screening Program and the new

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Employee Abuse Registry. Additionally, in this first phase, the PACT Orientation Coordinator developed an inclusive process for care providers to request onsite technical assistance and began to schedule trainings to meet the needs of care providers.

Also occurring during the initial phase of this program was the conceptualization, design and launch of the Consolidated Online Registry. This web-based application was developed as part of the technical assistance provided by Number Six Software who was a subcontractor of the CNA Corporation, the CMS technical assistance contractor. The Consolidated Online Registry

.consolidated. external and internal databases and synthesized the data for use by care provider

staff and New Mexico Department of Health personnel. The databases included the Nurse Aide Registry, the New Mexico Employee Abuse Registry, and the Caregivers Criminal History Screening Program database. There are future plans to include the New Mexico Department of Public Safety's Sex Offender database into the Consolidated Online Registry.

The **second phase** of the PACT Project centered on the introduction of the Consolidated Online Registry to care providers and state agencies and implementing a full training schedule. The Consolidated Online Registry concept was designed as a one-stop-shop for providers. compliance with Caregivers Criminal History Screening Program, the Nurse Aide Registry and the New Mexico Employee Abuse Registry. The Consolidated Online Registry allows providers to run compliance reports of their current staff and their associated statuses in the registries for self-monitoring and compliance assessment. The Consolidated Online Registry enables providers to enter a prospective employee's Social Security number to verify their status on the registries. State agencies that have oversight authority are able to run compliance reports by provider and utilize these reports in their survey and monitoring activities. This functionality has considerably enhanced the ability of the survey and review teams to audit providers.

compliance

with Caregivers Criminal History Screening Program requirements as well as those of the Nurse Aide Registry, and the New Mexico Employee Abuse Registry.

In this second phase of the PACT Project, the PACT Project Leader contacted all providers by mail and email to inform them of the Consolidated Online Registry, its goals and training schedule. Training materials for the Consolidated Online Registry were developed in concert with the other training materials and were included when the web-based application went into production. Those training materials were also made available online via the New Mexico Department of Health website. The PACT Orientation Coordinator added the Consolidated Online Registry onsite technical assistance requests to the PACT Training Schedule and a series of trainings around the state were conducted to instruct providers on the use and benefits of the Consolidated Online Registry. Included in the training was an introduction of the Divisional of Health Improvement website and its components that can also be of benefit to providers. The ability to access and use the Consolidated Online Registry data proved incredibly valuable adding measures of accountability for both providers and enabling them to use the system instead of calling Caregivers Criminal History Screening Program staff for the information.

The second phase saw a major push in the PACT Orientation Schedule. Table 1 demonstrates the aggregate statistics of the trainings through the course of calendar year 2006. The highly successful training program directly contributed the improvement in quality of criminal history applications submitted and quality of fingerprint cards. PACT Orientation Staff also trained New Mexico Department of Health, New Mexico Aging and Long-Term Services Department, and New Mexico Attorney General's Office surveyor, reviewers, and investigators

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on the new statutory requirements and proper use of the Consolidated Online Registry. This was essential in the lead up to the third phase of the project.

Table 1

PACT Project Orientations in 2006

Care Provider Staff Trained 383

Care Provider Agencies 203

Total Trainings 21

Fingerprint Technical Assistance Trainings 4
Caregivers Fingerprinted by PACT Staff 449*

*1,347 total fingerprint cards

The **third phase** of the PACT Project involved many distinct areas but resource centered on refining the widely successful training and curriculum and placed a heavy emphasis on increasing the ability of providers, surveyors and reviewers to measure and improve compliance of Caregivers Criminal History Screening Program, Nurse Aide Registry and the Employee Abuse Registry statutes and administrative rules. The PACT Project staff utilized compliance reports to do systemic analysis and the results were incorporated into the training curriculum to enhance and focus the training and technical assistance to more effectively produces measurable results. In the last phase of the PACT Project, the Project Leader used the data and work closely with surveyors and reviewers to monitor care provider compliance with Caregivers Criminal History Screening Program.

The additional components of the PACT Project that are necessary to the effort of improving the Caregivers Criminal History Screening Program system are the hardware/software upgrades and research/analysis activities conducted by the PACT paralegal were completed in the third phase. A primary hardware issue was that the outdated fingerprint card scanners utilized by Caregivers Criminal History Screening Program take between four to six minutes to scan one fingerprint card. Given the high volume of applicant fingerprint cards received by Caregivers Criminal History Screening Program, this causes extensive delays in processing applications. Another drawback to the outdated fingerprint scanners was that they had very little technical support. Newer scanners that have adequate technical support and are able to scan fingerprints in half the time were needed. Originally the New Mexico Department of Health had planned to purchase updated scanning terminals from the Sagem Morpho with Background Check Pilot funding but the New Mexico Department of Public Safety (DPS) entered into a contract with the vendor to supply a complete Automated Fingerprint Identification System with new Livescan and Cardscan terminals for the state agencies who utilized the new Automated Fingerprint Identification System. Unfortunately their project was over eight months behind schedule so Caregivers Criminal History Screening Program was not able to show any benefits of the new hardware during the course of the Background Check Pilot period. The systems continue to pose reliability and capacity problems to the New Mexico Department of Health.

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Table 2

PACT Project Orientations in 2007

Care Provider Staff Trained 427

Care Provider Agencies 58

Total Trainings 15

Fingerprint Technical Assistance Trainings 21

Caregivers Fingerprinted by PACT 1096*

*3,288 total finger cards

The role of the PACT Project paralegal was integral throughout the course of the CMS Background Check Pilot Project in improving the effectiveness of Caregivers Criminal History Screening Program statutory and regulatory functions. The paralegal.s role included the following:

1. Reviewing legal issues that prevent the program from disqualifying individuals with misdemeanor convictions;
2. Conducting research and analysis with recommendations to improve the process for

- obtaining provider trends data such as the number of employees by provider and turnover rates for targeting under-reporting providers;
3. Analysis of the reconsideration process is necessary to assess its adequacy and to recommend improvements;
 4. Supervise the Legal Section of Caregivers Criminal History Screening Program;
 5. Develop a crosswalk of all states. disqualifying convictions in order to streamline the criminal history screening process for New Mexico as well as other states having similar programs;
 6. Review other states with this type program to determine if there are additional crimes that should be added to the disqualifying list.

The primary focus of the PACT Project was to refine current Caregivers Criminal History Screening Program policies and improve program operations but during the two-year period, by participating in the CMS Background Check Pilot, the New Mexico Department of Health was able to tackle issues not previously known during the initial planning of the New Mexico pilot project. The ability to detect program problems and issues has proved extremely valuable as the Department of Health expanded Caregivers Criminal History Screening Program.s operations through statutory changes which have led to a 30 percent increase in applications submitted to the program state fiscal year 2007.

In 2005, to participate in the CMS Background Check Pilot, the New Mexico Department of Health had to go to the New Mexico Legislature and seek legislative changes in order to comply with the requirements established in Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (PL 108-173). The primary change that needed to be addressed was the 12-month exception which allowed a care provider to not submit a criminal history screening on a caregiver who had previously received a screening in the last 12 months. This gap was closed and the statute now met MMA requirements. The New Mexico Department of Health took the additional step of including general acute care hospital.s caregivers in its Caregivers Criminal History Screening Program statute. These facilities were

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not required by the MMA but inclusion of this care provider type played a significant role in the Caregivers Criminal History Screening Program operations.

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II. INTRODUCTION

The mission of the Caregivers Criminal History Screening Program (CCHSP) is to provide an effective, efficient and professional system of reporting and maintaining applicants' criminal histories and making appropriate employment fitness determinations through the utilization of a nationwide and statewide criminal history repository. The purpose of the Caregivers Criminal History Screening Program is to ensure, to the highest degree possible, the prevention of abuse, neglect and exploitation of recipients that receive health care in the State of New Mexico.

In New Mexico, the Caregivers Criminal History Screening Program managed by the New Mexico Department of Health has been conducting criminal history screenings on caregivers for long-term care provider facilities since 1999. Since CCHSP has been operating for 8+ years the Department was able to design and center the PACT Project on an integrated approach to improving care provider compliance with the regulatory requirements of the New Mexico Department of Health, Caregivers Criminal History Screening Program. PACT Project Staff, in collaboration with industry stakeholders, executed a proactive strategy that comprehensively addressed both defined CCHSP and care provider issues and uncovered

previously unidentified programmatic problems associated with this relatively new statutory requirement.

The broad goals of the New Mexico Department of Health's PACT Project were to improve the CCHSP system by:

- Improving provider compliance with the requirements of the Caregivers Criminal History Screening Act by providing training, technical assistance and improved access to information;
- Improving the quality of application packet submissions by reducing the number of incomplete applications and the number of fingerprint card rejections, resubmissions and clearances by affidavit;
- Upgrading software and hardware utilized by CCHSP to improve processing time to make either a clearance or disqualification determination for an applicant;
- Compile a crosswalk of all states' disqualifying convictions in order to facilitate processing;
- Provide recommendations for statutory and regulatory reform.

In order to accomplish these broad goals, the PACT Project Staff formulated a series of internal projects timed throughout the Background Check Pilot period to meet on the predetermined desired outcomes. Those internal projects were:

- Develop and launch an integrated web-based application, the Consolidated Online Registry (COR), to provide access for care providers and state agencies to criminal history screening status, Nurse Aide Registry status, and New Mexico Employee Abuse Registry status to track and ensure compliance and thereby reduce risks posed by untrained, uncertified and inappropriate caregivers.
- Develop and implement a fingerprint ink and hard card application training program and curriculum for care providers, state agency personnel, and other industry stakeholders;
- Regular regional fingerprint and application submission trainings;

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- Onsite technical assistance with application submission and fingerprinting to providers who requested it;
- Monthly evaluations of application and fingerprint card rejections and compliance with timelines by care provider;
- Onsite technical assistance based on rejection and compliance rates;
- Add functionality to New Mexico Department of Health website to enable care providers to access reports through the COR to gather staff clearance and training statuses enabling them to assess their compliance rate and take remediation steps as necessary;
- Evaluate New Mexico's criminal history screening statute and regulations and compared them with best practices of other states in order to implement regulatory and statutory reform;
- Compile a comprehensive crosswalk of states' disqualifying convictions to facilitate criminal history screening processes; and
- Replace outdated IDIS scanning equipment and software to expedite processing and ensure continued operations.

III. PROGRAM DISCUSSION

A. Enabling Statutory Authority

The three objectives specific to the statutory and regulatory component of the PACT

Project were to:

1. Evaluate New Mexico's criminal history screening process in order to suggest and implement statutory and regulatory reform;
2. Provide an analysis of the Caregivers Criminal History Screening Program administrative reconsideration appeals process to assess its adequacy and to recommend improvements;
3. Compile a crosswalk of states' disqualifying convictions to facilitate criminal history screening processes.

The *Caregivers Criminal History Screening Act* was initially passed by the New Mexico State Legislature in 1998 to ensure to the highest degree possible the prevention of abuse, neglect or financial exploitation of care recipients¹ within the health care provider community. The legislative design of the statutory objective directed the Department of Health to develop a regulatory scheme in which an applicant who is offered employment or contractual services as a caregiver² to undergo both a nationwide and statewide criminal history screening background checks.

¹ "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities.. See *Caregivers Criminal History Screening Act*, at §29-17-4D(1), (NMSA 1978).

² See *Caregivers Criminal History Screening Act*, at §29-17-4(1), (NMSA 1978), "caregiver" means a person, not otherwise required to undergo a nationwide criminal history screening by the New Mexico *Children's and Juvenile Facility Criminal Records Screening Act*, §§32A-15-1 et. seq., (NMSA 1978), whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider.. See *Caregivers Criminal History Screening Act*, at §29-17-4B (NMSA 2007).
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B. New Mexico Department of Health Implementing Regulatory Authority

The *Caregivers Criminal History Screening Act* was implemented by adoption of the *Caregivers Criminal History Screening Requirements*, 7.1.9³ New Mexico Administrative Code (NMAC).⁴ Generally included within this rule are the developmental guidelines for the criminal history screening program; requirements and procedures for submission of applicant and caregiver fingerprint applications; payment of fees and an administrative reconsideration appeals process for an applicant or caregiver after receipt of an employment disqualification notification.

C. PACT and CCHSP 2005 Legislative Amendments and Regulatory Compliance with the New Mexico Administrative Code Requirements.

In 2005 the New Mexico State Legislature amended the *Caregiver Criminal History Screening Act* to include in part hospital caregivers and an addition to the preexisting disqualifying conviction list with the supplement of burglary, fraud, and any attempt, solicitation or conspiracy involving any of the felonies in the subsection. However, the hospital caregivers were not included in New Mexico's background check pilot program design. The initial process

of amending and subsequently promulgating the *Caregivers Criminal History Screening Requirements*, 7.1.9 NMAC (2002), necessitated an internal collaborative effort of resources between the PACT Project Staff, CCHSP staff and participating members of the health care provider community. ⁵

D. Substantive Changes to the *Caregivers Criminal History Screening Requirements* 7.1.9 NMAC (2006)

The initial rule promulgation process⁶ of the then current CCHSP administrative rule began in late August of 2005. The objective of rule promulgation in the State of New Mexico is to establish standards⁷ for uniform rule filings and common format.⁸ These standards are

The 2005 amendment, effective June 17, 2005, in Paragraph A and twice in Paragraph G, inserted "or hospital caregiver".

³The Department of Health is authorized to promulgate the administrative rules to implement the *Caregivers Criminal History Screening Act*. See § 29-17-5 (NMSA 1978). See also; *State Rules Act* §§14-4-7 et. seq., (NMSA 1978); .rules are promulgated by State agencies to execute and support New Mexico statutes.. See also, NMAC

History Notes at 7.1.9 NMAC; 7 NMAC 1.9, *Caregivers Criminal History Screening Requirements* filed 08-03-1998, delineating the annotation of changes or repeals of a rule to a part or a section noted at the end of a modified section. At a minimum, the history note contains the effective date of the original filing and the dates and identification numbers of any subsequent amendment(s), promulgation(s) and any repeal.

⁴See New Mexico Commission of Public Records - State Records Center and Archives, *Rules General Provisions* at 1.24.1.7U NMAC (2000). .NMAC. means the New Mexico administrative code, the organizing structure for rules filed by New Mexico state agencies. The NMAC is also the body of filed rules and the published versions thereof. The New Mexico Administrative Code is administered by the Administrative Law Division of the Commission of Public Records and is the filing point for the administrative rules promulgated by executive-branch agencies, for interstate compacts, and for county subdivision regulations. See also *State Rules Act* §§14-4-7 et. seq., (NMSA 1978).

⁵Unless otherwise provided by statute, no rule affecting any person or agency outside the Department of Health can be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. See *Department of Health Act*, 9-7-6E. (NMSA 1978).

⁶The actual process of rule promulgation in New Mexico requires multiple administrative procedures under Title 1 General Government Administration Chapter 24 Rules, Parts 1, 10, 11, 15 and 20 NMAC.

⁷The NMAC style is guided by relevant portions of the current edition of the legislative drafting manual of the New Mexico legislature published by the New Mexico legislative council service. The following provisions are Page 9 of 35

designed to ensure that rules are readily identifiable and available for public inspection; that each rule filing can be historically traced from its current status back to the original rule filing; and that rule filings are structured for expeditious compilation into the New Mexico Administrative Code.⁹ As such, the PACT paralegal first began with a careful analysis of the New Mexico Administrative Code rule filing and drafting requirements to address both the legislative substantive amendment and semantic clarification¹⁰ to improve the sequential and specific sections to corresponding subsections and paragraphs.¹¹

The following bullets highlight the PACT and CCHSP departmental substantive and textual or semantic revisions based upon the legislative amendments, administrative requirements and public hearing comments submitted from the health care provider community.

1. Legislative Amendment:

- Subsection F at 7.1.9.7 was amended to include a definition of .care recipient..
- Subsection E, Paragraph (1) at 7.1.9.7 was amended to include .general acute care hospitals.
- Subsection K, at 7.1.9.7 was amended to include a definition of .hospital caregiver.¹²
- Subsection P at 7.1.9.7 was amended to include a definition of the statewide criminal screening process.
- Subsection G at 7.1.9.11 was amended to include the 2 additional felony disqualifiers of .burglary and fraud..

specifically adopted: Chapter 4, Bill Drafting, Chapter 7, Legislative Style and Language Provisions, for example the while drafting the new 7.1.9 NMAC 2002 rule there were numerous punctuation or capitalization changes throughout the amended rule to conform with the NMAC format i.e., .Department. had been changed to lower case

.department... Although seemingly a minor error this particular example was riddled throughout the rule with

similar errors. See New Mexico Commission of Public Records - State Records Center and Archives, *General Government Administration, Rules, New Mexico Administrative Code*, at 1.24.10.12.A (1) .(3) NMAC.

⁸ See New Mexico Commission of Public Records - State Records Center and Archives, *General Government Administration, Rules, New Mexico Administrative Code*, at 1.24.10.6 NMAC

⁹ The NMAC is designed to promote access and assist research by adopting a system for uniformly organizing state rules that facilitates fully searchable electronic access. Additionally, it is designed to facilitate electronic publication and availability via the internet. See New Mexico Commission of Public Records - State Records Center and Archives, *General Government Administration, Rules, New Mexico Administrative Code*, at 1.24.10.6 NMAC (2007).

¹⁰ For example the initial reading of the scope of applicability at 7.1.9.2 NMAC (2006) was specific to .caregivers. and .care providers. yet there were four classes of general applicability covered by this rule; applicant, caregiver,

hospital caregiver and care provider. Throughout the revised rule the vast majority of the bracketed text was not clear as to whether the applicant, caregiver or hospital caregiver was being addressed and consequently placed on notice as to the applicable section, subsection or paragraph. See appendix 4 at 7.1.9 NMAC (2006).

¹¹ The hierarchy of the NMAC is structured by title, chapter, part and section. See New Mexico Commission of Public Records - State Records Center and Archives, *Rules General Provisions* at 1.24.1.7U NMAC (2000).

¹² See *Caregivers Criminal History Screening Requirements* at 7.1.9.7K NMAC .hospital caregiver. means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that care provider in an inpatient setting who is not a licensed New Mexico health care professional practicing within the scope of a profession.s license. Page 10 of 35

- Subsection H at 7.1.9.11 was amended to include .an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

2. PACT Substantive Amendments

- Subsection C at 7.1.9.8 and subsections G and P at 7.1.9.7 were amended to require a definition of conditional **supervised employment** by a care provider to ensure the prevention of abuse, neglect or the misappropriation of property of a care recipient pending receipt of the caregiver.s criminal history background screening. The expectation is that the care provider will employ a managerial oversight program, which can demonstrate a systematic and routine monitoring of the safety and quality of service provided by the caregiver or hospital caregiver to the care recipient during the caregiver.s conditional employment period.¹³

- Paragraph (3), Subsection D at 7.1.9.8 was amended to increase the number of fingerprint cards submitted to CCHSP with the initial application packet from 2 to 3 cards.

- Subsection B at 7.1.9.8 was amended to provide one exception to the general rule to submitting the *required* statewide and nationwide criminal history background screening. The exception *ONLY* applies to those individuals who have already submitted to a statewide *and* nationwide criminal screening through the CCHSP within the last 12 months and have subsequently received an employment clearance letter.¹⁴

This change necessitated a modification to existing PACT Project policy to maintain compliance with the requirements set forth in the MMA. The Department of Health along with CMS determined that those applicants and caregivers eligible for this 12-month exception applying for a fitness determination with a care provider type included in the MMA would be required receive a nationwide screening to complete their application.

The negotiated terms specified that the PACT Project staff would use savings from the redistribution of the vehicle for PACT Project Team for In-State Travel and the non purchase of the IDIS Card Scanners to pay for the estimated 800 additional nationwide screenings and the associated processing costs. The savings from the redistribution of the

¹³ Amended language as follows: **.conditional employment.** means supervised employment pursuant to a bona

final offer of employment by a care provider to an applicant, caregiver or hospital caregiver, which is contingent upon the receipt of notice from the department that the applicant, caregiver or hospital caregiver nationwide

and statewide criminal history screening indicates no existence of a disqualifying conviction, or notice from the department pending an administrative reconsideration procedure under Section 7.1.9.10 NMAC. This includes that period of employment during the time allowed for responding to the department's request for additional information

in cases where the applicant, caregiver or hospital caregiver criminal history record indicates an arrest without

a final disposition for a crime listed under Section 7.1.9.11 NMAC. See 7.1.9.7G NMAC (2006).

¹⁴ Amended language as follows: **Exception:** A caregiver or hospital caregiver applying for employment or contracting services with a care provider within twelve (12) months of the caregiver or hospital caregiver's most

recent nationwide criminal history screening which list no disqualifying convictions shall only apply for a statewide criminal history screening upon offer of employment or at the time of entering into a contractual relationship with the care provider. At the discretion of the care provider a nationwide criminal history screening, additional to the required statewide criminal history screening, may be requested. See appendix XX at 7.1.9.8B NMAC (2006).

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vehicle and not purchasing the IDIS Card Scanners allowed the PACT Project to pay for the additional fees not covered by the care provider and expand the training training schedule in the last three quarters or the grant period.

- Paragraphs (2) and (3) of Subsection A at 7.1.9.9 were amended to provide clarification between a disqualifying conviction and an arrest and/or charge pending final disposition. Paragraphs (2) and (3) state that the department **will not make a final determination** for an applicant, caregiver or hospital caregiver with a pending potentially disqualifying conviction. In such instances of a pending potentially disqualifying conviction for which no final disposition has been made, the department will notify all parties concerned by certified mail that an employment clearance has not been granted.¹⁵

- Subsection B at 7.1.9.9 was amended to clarify that in all cases pending before the Reconsideration Committee it is the entirely the discretion of the care provider to continue the employment services of an applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction while awaiting a final employment determination.¹⁶

- Subsection F at 7.1.9.8 was amended to require that all fees and pertinent application information for all employees who meet the definition of an applicant, caregiver or hospital caregiver be submitted to the CCHSP no later than **twenty (20) calendar days** from the first day of employment or effective date of a contractual relationship with the care provider

- Paragraph (2), Subsection C at 7.1.9.9 was amended to require the care provider to notify the department within fourteen (14) days, as determined by the postmark, of the date and type of action taken to satisfy the removal requirements set forth in 7.1.9.9C (1) subsequent to termination of an employee who receives a **final** employment disqualification letter.

- Subparagraph (a), Paragraph (1), of Subsection B at 7.1.9.10 was amended to require that an applicant, caregiver or hospital caregiver after given notice by the CCHSP of a disqualifying conviction may submit a written request for an administrative

¹⁵ Amended language as follows:

(2) An applicant, caregiver or hospital caregiver failure to respond within the required timelines regarding the final disposition of the arrest for a crime that would constitute a disqualifying conviction shall result in [that applicant] the applicant, caregiver or hospital

caregiver.s temporary disqualification from employment as a caregiver or hospital caregiver pending written documentation submitted to the department evidencing the final disposition of the arrest [in the State of New Mexico] Information submitted to the department may be evidence, for example, of the certified copy of an acquittal, dismissal or conviction of a lesser included crime.

(3) The department will not make a final determination for an applicant, caregiver or hospital caregiver with a pending potentially disqualifying conviction for which no final disposition has been made.. See appendix XX at 7.1.9.9A (2)-(3) NMAC (2006)..

¹⁶ Amended language as follows: **Employment Pending Reconsideration Determination:** At the discretion of the care provider, [a caregiver] an applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction and who has requested administrative reconsideration may continue [to be employed] supervised employment pending a determination on reconsideration.

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reconsideration within *fourteen (14) calendar days*, as determined by the postmark, from the date of the notice issued by the department;

IV. STATE AGENCY AND STAKEHOLDER COLLABORATION

Stakeholders played a vital role during the Background Check Pilot period and were crucial to the successful implementation to New Mexico.s overall implementation strategy.

The

list of stakeholders in which New Mexico Department of Health collaborated ranges from industry associations, direct care providers, advocate agencies, higher education institutions, and other statewide governmental agencies. Initially the New Mexico Department of Health collaborated with several key industry organizations to gain both feedback and support for the grant project.

- The New Mexico Health Care Association (NMHCA), whose membership includes the following:

- Nursing Facilities,

- Facilities for the Developmentally Disabled (*In New Mexico these facilities are called Intermediate Care Facilities for the Mentally Retarded or ICF/MRs*),

- Assisted Living/Residential Care Facilities.

- The New Mexico Association for Home & Hospice Care (NMAHHC), whose membership includes the following:

- Home Health Agencies,

- Regional Members-Home Health Providers Outside New Mexico,

- Individual Members,

- Hospices,

- Association Members-Businesses or Organizations Related to Home Care,

- Case Management Agencies,

- New Mexico Hospital Association (NMHA), whose membership includes the following:

- New Mexico licensed acute inpatient, specialty or general hospitals and health systems,

- Long-Term Care Facilities,

- Primary care, Home care and Rehabilitation Facilities,

- Residential Treatment Facilities,

- Non-New Mexico Institutions,

- Government Facilities; including Indian Health Services, Department of Health and Public Health Service providers,

- o Insurers, Health Maintenance Organizations and Managed Care Organizations,
- o Other qualified health care institutions as determined by the New Mexico Hospital Association Board.

The three associations listed played an integral role in the both the rule promulgation process and program policy decisions. Throughout the Background Check Pilot period, PACT Project Leader met with the association.s directors and their members on a regular basis to provide them direct feedback on their compliance rates and to resolve any potential issues with CCHSP and criminal history screening process.

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PACT Project Staff met with representatives from the New Mexico Aging and Long-Term Services Department to assist them implementation of program changes and assist them with interpretation of program requirements. The New Mexico Aging and Long-Term Services Department operates. the Adult Protective Services Division which investigates incidents of abuse, neglect, and exploitation for Personal Care Attendant Care Providers and a state funded self directed waiver program. One component to those investigations is a verification by the investigator that CCSHP criminal history screening was conducted on the caregiver. PACT Project Staff briefed Adult Protective Services Investigators on the statutory changes and new requirement for care providers. Additionally, The PACT Project Leader and Paralegal collaborated with personnel from their self-directed waiver office and Personal Care Attendant office to ensure that those programs properly addressed the change in CCHSP requirements and provided technical assistance to their regional offices to better meet care provider inquiries. The PACT Project Staff worked in partnership with The New Mexico Attorney General.s Medicaid Fraud Unit providing them access to the Consolidated Online Registry and training them on specific CCHSP requirements and on an ongoing basis assisted their investigators in their fraud investigations. This was the first time that staff from the New Mexico Department of Health and staff from the Attorney General.s Medicaid Fraud Unit had collaborated on that level.

Several partnerships were reinforced within the Department of Health during the Background Check Pilot period. The Development Disabilities Support Division teamed with PACT Project Staff to hold joint quarterly divisional meetings covering a wide range of topics including CCHSP program requirements and the Employee Abuse Registry which now was under the purview of CCHSP. The quarterly meetings were the first of their kind and marked a new direction in cooperation between the two divisions.

PACT Project Staff teamed with the Information Technology Support Division throughout the development of the Consolidated Online Registry. This relationship was strained and suffered several setbacks. Support and development involvement waned throughout the development and deployment phases of the Consolidated Online Registry launch which made it extremely difficult for the application developer to deliver the application on schedule. The difficulties ranged from hardware procurement to database maintenance.

Within the Division of Health Improvement, PACT Project Staff met regularly with staff from the Quality Management Bureau, the Incident Management Bureau, and the Health Facility & Licensing Bureau to address any issues or questions and were regular presenters at their bureau meetings. The Quality Management Bureau is responsible for assuring accountability and compliance with program, contractual and quality standards of community based programs. The Incident Management Bureau conducts investigations and provides data-tracking of reported allegations of abuse, neglect and exploitation. The Health Facility & Licensing Bureau is responsible for establishing, monitoring and enforcing quality standards for over 1100 health

facilities to assure the safety and wellbeing of residents/patients/clients. The three bureaus along with CCHSP form the enforcement arm of the New Mexico Department of Health.

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V. DESCRIPTION OF STATE BACKGROUND CHECK PROGRAM

The Caregivers Criminal History Screening Act requires that if persons whose employment or contractual service with a care provider include direct care or routine and unsupervised physical or financial access to any care recipient served by that provider must undergo a nationwide and statewide criminal history screening prior to employment. Subsection B of 7.1.9.8. NMAC stipulates that care providers can only **conditionally** employ a caregiver **pending** completion of the criminal history screening, with the understanding that the results will meet the requirements of the law. A complete criminal history screening is divided into three elements: Application Submission and Processing, Employment Fitness Determination, and Administrative Reconsideration (if needed).

A. APPLICATION SUBMISSION AND PROCESSING

Upon hiring an employee or entering into a contract of a caregiver, a care provider must complete and submit a complete CCHSP application for processing. Completed applications must be submitted no later than 20 calendar days following the bona fide offer of employment.

A complete CCHSP Application includes:

- Three (3) completed applicant fingerprint cards;
- Copy of a photograph identification, (Drivers License or Passport) that meet the requirements of the Immigration and Naturalization Act;
- A signed New Mexico Department of Health Authorization for Release of Information form including social security number; and
- A \$65.00 fee for each application submitted for criminal screening

CCHSP Application Fee Distribution

Statewide Background Check \$10.00

Nationwide Background Check \$24.00

Operating Costs \$31.00

Total fees \$65.00

During the PACT Project the Department of Health charged \$65.00 for a caregiver's criminal history screening. Of that \$65.00, \$24.00 is paid to the FBI for the nationwide criminal history screening. The Department of Health also pays \$7.00 for the statewide criminal history screening and a \$3.00 per transaction fee to transmit data to NM Department of Public Safety (DPS) through a secure transmission protocol for a combined state fee of \$10.00. The Department of Health retains \$31.00 to cover the costs of processing and administrating CCHSP. The fee should be paid for by the care provider but PACT Project staff has discovered an emerging industry practice in which the care provider passes that cost onto the applicant or caregiver in various ways.

The fee payment must accompany the fingerprint application, or otherwise be credited to the Department of Health prior to or contemporaneous with the Department of Health's receipt of the complete application package. The manner of payment of the fee is by bank cashier check payable to the NM Department of Health, or other method of funds transfer acceptable to the Department. Business checks will be accepted unless the business tendering the check has

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previously tendered a check to the Department of Health unsupported by sufficient funds. The fee covers the processing of a second set of fingerprint cards should the first be unreadable by the IDIS. The \$65 fee will be charged to the care provider for submission of a third and any

subsequent fingerprint sets.

The Caregivers Criminal History Screening Act requires that the following care provider types screen direct care employees:

- State owned or operated health care facilities
- Intermediate care facilities for the mentally retarded
- General acute care hospitals
- Long-term care hospitals
- Psychiatric hospitals
- Rehabilitation hospitals
- Hospice services
- Guardianship providers
- Adult residential care facilities
- Adult community residential facilities
- Adult limited diagnostic treatment centers
- Case management entities providing services to persons with developmental disabilities
- Adult boarding homes
- Adult day care centers
- Adult family care homes
- Adult halfway homes
- Care providers operating respite, companion or personal care programs funded by the New Mexico Aging and Long Term Services Department
- Care providers funded through the New Mexico Children Youth and Families Department providing homemaker and adult care services
- Disabled and elderly residential care providers providing services paid for in whole or in part by state funds
- Home health agencies
- All residential habilitation service or respite service care 7.1.9.2 NMAC providers authorized to be reimbursed in whole or in part by state funds or under any Medicaid or Medicaid waiver program
- Nursing home facilities
- Any other care provider entity which is licensed or Medicaid certified and which is not specifically identified herein.

For the purposes of the PACT Project, the Department of Health only submitted data to CMS on the care provider types specifically identified in the MMA.

Care provider agencies who have submitted all completed criminal history screening documents and paid all applicable fees for a nationwide and statewide criminal history screening for the caregiver must keep them under conditional supervised employment pending receipt of fitness determination letter from The New Mexico Department of Health as to whether the caregiver has a disqualifying conviction. Once the application is received by CCHSP, the
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application will receive a quality assurance review. During the quality assurance review, CCHSP staff check the packet with specific criteria and if the application is missing an item(s) or if the forms are filled out incorrectly the complete package will be returned for completion or correction by the care provider. Once the application has received the quality assurance review it

is date stamped and the payment is separated from the remaining application items. CCHSP Financial Specialist takes the all the checks received each day and processes for deposit. The other three pieces of the application are assigned to CCHSP.s data entry clerks. The clerks take the applications and enter the following information into the CCSHP client-based application:

- Care Provider Identification Number
- Payment Details
- Last Name
- First Nam
- SSN
- Date of Birth
- Alias
- Address
- Sex
- Race
- Eyes
- Hair
- Caregiver Position
- Date of Hire
- Fingerprint Date
- Employee Abuse Registry Screening
- Employee Abuse Registry Screening Date
- Prior Felony Disclosure
- Fingerprint card rejection

Figure 1, on the following page, is the screen within the CCHSP database interface used by staff to enter the basic demographic information. If the information is entered correctly the database will the criminal history screening application a control number. The control number becomes the criminal history screenings new identity and all actions are driven by that number. Once the application has been entered manually in to the CCHSP database data entry clerk writes the control number assigned by the database on all pieces of the criminal history screening application. Once the control number is written in the appropriate areas it now physically moves to the next step in the process.

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Figure 1

The Cardscan section of CCHSP receives the application for the data entry clerks and prepares them for scanning. Cardscan clerks enter nearly the exact same information as previously entered by the data clerks into the Cardscan system and scan the fingerprint card. This redundancy is extremely inefficient and is a major cause to the habitual backlog endured by CCHSP. Once the Cardscan clerks selects to send the criminal history screening application the demographic information along with the fingerprints are transmitted electronically to the New Mexico Department of Public Safety.s (DPS) Automated Fingerprint Identification System for a statewide criminal history search and than routed on to the Federal Bureau of Investigation.s

criminal history repository for a nationwide criminal history search. The assumption is that the fingerprints on the applicant fingerprint card are of high enough quality that both systems will be able to read them and subsequently match upon finding a .hit..

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The Cardscan clerks print off the results nationwide and statewide criminal history screenings returned by the New Mexico Department of Public Safety and the Federal Bureau of Investigation and match them with the appropriate criminal history screening application. If the results came back negative, or a .clear,. for both screenings than the Cardscan clerks enter that

manually into the CCHSP database and that application is ready for to receive a clearance letter. The data entry clerks prints the letters in the queue and prepares them to be mailed to the care provider agency. If the results show a .hit,. meaning the screenings returned criminal history information, than the application is sent to the CCHSP Legal Section for review.

Following this process and in the event the applicant or caregiver was eligible for the 12-month exception statewide only criminal history screening and they fell under the purview of the CMS Background Check Pilot, the Department of Health conducted a nationwide criminal history screening on the applicant or caregiver. This additional step was necessary to meet MMA requirements and to ensure compliance with previous negotiated terms with CMS. Once It was determined by PACT Project staff that the application should receive a nationwide criminal history screening, it was routed to the CCHSP Cardscan Section for processing. The Cardscan Section would conduct the nationwide screening and forward any results to the CCHSP Legal Section for a fitness determination.

Under the negotiated terms, the care provider was required to submit the initial required fee of \$20.00 as directed by CCHSP policy for those eligible applicants or caregivers and the PACT Project paid for the remaining portion of the criminal history screening application fee. On a weekly basis, PACT Project staff identified the applications included under the MMA requirements and forwarded those results to the CCHSP Program Manager. The CCHSP Program Manager verified the list of applications and once the list was correct it was forwarded to the CCHSP Financial Specialist for invoicing. The CCHSP Financial Specialist sent out a monthly invoice to the PACT Project for the additional nationwide criminal history screening and associated administrative fees totaling \$45.00 per application.

B. EMPLOYMENT FITNESS DETERMINATION

If an the criminal history screening application.s results show that the caregiver has a criminal history that file is forwarded to the CCHSP Legal Section for review and determination. The CCHSP legal assistants review the rap sheet and determine if there is any item in that individual.s criminal history that would disqualify them from employment in accordance with the Caregivers Criminal History Screening Act and Rule. If there is an item in their criminal history that does meet the threshold determined by the CCSHP disqualification list than a Disqualification letter is generated and sent via certified mail to the caregiver and the care provider. If the item in the does not meet the threshold it is updated in the CCHSP database and it processed for clearance. The fitness determinations of those caregivers with criminal histories are made by the trained legal assistants under the supervision of the PACT Project Paralegal who does hold a Juris Doctorate degree.

If the caregiver receives a Disqualification letter but wishes to appeal the determination they may request in writing within fourteen calendar days, as determined by the postmark, of their intention to do so. This request must be made directly by the caregiver and the care

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provider must continue to comply with the supervision requirements outlined in the CCHSP statute and rule.

The following felony conviction list is used by the CCHSP legal assistant to determine if the caregiver is eligible for employment or contractual services with a care provider:

- homicide;
- trafficking, or trafficking in controlled substances;
- kidnapping, false imprisonment, aggravated assault or aggravated battery;
- rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- crimes involving adult abuse, neglect or financial exploitation;
- crimes involving child abuse or neglect;
- crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; or
- an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

[7.1.9.11 NMAC - Rp 7 NMAC 1.9.12, 08/15/02; 7.1.9.11 NMAC - N, 01/01/06]

C. ADMINISTRATIVE RECONSIDERATION

CCHSP does have relief for those individuals who have been determined to not meet employment requirements specified by the Caregivers Criminal History Screening Act and Rule. This appeals process is called Administrative Reconsideration. The reconsideration proceeding is intended to be an informal non-adversarial administrative review of written documentation. It will be conducted by a reconsideration committee designated for that purpose by the New Mexico Department of Health. The reconsideration committee will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. In cases where the reconsideration committee finds the need for additional or clarifying information, the reconsideration committee may request that the applicant, caregiver or hospital caregiver supply such additional information within the time set forth in the reconsideration committees. request.

In determining whether a caregiver.s nationwide criminal history record reflects a disqualifying conviction may be employed, the reconsideration committee shall take into account the requirements of Section 28-2-1 to 28-2-6, NMSA 1978 of the criminal offender employment act. However, that act is not dispositive. The following factors may be considered:

- Total number of disqualifying convictions;
- Time elapsed since last disqualifying conviction or since discharge of sentence;
- Circumstances of crime including whether violence was involved;
- Activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;
- Whether conviction was expunged by the court or whether an unconditional pardon was granted;
- False or misleading statements about any conviction in the signed declaration;
- Evidence that caregiver poses no risk of harm to the health and safety of care recipients; and
- Age of caregiver at time of disqualifying conviction.

The committee may issue a clearance determination to a caregiver if the request for reconsideration and accompanying documentation clearly demonstrates it has sufficiently satisfied one of the following three grounds for a reconsideration clearance determination.

• **Inaccuracy:** The nationwide criminal history record inaccurately reflects a disqualifying conviction. This ground for a reconsideration employment clearance determination applies:

○ In instances of factual error in the nationwide criminal history record, from any source;

○ In instances of error arising from the departments. application or use of the inappropriate criminal statute or standard to the disqualifying conviction at issue; and

○ In instances where the department, pursuant to the caregiver.s required consent, applies a rebuttable presumption of a disqualifying conviction to an arrest for a felony that lacks a final disposition in the nationwide criminal history record.

• **No Risk of Harm:** The employment or contractual services provided by an caregiver or with a disqualifying conviction presents no risk of harm to a care recipient. The reconsideration employment clearance determination issued by the reconsideration committee under this ground may be limited, in certain cases, based upon the evidence in the request for reconsideration and the accompanying documentation. The reconsideration determination of whether the applicant, caregiver or hospital caregiver presents no risk of harm to a care recipient is based upon the risk arising from the disqualifying conviction.

• **No Bearing on Fitness:** The disqualifying conviction does not directly bear upon the caregiver.s fitness for employment with the care provider.

[7.1.9.10 NMAC - Rp 7 NMAC 1.10, 08/15/02; 7.1.9.10 NMAC - N, 01/01/06]

VI. CUMULATIVE DATA STATISTICS

Table 3 provides an overview of the criminal history screenings conducted by CCHSP on those care provider types included in the MMA. These screenings are only a fraction of the overall criminal history screenings conducted by CCHSP. CCHSP is charged with screening caregivers who are employed in long-term care, as well as community programs and the general acute care settings. Over the same grant period CCHSP process 36,364 criminal history screening applications that were not from the MMA required care provider types.

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Table 3

Cumulative PACT Project Statistics

Total Criminal History Screenings 13,145

Total Disqualifications 269

Disqualified by only the Nationwide Screening 103

Disqualified by only the Statewide Screening Results 20

Disqualified by combined Nationwide and Statewide Results 146

Percent Disqualified 2%

A key element of the CCHSP process is the Administrative Reconsideration process.

This the caregivers opportunity to appeal to the Department the initial fitness determination made by CCHSP. During the grant period 87 caregivers requested and submitted a complete reconsideration packet. PACT Project staff noticed a considerable increase in the quality of the reconsideration applications following the implementation of the PACT Project Orientations. 47% of the approved Administrative Reconsideration request occurred in the last 10 months of the grant period.

Table 4

Cumulative Administrative Reconsideration Results

(Applicants or caregivers who had potentially disqualifying results in their criminal history)

Total Administrative Reconsideration Requests 87

Administrative Reconsideration Requests Approved 57

Administrative Reconsideration Requests Not Approved 30

Percent Approved 65.5%

Approved between 1/1/07 . 9/30/07 27

VII. PACT PROJECT EXPENSES

Since the Department of Health has been operating a stable CCHSP for 8+ years the focus of the PACT Project was to enhance an already operating program. This philosophy drove how the Department prioritized the use of resources. Employee salaries along with the fringe benefits comprised 78% of the overall grant spending. This was necessary because during the grant proposal period the Department recognized that with the labor intensive CCHSP process additional employees would be necessary to ensure successful grant implementation.

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Table 5

PACT Project Expenses

Personnel 59%

Fringe Benefits 19%

Travel 11%

Equipment 6%

Supplies 1%

Other 4%

VIII. PROGRAM IMPLEMENTATION ISSUES

• DATA ELEMENT REPORT

PACT Project Staff faced challenges associated with the CMS Data Element Report for the entire Background Check Pilot period. Originally when the guidelines were published by the CNA Corporation regarding the data elements requirement PACT Project Staff identified that the CCHSP database captured all but three of the data elements. The fields needed were the applicant.s date of hire, fingerprint date, and position type. PACT Staff requested technical assistance

• CCHSP STAFF SHORTAGE

The inclusion of general acute care hospitals which increased the total number of criminal history applications submitted to CCHSP coupled with severe logistical issues and staff shortages have caused an increase in the CCHSP processing timeline. During the Background Check Pilot period, CCHSP operated with a deficit of 2-4 staff members. The on-site supervisor was removed for disciplinary reasons, and a data entry clerk was excused for a medical condition, the financial specialist retired, the new financial specialist left for another agency, and another clerk retired. Key staff members who possessed tremendous amounts of program knowledge were no longer contributing causing the backlog to continue to grow. The staff members were not grant project staff members. They were funded by CCHSP funds and in place prior to the grant project. CCHSP was able to fill the open positions internally but that created a deficit of employees in other areas of CCHSP. The open Program Coordinator position was filled by the CCHSP Legal Assistant and the Financial Specialist with an internal legal clerk. CCHSP filled the Legal Assistant position and the remaining clerks but the staff shortage was a significant obstacle to overcome.

- **INTERIM DISTRIBUTION IMAGING SYSTEM (IDIS) INOPERABILITY DUE TO THE CCHSP OFFICE MOVE**

During the latter part of August and the month of September 2006, CCHSP moved office locations. Although CCHSP/PACT Staff planned for the move months in advance, and entered all necessary work orders, delays continued to impede services to the new office location. Subsequently, CCSHP waited an additional two weeks for telephones and network connections, Page 23 of 35

thus limiting our ability to access servers centrally located in another New Mexico Department of Health facility, limiting application processing. Additionally, CCSHP Staff coordinated with New Mexico Department of Public Safety personnel for the move of the two IDIS machines. While DPS moved and installed the machines timely fashion at the new location, the IDIS settings had not been recalibrated correctly by Department of Public Safety IT personnel which caused the system to fail. Consequently, it took DPS IT staff 31 days to troubleshoot and correct the problem and have the IDIS operational. Having the IDIS system caused down for that period of time caused a nearly three thousand application backlog. CCHSP endured the effects of this down period for the remainder of the grant period.

- **INCREASE IN APPLICATION PROCESSING TIMELINE**

CCHSP saw a 30 percent increase in criminal history screening applications submitted in state fiscal year (SFY) 2007 from SFY 2006 and a nearly 20% increase in SFY 2006 from SFY 2005. In the first half of the grant period, a criminal history screening application cleared by both the FBI and DPS the average was 17 days from receipt of the application until the file was closed and the fitness determination was sent to the care provider. Due to the increase in volume of application submissions, logistical issues, and staff shortage the timeline for those criminal history screenings increased to over 31 days.

Table 6

Total Criminal History Screenings Submitted

(Long-Term Care and General-Acute Care Combined)

State Fiscal Year 2005 19,060

State Fiscal Year 2006 22,758

State Fiscal Year 2007 33,592

- **THE 12-MONTH EXCEPTION**

The New Mexico Legislature allowed for an exception for those .caregivers. or .hospital caregivers. who had received a full nationwide and statewide criminal history screening in the

previous 12 months to undergo a statewide only criminal history screening when applying with a new care provider. To comply with the requirements set fourth in the MMA, New Mexico Department of Health agreed to conduct the nationwide criminal history screening on those applicable .caregivers. who were employed with the care providers matching the types specified

in the MMA. CMS also agreed to allow New Mexico to reduce the scope of their pilot program to only the mandatory long-term care providers referenced in the MMA, and permitted the Department to use grant funds to cover the cost of the caregiver.s nationwide criminal history check.

New Mexico faced several challenges in complying with this requirement. The first was that the CCHSP system had unreliable and incomplete data in the care provider type field. This made narrowing the required criminal history screenings extremely difficult. This situation was

complicated by a regulatory requirement that CCHSP destroy all fingerprint cards once the file
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has been processed and closed. In June 2006 PACT Project staff and CMS agreed that beginning July 1, 2006, CCHSP would retain the fingerprint card so that the additional nationwide criminal history screening requirement could be met and grant funds would be used to pay for the additional nationwide criminal history screenings. Due to the already destroyed fingerprint cards New Mexico was unable to conduct the nationwide criminal history screenings on those .caregivers. who were received from April 1, 2006 . June 30, 2006.

PACT Project Staff updated the CCHSP system through a collaborative effort between CCHSP, the Administrative Services Bureau and the Health Facility and Licensing Bureau. Once this was complete, New Mexico queried the appropriate criminal history application by care provider type and separated for processing. CCSHP IDIS staff members conducted the criminal history screenings on the separated criminal history screening applications and the PACT Project staff entered the data/results into the CCHSP system. New Mexico continued to submit this information in data elements report through the grant period.

• IMPROVING THE EFFECTIVENESS OF THE CCHSP LEGAL OFFICE
PROFILE AND DEFINING THE SPECIFIC JOB DUTIES OF THE CCHSP
LEGAL OFFICE STAFF

The CCHSP Legal Office is in the unique position of being both a first tier administrative review of applicants. with disqualifying convictions and the final administrative appellate review

by the New Mexico Department of Health, Division of Health Improvement.s Reconsideration Committee.¹⁷ The responsibilities of the Legal Office pertaining to an applicant caregiver application packet may only begin when there is a .hit. by either Department of Public Safety or

Federal Bureau of Investigation on an applicant.s criminal background check. However, the CCHSP (Program) and Legal Office had thus far operated as one unit. Although individual job duties did exist the Program had not sufficiently delineated the distinct role and responsibilities concerning those between the legal staff¹⁸ and Program staff.

An essential element of creating and subsequently fostering a professionally administered legal office was establishing stringent protocol between the Program staff and that of the Legal Office. The specific responsibilities assigned to Program personnel could not allow the Legal Office to supplement other position responsibilities such as processing initial caregiver applications with no disqualifying convictions or in the alternative Program staff initiating legal correspondences or ex-parte discussions or communications with a potential caregiver or care provider pertaining to a potential employment disqualification.

¹⁷ Pursuant to 7.1.9.10 NMAC (2006) each applicant who receives an initial .notice of employment disqualification.

may request an administrative appeal through the CCHSP Legal Office. The reconsideration Committee then acts as an independent informal non-adversarial administrative review of written documentation submitted by the applicant. Depending upon the recommendation of the Reconsideration Committee an applicant may or may not be issued an employment clearance letter based upon the all supporting documents submitted. See 7.1.9.10D NMAC (2006).

¹⁸ The CCHSP Legal Office employs one paralegal and one clerk specialist whose responsibilities include in part, case file management pertaining to all applicants whose criminal history reports a disqualifying conviction of an enumerated felony. The Legal Office staff interacts directly with all applicants or by representation of counsel during the reconsideration appeals process, for the purposes of preparing and presenting before the Reconsideration Committee.

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Subsequently the PACT agenda was both a broad examination of the general functions of

the CCHSP Legal Office and specific programmatic goals for the future direction of operations following the conclusion of the grant. The following bullets highlight the PACT programmatic and administrative regulatory changes following the adoption of the amended 2006 CCHSP rule.

- All correspondences containing any legally operative documents are now processed directly by the Legal Office. Consequently, all legal correspondences are immediately forward to the Legal Office and not delayed by alternative channels.
- All existing CCHSP legally operative form letters were reformatted with corrected statutory and regulatory legal citations.
- Eliminated an unnecessary and onerous programmatic procedure of requesting additional court documents when no court disposition was listed on the criminal history screening report.
- Revised the reconsideration appeal process instruction letter with an emphasis on applicant comprehension.
- Established a weekly joint PACT and CCHSP Legal Office case file review prior to each Reconsideration Committee meeting.
- A continuing interpretative regulatory and statutory on-the-job training was introduced to the CCHSP Legal Office by the PACT paralegal. The training addressed statutory versus case law interpretation; what charge(s) constitutes a felony, interpreting dismissals and other pleas pertaining to a reported disqualifying conviction in accordance with Subsection J at 7.1.9.7 NMAC 2006.¹⁹

- **INCORPORATING LEXISNEXIS INTO CCHSP LEGAL SECTION OPERATIONS AND THE PACT PROJECT CROSSWALK**

An integral part of the CCHSP Legal Office's review of applicant disqualifying convictions required the staff to pursue creative though time consuming avenues for conducting interstate criminal statutory research. Through an internal review of the Legal Office's viable options PACT reintroduced an underutilized commercial web based research engine LexisNexis®. As a leading commercial provider of one of the most comprehensive legal research web based engines, with access to searchable documents from more than 32,000 legal,²⁰

¹⁹ See *Caregivers Criminal History Screening Requirements* at Subsection J at 7.1.9.7 delineates the distinctions of a **disqualifying conviction** by a plea, judgment or verdict of guilty, a plea of nolo contendere, an *Alford* plea or any plea or judgment entered in connection with a suspended sentence, in this state or from any other state or jurisdiction to a felony crime listed in 7.1.9.11 NMAC (2006).

²⁰ Among the legal publishing brands within LexisNexis are Butterworths, JurisClasseur, Malayan Law Journal, Abeledo-Perrot and Orac.

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sources, LexisNexis has been an indispensable tool for allowing the Legal Office to research the law more efficiently while accessing a multi-state database.²¹

Ultimately LexisNexis has provided a more effective solution to the daily work demands of filing and comparing interstate statutory conviction citations. The following bullets highlight the PACT programmatic and administrative regulatory improvements following the implementation of the LexisNexis search engine program.

- Case law, statutes and administrative materials which most importantly provided a complete collection of federal and state statutes with "Official Publisher" status in seventeen jurisdictions.
- Public records options that provide the Legal Office staff with a streamline factual

discovery of public records which includes criminal history records and inmate indexes; court filings; jury verdicts, and settlement.

- Focus on a specific area of law or jurisdiction with resources features, which allow expanding the original search by use of similar citation patterns or passages of text that match an on-point case of interest.

Follow research issues on a monthly, weekly or daily basis; get regular Shepard's updates on citing authorities that could potentially affect the validity of your cases; and get regular updates on court filings and other court records activity from LexisNexis CourtLink.

- STAFF TRAINING IN REGULATORY INTERPRETATION OF THE ENUMERATED DISQUALIFYING CONVICTIONS PURSUANT TO THE *CAREGIVERS CRIMINAL HISTORY SCREENING ACT*.

A narrow interpretation of the enumerated felony convictions under the *Caregivers Criminal History Screening Act* and subsequent implementing rule, had limited the disqualifying convictions to those plainly stated by the crime. Subsequently a similar pattern of association was then applied to corresponding felony convictions of other states. An integral part of the PACT paralegal.s agenda extended to providing training to the Legal Office staff regarding

regulatory interpretation of the enumerated felony convictions under the *Caregivers Criminal History Screening Act*.

The New Mexico State Legislature arguably intended an expansive regulatory and programmatic interpretation of the *Caregivers Criminal History Background Screening Act*. This²¹ All fifty states maintain an independent legislative and administrative numerical system of statutory codification and rule filing similar to that discussed in footnotes 12 and 25. However, the elements of culpable criminal conduct remain in any jurisdiction an issue requiring the commission of both an act (actus rea) and mental state (mens rea). In relation to researching specific crimes, for instances those enumerated under the *Caregiver Criminal History Act*, the proposition of state jurisdictional boundaries posing an inconsistency in delineating the elements of criminal conduct are a non-factor. The specific or general intent of the conduct taken is the measure criminal culpability and the elements of the crime will remain the same. For this reason, the addition of LexisNexis as the primary research tool has provided immediate access to cross-reference varying statutory chapters containing what are essentially common elements.

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is evidenced by the legislature.s insertion of pertinent legal clauses with in the sentence structure

to provide an expansive programmatic interpretation, rather than a strict regulatory reading delineating a rigid list of disqualifying convictions. For example, subparagraph (4) exclusively addresses sexual offenses by specifically stating .rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses.. However, the latter sentence clause states .or (emphasis added) other related sexual offenses.. With the addition of one conjunction the semantics of the list of disqualifying convictions is extended to encompass any one of the felony offenses listed under Chapter 30, Article 9 of the *New Mexico Criminal Code*. This example is further illustrated at subparagraph (5) and (6) of §29-17-5D of the Act which expands *crimes involving* (emphasis added) adult abuse, neglect or financial exploitation and *crimes involving* (emphasis added) child abuse or neglect.²²

As a result of the training the Legal Office.s ability to independently research the letter of the law, as a mechanism for interpretation, ensures the expansive statutory objective of the CCHSP regulatory scheme in both an interstate and intra-state.

IX. INFORMATION TECHNOLOGY ENHANCEMENTS

The Consolidated Online Registry initiative is focused on providing a one-stop repository

for care providers to quickly ascertain employment suitability for new caregivers. The existing Division of Health Improvement Caregivers Criminal History Screening Program (CCHSP) is a client-server application (Visual Basic 6 and MS SQL Server) and is maintained by New Mexico Department of Health personnel. The central focus of this project was to make segments of the CCHSP data available and to augment that data with other related information sources including: Nurse Aide Registry (NAR), New Mexico Employee Abuse Registry (EAR) and New Mexico Sex Offender database. The Consolidated Online Registry data is made available to authorized New Mexico users via the Internet. Other data sources may be added in the future.

Unlike the current approach that depends on manual contact with CCHSP personnel to determine suitability of New Mexico caregivers, the Consolidated Online Registry provides a one-stop, self-service alternative for New Mexico care providers to determine if preexisting issues exist for a potential caregiver. While the registry does not provide details of any abuse, neglect or exploitation, it will identify that such details may exist and give the employer the contact information of the entity providing such details. The key benefit is to enforce the zero tolerance policies and provide quality services to the New Mexico citizenry. Within New Mexico there is no single source of this vital information. This registry addresses this issue. CCHSP is formally charged with ensuring quality healthcare services within the New Mexico. The CCHSP program has been used internally since 1999. At its inception the program handled approximately 4,000 applications from caregivers. Applications stabilized at nearly 20,000 per year commencing in 2001, but planned facility and program expansions coupled with resource constraints and background check requirements necessitate the evolution of the CCHSP

²²Notably each of the CMS Pilot Program states have similar language. For example, Nevada.s annotated statutory

authority under NRS 449.188 list .sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure *or any other* (emphasis added) sexually related crime..

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application into a one stop shop location for care providers offering a .self service. style approach. Care providers using the Consolidated Online Registry are able to view a broader source of information and use it in determining caregiver suitability and it lowers the burden on CCHSP staff in summarizing and presenting information to directly to care providers.

The PACT Project Staff requested and received IT technical assistance through the CMS Background Check Pilot for the Consolidated Online Registry. Once the reporting requirements were published, PACT Project Staff evaluated the requirements and determined that three key data fields were not captured in the CCHSP database and two others needed modification.

PACT Project Staff again went to CMS to request technical assistance to more integrate and properly configure the CCHSP application to both capture the data required and produce an accurate data report for submission. This request was denied by CMS. This denial put CCHSP in very difficult position. It was unable to capture the data in a efficient fashion and was growing increasing behind due to increased application submissions and Interim Distribution Imaging System failures yet still wanted to properly comply with the data element guidelines. CMS proposed that CCHSP manually input the data into a separate database and have IT staff merge the data prior to submission. PACT Project Staff reluctantly agreed only to maintain good standing within the CMS Background Check Pilot.

The agreement made by PACT Project Staff ultimately had a negative impact on CCHSP operations because it required that the limited staff resources had to be pulled off of processing criminal history applications and transferred to inputting supplemental data into an additional database. This compounded the growing backlog of criminal history screenings needed to be

processed by CCHSP. PACT Project Staff sought support from New Mexico Department of Health Information Technology Support Staff for the data element report issues but the support was inconsistent and lacked follow through. Ultimately, the data submissions were incomplete and lacked the accuracy required. This continued for three straight quarters and endangered New Mexico's status within the CMS Background Check Pilot.

CMS did authorize a Business Process Reengineering by the developers of the COR system working in conjunction with PACT Project Staff. The Business Process Reengineering evaluated the current .as is. CCHSP process and developed a .to be. process taking into consideration statutory requirements, IT limitations, and CMS/MMA constraints. The .as is. design clearly showed what PACT Project had already discovered, a series of inefficient procedures adding unneeded time to an already stretched timeline. The .to be. design was based on a .push. and .gate. design utilized to control and monitor employee efforts and it streamlined

processing to eliminate unnecessary steps.

Following the three quarters in which the New Mexico Department of Health experienced the chronic issues with the data elements report CMS offered a very limited technical assistance project to assist CCHSP with capturing the missing data. The technical assistance offered was limited by CMS staff to only adding three data fields while including a canned report that met CMS specifications. This improvement was delivered in late July 2007. The install was completed one week after the quarterly data element report was due to CMS. PACT Project Staff requested an extension to be able to use the new modified application to produce the data elements report. This request was denied by CMS and the New Mexico Department of Health

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was forced to compile and submit an incomplete report for the 4th straight quarter. When the upgrade was finally complete, PACT Project Staff were able to submit the final data elements report using the new functionality.

X. ACTIONS TO SUSTAIN

CCHSP is funded through income associated with the cost of a criminal history screening applications. The program will continue operations in accordance with pre-Background Check Pilot operations. The New Mexico Department of Health has made the commitment to subsidize the CCHSP budget to support a modified training schedule to ensure future operations. Additionally, an Information Technology Support Division staff position has been identified to support the COR system and provide future enhancements.

XI. CONCLUSIONS

• IMPROVED CRIMINAL HISTORY SCREENING APPLICATION QUALITY

A **significant outcome** of the project was the substantial improvement in compliance by care provider agencies and the reduction of demonstrated stress on the processing end by CCHSP through the efforts to train, communicate and inform the care provider agencies. The quality of submissions has greatly improved through the Background Check Pilot period and application issues continue to decrease. This has reduced the resources needed in the quality assurance check step and eventually the improvements should allow for the redirection of staff from redundant processing to training and compliance monitoring.

This model proved enhanced application quality that resources are better used to train, assist and inform on the front end of the process than in working and reworking problems at the back end of the system. The PACT Project successfully demonstrated that proactive and ongoing training support will improve the quality of application submissions, improve provider compliance and enable a reduction of clerical staff at CCHSP reducing overall operating costs.

- **INADEQUATE INFORMATION TECHNOLOGY INFRASTRUCTURE**

The PACT Project identified a major concern of IT infrastructure. A national criminal history screening program must be funded to the degree that each state has the necessary infrastructure to provide the service in a timely fashion. New Mexico could not move to an electronic process of submitting fingerprint cards because the New Mexico Department of Public Safety did not have the adequate infrastructure to electronically match the prints until the final months of this pilot. CCHSP had to utilize an antiquated system and care providers were forced to wait weeks for results. This created a situation in which the New Mexico Department of Health was requiring care providers to submit criminal history screening applications within suspense period but was unable to produce results in a similar fashion.

A secondary result was that caregivers discovered a **loophole in the enforcement** of the CCHSP requirements due to the infrastructure deficiency. A subset of caregivers found that they could jump from one agency to another agency either just before or after their Final

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Disqualification letter reached the agency. Multiple examples of this occurred during the pilot period and further emphasized the needed for the faster turn around time in processing the criminal history screening applications.

- **PROVIDE MULTI-LINGUAL SERVICES**

In New Mexico, the PACT Project Staff found that the caregiver workforce includes a high percentage of immigrant workers. All services and documents should be produced in multiple languages to better serve the caregivers who are subject to a national criminal history requirement. It is important in all areas of the program but especially important in any appeals process. The PACT Project discovered that a high number of Final disqualifications were determined because the caregiver did not respond correctly. Additional investigation determined that a high percentage were because the caregiver did not comprehend the administrative reconsideration instructions. It is unclear how many would have been cleared had they understood the instructions but not having multi-lingual support has further decreased an already strained and limited workforce.

- **UNIFORMITY OF FEDERAL LEGISLATION VERSUS STATE SOVEREIGNTY AND STATUTORY CONSISTENCY**

Federal implementation of a national criminal history screening program²³ would require a consensus among the states not a mandatory buy-in system that promotes one level of agency tracking²⁴ which may not be conducive to that of fifty individual states. As a matter of Constitutional Law the concept of each state's right²⁵ to accept or refuse the imposition of federal legislation is an inherent power²⁶, granted under the 10th Amendment of the U.S Constitution. For example, the participating states would be required to prescribe a federal threshold of culpable conduct²⁷ to which each states. legislature has predetermined what criminal

²³ At the time of this report Senate Bill 1577 *.Patient Safety and Abuse Prevention Act of 2007.* was introduced which was read twice and referred to the Committee on Finance. June 7, 2007, 110 Congress 1st Session. In pertinent part the proposed Bill purports to amend titles XVIII and XIX of the Social Security Act to require screening, including national criminal history background checks, of direct patient access employees of skilled nursing facilities, nursing facilities, and other long-term care facilities and providers, and to provide for nationwide expansion of the pilot program for national and State background checks on direct patient access employees of longterm care facilities or providers.

²⁴ See Section 3(b)(1) Senate Bill 1577 *.Patient Safety and Abuse Prevention Act of 2007* identifies the creation of a coordinated, nationwide system of state criminal background checks.

²⁵ States rights refers to the 10th Amendment, U.S. Constitution interpreted as .rights not conferred on the federal government or forbidden to the States. Black.s Law Dictionary at 1409.

²⁶ Also referenced as the legal doctrine of a state.s inherent police power, the term references the capacity of a state

to regulate behaviors and enforce order within its territory, often commonly framed in terms of public welfare, security, morality, and safety. Police power is legally considered an inherent power, limited only by prohibitions specified in the constitution of a state, making it the most expansive authorized power exercised by a state.

²⁷ The commission of a crime requires both an act and mental state. In criminal law in order to have criminal conduct a perpetrator requires the element of both mens rea and actus rea. The actus rea representing the physical aspect of a crime, whereas the mens rea involves the mental intent factor. Thus the mens rea, actus rea and the specific or general intent of the conduct taken is the measure criminal culpability. In criminal law, the intent to accomplish the precise act, which the law prohibits, is considered .specific intent.. In criminal law, the intent to do

that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result, which eventuated.

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conduct operates as a bar to employment. Such an imposition would be contrary to an essential element of the police power doctrine of law.²⁸

Moreover, states have historically codified culpable criminal conduct by statute enacted by the each legislature or by the adoption of the National Conference of the American Law Institute.s Model Penal Codes.²⁹ However, more frequently then not, the state adopting the American Law Institute.s Model Penal Codes will subsequently modify it to some extent to meet

its own needs or in the alternative may adopt only a portion of such.³⁰ As a matter of administrative efficiency and public policy each of the participating states of a federal criminal history screening program would subsequently maintain an individually separate title and chapter assignment for each disqualifying conviction³¹ independent of the federal and sister states. As such, the implementation of a federal program would depend largely upon actual consistency among the state legislatures and most importantly agency programmatic interpretation.

Ultimately the success of federal legislation will not be the threat of competing interstate legislative objectives or varying state statutory criminal titles and chapters, but whether or not the federal statute defining the disqualifying criminal convictions can sufficiently delineate the federal objective with the implementation and interpretation soundly with in the purview of each state regulatory agency.

• EXPANDING THE NEW MEXICO DEPARTMENT OF HEALTH.S REGULATORY OVERSIGHT THROUGH THE CAREGIVERS CRIMINAL HISTORY SCREENING ACT AND RULE

Following the regulatory amendments to 7.1.9 NMAC 2006 one objective of the PACT Project was to incorporate CCHSP into a greater administrative oversight scheme with in New Mexico Department of Health.s regulatory program. By rule promulgation an interrelated network

of regulatory requirements were implemented utilizing the existing CCHSP Act and rule.³²

o The *Lynn and Erin Compassionate Use Act* §§29-17-1 *et seq.*, (NMSA 2007)

²⁸ As discussed in footnote 44 as essential element of a state.s inherent police power, regulate behaviors and enforce

order within its territory, would intruded upon by the adoption of a federally proscribed imposition of disqualifying criminal convictions, thus once again, the state.s police power is legally considered an inherent power, limited only

by prohibitions specified in the constitution of a state, making it the most expansive authorized power exercised by a state.

²⁹ The National Conference of the American Law Institute is comprised of legal scholars, who are responsible for the Restatements in the various disciplines of the law and who, jointly with the National Conference of Commissioners on Uniform State Laws, prepare some of the Uniform State Laws.

³⁰ See Black's Law Dictionary at 1003

³¹ All fifty states maintain an independent legislative and administrative numerical system of statutory codification and rule filing.

³² In conjunction with the amendment to the *Caregiver Criminal History Screening Act*, §§29-17-1 *et seq.*, (NMSA 1978) and implementing rule, 7.1.9 NMAC (2006), the New Mexico Department of Health also promulgated an additional supplemental administrative rule requirements for pre-employment screening pursuant to the *Employee Abuse Registry Act*, §§ 27-7A-1 *et. seq.*, (NMSA 2005); implementing rule *Employee Abuse Registry*, 7.1.12 NMAC

(2006). The rule is applicable to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that all applicable health care providers check with the Department's employee abuse registry and prohibits employing an individual on the registry.

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At the close of the 2007 State of New Mexico Legislative session Governor Richardson signed into law the *Lynn and Erin Compassionate Use Act*.³³ The *Lynn and Erin Compassionate Use Act*, which contains multiple regulatory requirements, calls for in relevant part for the New Mexico Department of Health, Division of Public Health to establish a regulated system of medical use cannabis by: issuing identification cards for participating qualified patients,³⁴ and designated caregivers;³⁵ and developing a distribution system by state licensure of medical use cannabis producers and production facilities and the designation of a medical use marijuana advisory board.³⁶

Pursuant to the Act, the New Mexico Department Health staff preformed a collaborative effort³⁷ to promulgate³⁸ the *Medical Use of Marijuana Registry Identification Cards* 7.34.3 NMAC, which in part govern the safe use and possession of medical marijuana for individuals living with debilitating medical conditions, and the safe possession and administration of medical marijuana to those individuals by designated caregivers.³⁹

Most notably contained within the provisions of the rule is at Subsection 8, Paragraph (1) entitled *Designated caregiver application requirements and prohibitions* the rule requires all designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check in accordance with all rules and procedures of the department's caregivers criminal history screening program. In addition to the rules and procedures of the *Criminal History Screening Act*, §§ 29-17-2 *et. seq.*, NMSA (1978), the requirements at 7.34.3 NMAC also state .if an applicant has been convicted of a felony violation

of the Controlled Substance Act, §§ 30-31-1 *et seq.*, NMSA (1978), which has occurred less than

three (3) years from the date of the applicant's completion of all obligations associated with the conviction, the applicant is prohibited from being a designated caregiver..⁴⁰ If the applicant has been convicted of more than one (1) felony violation of the Controlled Substance Act, §§ 30-31-

³³ See *Lynn and Erin Compassionate Use Act*, Senate Bill 523, codified at §§ 26-2B-1 *et. seq.*, (NMSA 2007), pending final approval by the NM Department of Health Secretary of implementing administrative rule 7.34.3 NMAC (2007), see appendix XXX. With the enactment and subsequent rule promulgation and public hearing New Mexico became only the twelfth state to pursue an administrative regulated field for the production, possession, distribution or dispensing of medical use of marijuana for qualified patients, designated caregivers and licensed producers.

³⁴ "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of

this rule.. See *Medical Use of Marijuana Registry Identification Cards* at 7.34.3.7BB NMAC.

³⁵ "Designated caregiver" means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the patient's practitioner or qualified patient as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of marijuana pursuant to the provisions of the act.. See *Medical Use of Marijuana Registry Identification Cards* at 7.34.3.7K NMAC.

³⁶ See *Lynn and Erin Compassionate Use Act*, §§ 26-2B-1 et. seq., (NMSA 2007)

³⁷ Due to the extensive intradepartmental regulatory oversight mandated under of the *Lynn and Erin Compassionate Use Act* the PACT paralegal worked in a collaborative venture that included PACT, CCHSP, Administrative Services Bureau, and Harm Reduction Bureau during the initial drafting process of the proposed rule.

³⁸ The Department of Health has held public hearing and comment on the promulgation of *Medical Use of Marijuana Registry Identification Cards* 7.34.3 NMAC and *Advisory Board Duties & Requirements*, 7.34.2 NMAC, on October 1, 2007. See appendix 5.

³⁹ See *Medical Use of Marijuana Registry Identification Cards*, at 7.34.3.6 NMAC.

⁴⁰ See *Medical Use of Marijuana Registry Identification Cards* at 7.34.3.8.D(1) NMAC

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1 et seq., NMSA (1978), the applicant and qualified patient will be notified by registered mail that the applicant is permanently prohibited from being a designated caregiver and cannot be issued a medical use marijuana registry identification card.

o *Incident Reporting, Intake, Processing and Training Requirements* 7.1.13 NMAC 2006

The incorporation of regulatory oversight continued through the promulgation of the *Incident Management Reporting Requirements* 7.1.12 NMAC 2006. This rule established standards for licensed health care facilities and community based service providers to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect and misappropriation of property.⁴¹ As an integral element of the PACT Training component of the pilot program the promulgation of the *Incident Management Reporting Requirements* enable the CCHSP to further broaden regulatory ties with the health care provider community and the New Mexico department of Health, Division of Health Improvement, Incident Management Bureau.

o *Licensing Requirements for Alcohol and Drug Treatment Facilities* 7.32.9 NMAC

The current promulgation of the *Licensing Requirements for Alcohol and Drug Treatment Facilities* 7.32.9 NMAC represents a new rule applicable to an expanded number of substance abuse treatment providers of detoxification services.⁴² For example, it will apply to those treatment facilities providing long and short term social detoxification services, medically monitored detoxification services, medically managed detoxification services and other intensive treatment services. Most importantly, this new rule will be pertinent to all employees hired under the applicable .caregiver. definition of 7.1.9.7D(1) NMAC.

o Incorporation of the CCHSP Regulatory Requirements into the Department of Health, Developmental Disabilities Support Division, *Interpretative Standards for Developmental Disabilities Waiver Programs*

The incorporation of the CCHSP regulatory requirements into the Department of Health, Developmental Disabilities Support Division.s Interpretative Standards⁴³ for Developmental Disabilities Waiver Programs applied to all services providers through the Medicaid Home and Community Based Services Waiver programs for individuals with developmental disabilities. The Developmental Disabilities Support Division of the Department of Health has established these standards to guide service delivery and promote the health and safety of individuals served by DD Medicaid Waiver Provider Agencies. These standards became effective March 1, 2007, and address each service covered by the Developmental Disabilities Waiver as renewed in 2006, as well as personnel requirements for people employed by or subcontracting with agencies providing services. All provider agencies that enter into a contractual relationship with DOH to

provide Developmental Disabilities Waiver Services must comply with each applicable requirement under the *Caregivers Criminal History Screening Requirements* at 7.1.9.11A-H NMAC (2006).

⁴¹ See *Incident Reporting, Intake, Processing and Training Requirements* at 7.1.13.6 NMAC.

⁴² See appendix 6, *Licensing Requirements for Alcohol and Drug Treatment Facilities* 7.32.9 NMAC. This rule is currently pending public hearing and publication.

⁴³ These standards interpret, and further enforce the Human Services Department, Medical Assistance Division standards and regulations governing the Developmental Disabilities Waiver, (MAD-736, effective 7/1/02).

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- **FUTURE REGULATORY REFORM**

The following bulleted regulatory provisions have been identified as persistent programmatic issues encountered by PACT Project staff.⁴⁴

- **Subsection C, and A, Paragraph (2) at 7.1.9.9 NMAC.** Currently both PACT and CCHSP staff have identified two areas for clarifications that involve an applicant caregiver.s disqualification for non-compliance with the reconsideration procedures under Subsection A(2) as oppose to a notice of final disqualification under Subsection C following an administrative decision by the Reconsideration Committee. The present language of the rule does not specify to a legal certainty whether a disqualification for noncompliance bars an applicant caregiver from subsequently reapplying with the same care provider after termination.

- **Incorporation of the *Criminal Offenders Employment Act* §§ 28-2-1 to 28-2-6, (NMSA 1978).** The current rule permits the Reconsideration Committee to take into account the requirements of the *Criminal Offenders Employment Act*.

Unfortunately, the Act is not dispositive in the reconsideration Committee.s decision or applicable with in the current regulatory and programmatic confinements of 7.1.9. NMAC. Presently the CCHSP Legal Office issues a notice of disqualification to all applicants whose criminal history screening reports a charge under any one of the enumerated disqualifying convictions. This process does not consider the statutory objective of the *Criminal Offenders Employment Act*⁴⁵ or the effect of subjugating an applicant through the administrative reconsideration procedures for a single instance occurring in some cases as long as twenty year ago.

- **Subsection B at 7.1.9.9 Exemption to Employment Pending Reconsideration**

Determination: At the discretion of the care provider, an applicant caregiver or hospital caregiver who has requested an administrative reconsideration may continue conditional supervised employment pending a determination on reconsideration. The initial intention of the amendatory language of the rule at subsection B was to provide the continuance of employment during the reconsideration process while also maintaining the continuity of the health care services to the care recipient. Unfortunately the exemption has promoted a practice of laying-off the applicant caregiver during the reconsideration process although that individual is entirely responsible for providing services to a dependent family member. The resulting consequent is that the applicant caregiver continues providing services to the family member while the health care

⁴⁴ Although the inclusion of additional disqualifying convictions has been discussed the issue is a matter beyond that which is attainable by departmental regulatory amendments. The three examples proposed represent semantics concerning substantive text and does not attempt to circumvent the New Mexico State Legislature.

⁴⁵ See *Criminal Offenders Employment Act* at §28-2-2 (NMSA 2006) Purpose of act .The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible..

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provider maintains a regulatory sanctioned windfall of maintaining both contractual relationships with the caregiver and recipient.

XII. APPENDIX

- *Caregivers Criminal History Screening Requirements* at 7.1.9 NMAC (2006)
- *Caregivers Criminal History Screening Act*, at §29-17-2 et seq., (NMSA 1978)

WISCONSIN ABUSE PREVENTION TRAINING PROGRAM FINAL REPORT

The Wisconsin Caregiver Project: Prevent ~ Protect ~ Promote

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Wisconsin Department of Health and Family Services

CMS Project ID Number 11-P-93043/5

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The statements contained in this report are solely those of the authors and do not necessarily reflect the views or policies of the Centers for Medicare and Medicaid Services. The awardee assumes the responsibility for the accuracy and completeness of the information contained in this report.

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1. INTRODUCTION

Wisconsin was one of three states to receive additional funding to develop and provide innovative abuse and neglect prevention training for Wisconsin's direct caregivers. The project was administered by the Wisconsin Department of Health and Family Services (DHFS) through a partnership with the University of Wisconsin-Oshkosh Center for Career Development (CCDET). More than 33 hours of training materials were created and more than 2,100 caregivers attended DHFS-sponsored training. In addition, approximately 1000 additional participants received in-house training in their own facilities. The training materials can be divided into segments as short as 45 minutes and as long as 4 hours, giving long-term care providers maximum flexibility to tailor the training to their individual needs.

In response to provider requests, the project also developed and produced a DVD to meet the needs of smaller facilities with few staff or trainers. Wisconsin also hosted a series of train-the-trainer sessions, during which representatives from healthcare providers learned how to facilitate the training developed through this pilot. At the end of the pilot, 207 provider representatives were trained. They, in turn, plan to train almost 60,000 caregivers across the state.

In response to an overwhelmingly positive response from providers regarding the effectiveness of this training, Wisconsin is using state funds to continue the abuse prevention training effort after the pilot ended in September 2007. Wisconsin will continue to host train-the-trainer events across the state to get the training materials out to as many providers, and ultimately to their direct caregivers, as possible.

2. BRIEF SYNOPSIS

The following is a brief summary of the training curricula, including the goals accomplished.

Part I – Abuse and Neglect Prevention Experiential Training

Target Audience: Direct Caregivers; also appropriate for Managers and Supervisors

Overview: During this interactive, four-hour training participants interact with each other through eight reality-based scenarios. The experiential training gives participants a unique opportunity to walk in the shoes of other caregivers, managers, residents/consumers, and family members. Scenarios take place in both facility-based and home-based settings and address the following topics: emotional abuse, mental abuse, physical abuse, sexual abuse, verbal abuse, neglect and misappropriation

Training Goals:

- Knowing how to identify the red flags of abuse and neglect
- Understanding and utilizing appropriate responses when abuse or neglect is suspected or observed, including reporting protocols
- Understanding the strategies and techniques to protect residents and prevent abuse
- Promising practices to promote resident and staff safety, dignity, respect and health

Training Length:

90 minutes to conduct 1 scenario; 4 hours for a full training in which participants interact in 2 scenarios

Part II – Behavior Training and Intervention Workshops

Comprised of a series of four topical workshops that target a variety of participants. Strategies for behavior and interventions in specific real-life situations are explored. Training and intervention examples were drawn from the state survey's misconduct report records. Each workshop is outlined below:

Supporting the Professional Caregiver

Target Audience: Managers and supervisors

Overview: This interactive training gives managers and supervisors the skills they need to support their direct caregivers.

Training Goals:

- Encouraging cooperation and teamwork among staff members
- Providing effective feedback
- How to support caregivers through challenging situations

Training Length: 4 hours for a full training, can be split into smaller segments

Responding to Challenging Situations

Target Audience: Direct caregivers, also appropriate for managers and supervisors interested in learning techniques and approaches to teach direct caregivers

Overview: This class helps direct caregivers in long-term care facilities understand and develop skills to deal with the challenging situations surrounding dementia. This class also discusses effective ways to deal with clients whose abilities and needs change over time.

Training Goals:

- Understanding the symptoms and stages of dementia and other causes of challenging behavior of elderly clients
- Exploring approaches to challenging situations such as wandering, elopement, aggressive/challenging behavior, nutrition, intimacy, etc.
- Enhancing the quality of life for persons in your care

Training Length: 4 hours for a full training, can be split into smaller segments

Keys to Professional Caregiving

Target Audience: Direct caregivers

Overview: This interactive training focuses on improving communication skills for direct caregivers that will result in improved care for clients and better relationships between co-workers and supervisors.

Training Goals:

- Understanding how style affects communication
- Using your communication style effectively
- Maintaining professional boundaries

Training Length: 4 hours for a full training; can be split into three 90-minute sessions

Conducting Internal Investigations of Caregiver Misconduct

Target Audience: Managers and supervisors

Overview: This class will help managers and supervisors identify the key components of conducting internal investigations into allegations of abuse, neglect and misappropriation.

Training Goals:

- Understanding how to conduct a thorough investigation
- Identifying essential interviewing skills
- Recognizing caregiver misconduct definitions and reporting requirements

Training Length: 4 hours for a full training; can be split into smaller components

Part III – Abuse and Neglect Prevention DVD

This training adapts six of the eight Experiential Training scenarios into video-based training. Participants watch a brief introduction and the first 3 scenes of the scenario. They are then prompted to pause the DVD to answer a series of questions about the situation such as: What could the direct caregiver have done to avoid this situation? What were the red flags that misconduct was about to occur? How can caregivers support each other in situations like this? Next, participants watch the fourth and final scene in which the caregivers portrayed behave appropriately to ensure the safety of the client.

Lessons learned from the development of the various training modules are incorporated into the video project. The training can be used by an individual or a group and is accompanied by a training manual. Each scenario should take between 30-40 minutes.

Part IV – Train the Trainer Events

Due to the popularity of the training and the finite nature of the pilot, it was determined that the best way to offer the training to the largest population was to develop a series of train-the-trainer sessions for both the experiential and topical training materials. In November 2006, CMS approved Wisconsin's request to offer the new curricula outside the four original pilot counties. Two-day experiential train-the-trainer sessions were developed and offered to facility trainers, administrators, social workers, and other staff responsible for making training decisions beginning in the 2nd quarter of 2007. Full day train-the-trainer sessions for the topical materials were offered in the 3rd quarter of 2007.

3. KEY ELEMENTS OF ABUSE PREVENTION TRAINING

The key elements of Wisconsin's Abuse Prevention Training Program are identified below.

Part I – Abuse and Neglect Prevention Experiential Training

The Abuse and Neglect Prevention curriculum was developed using an experiential-learning model.

- Experiential learning focuses on the "affective domain" of learning: challenging the participant's attitudes, interests, feelings, values, appreciation and commitment toward a

topic, specifically elder abuse and neglect. After the participant experiences the virtual health care setting, s/he is challenged to reflect upon his/her own attitudes, interests, feelings, and values.

- Experiential learning is a preferred method for achieving these goals because it: “1) is practical rather than abstract; 2) involves the whole person (mind, body, emotions), 3) appeals to a variety of learning styles, 4) has individualized outcomes and 5) is congruent with the principles of adult learning.”¹

Part II – Behavior Training and Intervention Workshops

“Behavior Training and Intervention” curricula include hands-on activities, mixed media presentations, high-quality written materials, as well as large and small group discussions.

Part III – Abuse and Neglect Prevention DVD

“DVD Abuse and Neglect Prevention Training” engages participants through a group discussion or self-reflection. The discussion questions were based on input from caregivers participating in the face-to-face Experiential Abuse and Neglect Prevention training.

Part IV – Train the Trainer Events

Both the experiential and topical train-the-trainer curricula offer a handbook specific to the experiential and topical training styles. The experiential curricula offers trainees the opportunities to both participate in a scenario as well as practice facilitating a scenario. The topical curricula offer an overview of each of the four topical trainings along with training tips and guidelines.

4. SCOPE OF TRAINING PROGRAM

Four counties in Wisconsin were chosen to originally pilot the training: Dane, Kenosha, LaCrosse and Shawano. CMS later authorized Wisconsin to expand train-the-trainer sessions to reach more caregivers.

Every health care entity covered by the pilot in the four affected counties was included in the abuse prevention training:

- nursing homes,
- long term care hospitals,
- intermediate care facilities for persons with mental retardation (ICFs/MR),
- home health agencies,
- community based residential facilities (CBRFs) with 8 or more beds,
- personal care workers in home health agencies, and
- hospices

Training was offered to caregivers including facility administrators, staffing agencies, social workers, human resource staff, professional nursing staff, nurse aides, personal care workers, housekeepers, feeding assistants, contracted caregivers, maintenance staff and other staff who have direct access to residents and clients.

Continuing Education Credits were approved and provided for professional/licensed positions

¹Wentz, Rose Marie and Nora Gerber, Experiential Learning Process Handout, 2003.

by the UW-LaCrosse. In addition, certificates of attendance were provided to credentialed and non-credentialed staff so that facilities might use this training to help fulfill required annual staff in-service training.

Frequency of Training

Part I was offered in two sessions: one in early 2006 and one in early 2007. The experiential training was offered at least twice in each of the four pilot counties in 2006 and at least once in each of the four pilot counties in 2007.

Part II consists of 4 training/workshop topics. Each topic was provided at least once in each of the four pilot counties beginning in May 2006 and running through May of 2007.

Part III The DVD was distributed at a statewide conference in August 2007 and is currently offered through the DHFS website.

Part IV was offered in 2007 and held in Waukesha, Racine, Dane, Eau Claire, Marathon, Winnebago, Shawano, LaCrosse, Rock and Door Counties per the Substantial Change Approval from CMS.

Delivery Methodology

Part I was conducted face-to-face, on site (whenever possible), utilizing props to create a virtual health care environment. Adequate training staff was provided to ensure a safe learning environment. The experiential learning lasts four hours. Providers may also run just one scenario in 90 minutes.

- Participant handouts supplement the training. Handouts may be printed separately, and include a list of resources and a bibliography of sources cited during the training.
- Training materials may be downloaded from the DHFS website at www.dhfs.state.wi.us/caregiver/training/trgIndex.HTM.

Part II was conducted face-to-face in a classroom-type setting on site (whenever possible). It included lecture by a trainer, discussion, and activities through which participants apply the learning. Each topical workshop was a four-hour session.

- Participant guides and handouts supplement the training. Participant guides include all key points covered in the training as well as space for participant notes. Handouts may be printed separately and include a list of resources and a bibliography of sources cited during the training.
- At the end of the pilot, Part II training components were made available to other facilities statewide, by posting materials to the DHFS website.

Part III was made available in August 2007 for postage and handling costs only. The DVD includes a facilitator's guide with instructions on how to engage staff in a discussion about the scenario. We estimate that it should take between 30-40 minutes to complete one scenario.

The DVD continues to be offered on the DHFS website at <http://dhfs.wisconsin.gov/caregiver/Training/dvdtrg.htm>.

Part IV was conducted face-to-face in a combination of classroom- and breakout session-

settings. Each session included a training manual, facilitator guide and instruction for downloading all materials from the DHFS website.

The experiential training was provided at least twice in each of the four pilot counties. Each of the topical trainings was provided at least once in each of the four pilot counties.

- Several of the counties are rural and providing training in their area was a benefit to staff that most often have to travel to a metropolitan area for such training.
- By providing the experiential training at least twice in each of the counties, entities were able to limit the impact on staffing levels by splitting their staff across two training sessions.
- Whenever possible, the pilot provided trainings at an interested facility to that facility's staff.
- Several of the trainings can be split into smaller segments, making it more versatile.

The DVD training allows facilities with smaller staff to participate in the training effort. All of the training materials are available free of charge on the DHFS website.

Training Oversight

The full learning management system, Pathlore, tracked workshop participation. This includes notification of workshop availability, registration of participants, tracking completion, developing reports, and maintaining personalized transcripts.

Training Feedback

Feedback from training was used during the pilot to improve subsequent training presentations.

- The Training Advisory Committee met several times during the course of the pilot providing a forum to discuss lessons learned.
- The Project Coordinator and the Training Coordinator remained in close contact with the Office of Caregiver Quality throughout the pilot providing feedback and insights learned through the training process.
- The DHFS Division of Quality Assurance training staff was also involved in the discussions about lessons learned so that they could incorporate the information from the pilot into ongoing training and technical assistance.
- DHFS made all training materials available to any interested party following the pilot. These final training materials incorporated the feedback received during the pilot period.

5. MANAGEMENT

UW-Oshkosh CCDET managed the training plan, working closely with the DHFS staff to ensure that all curricula were developed in accordance with the DHFS abuse and neglect prevention plan. "Check-in" meetings were held regularly.

The CCDET project manager demonstrated the ability to 1) successfully manage multi-part projects; 2) work collaboratively with partner entities; 3) have knowledge of the long-term care system; and 4) clearly understand the federal and state regulations concerning caregiver background checks and abuse prevention.

6. PARTNERSHIP AND COLLABORATION

The Abuse Prevention Training Planning Committee provided input on the training plan for the abuse prevention aspect of the pilot including the Experiential Training and the Topical Training. 20-35 members met 3 times in 2005. Smaller workgroups met throughout the project on specific training topics. The committee ensured that training strategies were appropriate and addressed current issues.

The committee consisted of project leaders from the UW-Oshkosh, CCDET and DHFS; a representative from the Wisconsin Board on Aging and Long Term Care (Ombudsman); a representative of the state Elder Abuse prevention agency; invited members of facility and professional associations, law enforcement, specialists in adult education and experiential training; at least one representative from each facility type included in the pilot project; and at least one long-term care recipient or family member.

7. EVALUATION

Increased Staff Awareness

Staff at all levels have a heightened awareness of actual and potential abuse as shown through:

Attachment 1: Results from Post-Experiential Training Evaluation (4 months post; response rate of 17%):

Respondents agreed or strongly agreed that, as a result of the training,

- 76% are more alert to the signs of abuse and neglect at the workplace
- 77% are able to better protect clients
- 79% are able to respond better to challenging situations with clients or co-workers
- 87% are more likely to help out a co-worker who appears overwhelmed
- 84% are more likely to respond and report to a supervisor if the caregiver witnesses an incident that makes the caregiver uncomfortable
- 76% have used the materials received at the training
- 86% have recommended the training to a co-worker

Attachment 2: Responding to Challenging Situations On-Site Post Training Evaluation

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|---|-----|
| 1. Tips for enhancing the quality of life of those in your care? | 4.3 |
| 2. The causes and symptoms of dementia? | 4.3 |
| 3. Responding to the challenging behavior of residents with dementia? | 4.4 |

In a follow-up survey conducted approximately four months after each training, 92% of respondents were agreed that they were better able to see challenging behavior as a sign of unmet need instead of bad behavior; 80% agreed that they had identified a possible cause of the challenging behavior of one or more clients and 74% had used a new approach with a client in a challenging situation.

Reduced Abuse and Neglect Incidents by Employees

Training surveys indicate the likelihood of reduced incidents of abuse, neglect and misappropriation of property:

Attachment 3: Results From Experiential On-Site Evaluations

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|---|-----|
| 1. How to protect residents and patients and prevent abuse and neglect? | 4.3 |
| 2. How to recognize the signs and red flags of abuse and neglect? | 4.4 |
| 3. How, when and why an incident should be reported? | 4 |
| 4. How to respond better in serious situations? | 4.2 |

In addition, participants agreed or strongly agreed with the following:

- 90% will use the training handouts/materials
- 92% liked the style of training
- 92% would recommend the training to co-workers

Attachment 4: Results from Conducting Internal Investigations of Caregiver Misconduct On-Site Evaluations

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|---|-----|
| 1. How to develop an investigation protocol | 4.1 |
| 2. Conducting an internal investigation | 4.1 |
| 3. Interviewing skills | 4 |
| 4. Resources for reporting requirements | 3.9 |

In a follow-up survey conducted approximately four months post-training, 82% had used the training materials, 82% had used the tips for completing interviews and 69% had recommended the training to co-workers.

Improved Organizational Culture

Measurable outcomes that evaluate better communication between administration and staff, improved employee morale, lower staff turnover and improved quality of life and care for residents/patients.

Organizational culture was improved as shown:

Attachment 5: Results from Post-Training Evaluation of Managers (5-9 months post; response rate of 23%):

- 100% of respondents said staff discussed training after event, and 93% of respondents said staff comments were either positive or very positive
- 75% of respondents described staff behavioral changes as positive
- 100% of respondents said staff members seem to be motivated to prevent abuse and neglect as a result of the training

- 100% of respondents said they would send more staff to future abuse and neglect prevention training events

Attachment 6: Results from Keys to Professional Caregiving On-Site Training Evaluations

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|--|-----|
| 1. How to identify your communication style and the communication style of others? | 4.3 |
| 2. How style affects communication? | 4.6 |
| 3. How to use your communication style more effectively? | 4.3 |
| 4. How to maintain professional boundaries? | 4 |

In a follow-up survey conducted approximately four months post-training, 78% had improved communication with co-workers, supervisors and residents, 85% of caregivers were more aware of professional boundaries, and 81% had recommended the training to a co-worker.

Attachment 7: Results from Supporting the Professional Caregiver On-Site Training Evaluations

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|--|-----|
| 1. How to understand and encourage cooperation and teamwork among staff members? | 4.3 |
| 2. How to identify your communication style and the style of others? | 4.4 |
| 3. How to provide effective feedback? | 4.3 |
| 4. How to coach and support caregivers through challenging situations? | 4.3 |

In a follow-up survey conducted approximately four months post-training, 70% were better able to encourage teamwork and cooperation among staff members, 79% had provided more effective feedback to staff, co-workers and/or managers, and 86% had recommended the training to a co-worker.

Number and Types of Deficiencies Cites

Due to Wisconsin’s experience that training often results in increased reporting of abuse and neglect, it was determined that a more accurate strategy to ensure the training’s success was to include a train-the-trainer component to reach more caregivers (Part IV) and produce a DVD (Part III) that gives every facility in Wisconsin the ability to provide training beyond the parameters of the pilot. At the pilot’s end, more than 1200 DVDs have been distributed, and facilities continue to request the DVD through the DHFS website.

As of 9/30/2007, participants in all train-the-trainer sessions estimated that they would reach approximately 60,000 direct caregivers, supervisors and managers in Wisconsin and other states (some Wisconsin facilities also own facilities outside Wisconsin). In addition, DHFS has provided \$200,000 of state funds to continue the train-the-trainer sessions through June 30, 2008 in order to reach even more caregivers, supervisors and managers throughout Wisconsin.

8. MANAGEMENT

Staffing Requirements

Part I – 2 Training Coordinators, 8 ad hoc trainers, also hired term-limited, project-based technical experts to help with various aspects of the curriculum

Part II – 1 Training Coordinator, 1 curriculum developer, and 3 ad hoc trainers

Part III – 1 Project Manager and a subcontract with University of Wisconsin-Madison's Department of Information Technology to produce the DVD

Part IV – 1 Training Coordinator and various ad hoc trainers depending on the needs of Part I and Part 2 training

Staff Responsibilities

All of the staff listed below were employed by UW-Oshkosh CCDET.

Project Coordinator provided oversight to the Training Coordinators and the general development and facilitation of training. The Project Coordinator established and facilitated the advisory committee with the assistance of the Training Coordinators. The Project Coordinator and the Training Coordinators established the evaluation process and analyzed the results. The Project Coordinator coordinated with DHFS staff and entity staff to ensure that lessons learned through the trainings were incorporated into agency policies and processes.

Training Coordinators were responsible for managing training program development, implementation and evaluation for abuse prevention training. The Training Coordinators also designed, developed, wrote and delivered training. Training Coordinators worked closely with technical limited-term curriculum writers as well as a team of ad hoc trainers during the implementation phase. The Training Coordinators managed team communication and worked in a team setting to develop curriculum.

Technical curriculum writers were hired on an as needed basis to help write portions of the training curriculum.

Ad Hoc Trainers worked under the Training Coordinators. After attending the train-the-trainer session in January 2006, these trainers were on hand to serve as additional trainers for Part I experiential training, Part II topical training, and Part IV train-the-trainer sessions.

Organization Chart

See Attachment 8.

9. TRAINING PROGRAM COSTS AND USE OF FUNDS

See Attachment 9.

10. ACTIONS TO SUSTAIN

Distribution of Training Materials

Part I & II: All training materials including facilitator guides, life binders, participant guides, posters, handouts, and video clips are posted on the DHFS website. Anecdotal evidence indicates wide access by Wisconsin providers and has also been utilized by other states.

Part III: The DVD continues to be offered through the DHFS website for shipping costs only. Over 1200 copies had been distributed at the end of the pilot. Most were Wisconsin providers, but as word spread, several other states made requests as well.

Train-the Trainer Sessions

Part IV: Due to the popularity of the training and the finite nature of the pilot, Wisconsin began to offer train-the-trainer opportunities for providers beginning in Spring 2007. At the end of the pilot, 337 agency representatives had attended these sessions and estimated that they would train over 60,000 direct caregivers in the future.

Attachment 10: Results for Experiential Train the Trainer On-Site Evaluations

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

- | | |
|--|-----|
| 1. The experiential training model? | 4.6 |
| 2. How to facilitate a scenario? | 4.6 |
| 3. Adapting the training to your facility's needs? | 4.4 |
| 4. Obtaining the training materials online? | 4.7 |

On a scale of 1-5, with 1 being “learned nothing” to 5 being “learned very much,” respondents reported the following as an immediate result of the training:

Attachment 11: Results for Topical Train the Trainer On-Site Evaluations

- | | |
|--|-----|
| 1. The topical training model? | 4.3 |
| 2. How to facilitate the four topical trainings? | 4.3 |
| 3. Adapting the training to your facility's needs? | 4.2 |
| 4. Obtaining the training materials online? | 4.4 |

Wisconsin Provides Funds to Extend the Project

Due to the continued provider interest and high demand, Wisconsin’s DHFS identified additional funds to provide train-the-trainer sessions between October 1, 2007 and June 30, 2008. Five DHFS-funded trainings were conducted in October and November 2007, with eight or nine trainings scheduled for Spring 2008.

11. CONCLUSION

Wisconsin's experience with the Abuse and Neglect Prevention pilot project has demonstrated a critical need for direct caregivers, especially those who are non-credentialed, to receive training that offers the behavioral and interpersonal skills to respond positively in potentially abusive situations.

While all caregivers receive some level of clinical training to provide for the physical needs of residents and clients, many do not have the life experience or training to offer the emotional and social support necessary to establish a positive relationship with those in their care. Providing those skills is likely to reduce many incidents of abuse and neglect, which often result from lack of training and support.

Wisconsin's efforts to provide meaningful training to direct caregivers and their supervisors and managers received an extremely positive response. The response was so great, and the need for training resources so clear, that the Department identified additional funding to continue training for trainers through 2008. Our experience so far has been that trainings fill up quickly and potential participants rate the training highly.

As a result of the project, Wisconsin learned some valuable lessons and developed promising practices:

Direct caregivers need training.

- 74% of surveyed providers said their staff could use additional training on abuse and neglect prevention
- Most trainings are targeted to supervisors and not direct care staff
- Personal care worker agencies were our most frequent customers

Providers want short, flexible training that they can deliver themselves

- Coverage and cost issues limit providers willingness to send staff to outside training
- Although we targeted direct caregivers, managers often attended in their place
- 77% of non participants said they wanted to provide the training themselves
- 62% asked us to make another video

Providers are interested and able to facilitate the experiential training

- All train-the-trainer sessions were filled quickly and most had waitlists
- Trainees have been very excited to implement training; several already have done a training
- Trainees are not put off by the amount of materials involved in Experiential Training

Experiential training is very labor intensive to develop

- Training requires lots of materials all related to each other
- Keeping track of everything is a challenge
- Developing the DVD gives smaller facilities the means to provide the training

Partnerships are important

- A large advisory committee ensure that the training was relevant and realistic
- Curriculum writers had experience with caregiver misconduct and were able to base training on actual incidents of misconduct in Wisconsin
- Marketing the training is critical; we partnered with our LTC Workforce Alliance to market training

Making training positive is essential

- Training is not focused on forms or processes but on the role the direct caregiver plays
- Allows the caregiver to be the expert by inviting and facilitating input
- Training should be “serious fun.” Serious topics need some lighthearted moments to ensure learning
- Training materials must appeal to a wide variety of learning styles and assist participants with learning disabilities
- Handed out bumper stickers: “Proud to be a Wisconsin Caregiver”
- Boosted confidence of direct caregivers by honoring their difficult and important job

12. ATTACHMENTS

Attachment Number	Attachment Title
1.	4-month Post-Experiential Training Evaluation
2.	Responding to Challenging Situations On-Site Training Evaluation Follow-Up Survey for Responding to Challenging Situations
3.	Experiential On-site Training Evaluations
4.	Conducting Internal Investigations of Caregiver Misconduct On-Site Evaluations Follow-Up Survey for Conducting Internal Investigations of Caregiver Misconduct
5.	Post-Training Evaluation of Managers
6.	Keys to Professional Caregiving On-Site Training Evaluations Follow-Up Survey for Keys to Professional Caregiving
7.	Supporting the Professional Caregiver On-Site Training Evaluations Follow-Up Survey for Supporting the Professional Caregiver
8.	Organization Chart
9.	Caregiver Abuse Prevention FY 05-FY 08 Revenues and Expenditures
10.	Experiential Train the Trainer On-Site Evaluations
11.	Topical Train the Trainer On-Site Evaluations

Follow-up survey for Abuse/Neglect Prevention Training

<http://www.quia.com/sv/91215.html>

Number of respondents

176

1 Choose the Provider Type(s) that best describes your organization:

	Count	Count Percentage	Respondent Percentage
CBRF (>8 beds)	64	35.96%	36.36%
LTC (Swing Bed) Hospital	0	0.00%	0.00%
FDD (ICF/MR)	15	8.43%	8.52%
Medicaid-Funded PCW Agency	22	12.36%	12.50%
Home Health	25	14.04%	14.20%
Nursing Home	46	25.84%	26.14%
Hospice	6	3.37%	3.41%

2 Choose the category that best describes your position (choose only one):

	Count	Percentage
Administrator (HR, Manager, CEO, etc.)	50	28.74%
Licensed Professional Staff (MD, RN, LPN, etc.)	37	21.26%
Other Facility Staff (maintenance, cleaning staff, etc.)	4	2.30%
Certified Nurse Aide	24	13.79%
Other Direct Care staff (CBRF staff, Personal Care Worker, etc.)	26	14.94%
Non-Medical Professional Staff (Social Worker, etc.)	33	18.97%

3 What county do you work in?

	Count	Percentage
Dane	65	47.10%
Kenosha	17	12.32%
La Crosse	41	29.71%
Shawano	15	10.87%

4 As a result of this training program... I am more alert to the signs of abuse and neglect at my workplace.

Rating	Meaning	Count	Percentage
[1]		3	1.71%
[2]		3	1.71%
[3]		32	18.29%
[4]		69	39.43%
[5]		68	38.86%

Average Rating

4.12

5 I am able to better protect clients.

Rating	Meaning	Count	Percentage
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[1]	2	1.14%
[2]	2	1.14%
[3]	27	15.43%
[4]	76	43.43%
[5]	68	38.86%

Average Rating
4.18

6 I am able to respond better to challenging situations with clients or co-workers.

Rating	Meaning	Count	Percentage
[1]		1	0.57%
[2]		3	1.71%
[3]		26	14.86%
[4]		82	46.86%
[5]		63	36.00%

Average Rating
4.16

7 I am more likely to help out a co-worker who appears overwhelmed.

Rating	Meaning	Count	Percentage
[1]		3	1.74%
[2]		2	1.16%
[3]		19	11.05%
[4]		61	35.47%
[5]		87	50.58%

Average Rating
4.32

8 If I witness an incident that makes me uncomfortable, I am more likely to respond and report to my supervisor.

Rating	Meaning	Count	Percentage
[1]		2	1.17%
[2]		5	2.92%
[3]		18	10.53%
[4]		44	25.73%
[5]		102	59.65%

Average Rating
4.4

9 I have used the materials I received at the training.

	Count	Percentage
Yes	117	68.42%
No	54	31.58%

**RESPONDING TO CHALLENGING SITUATIONS
ON-SITE EVALUATIONS**

Total Participants: 360

Total Responses: 340

Average Score
1=worst;
5=best

Did you learn more about:

- 1. Tips for enhancing the quality of life of those in your care? 4.3
- 2. The causes and symptoms of dementia? 4.3
- 3. Responding to the challenging behavior of residents with dementia? 4.4

Feedback:

- 1. Will you use the materials we gave you? 4.5
- 2. Did you like this style of training? 4.4
- 3. Would you recommend this training to co-workers? 4.5

Overall Average Evaluation: 4.4

Comments--Liked Best:

Got resources and references
 Very useful, helpful case scenarios
 Challenging situations were great!
 Group discussions
 Life situations with residents
 Specific approaches for behavior concerns
 Intelligent, informative, no nonsense but friendly approach to subject.
 Please...more!
 Focusing more on the positives than the negatives
 Really made me think
 Very informative, different viewpoints
 I learned a lot about dementia

Follow-up Survey for Responding to Challenging Situations Training

<http://www.quia.com/sv/112855.html>

Number of respondents
38

1 Choose the Provider Type(s) that best describes your organization:

	Count	Count Percentage	Respondent Percentage
CBRF (>8 beds)	9	21.95%	23.68%
LTC (Swing Bed) Hospital	0	0.00%	0.00%
FDD (ICF/MR)	2	4.88%	5.26%
Medicaid-Funded PCW Agency	3	7.32%	7.89%
Home Health	7	17.07%	18.42%
Nursing Home	6	14.63%	15.79%
Hospice	0	0.00%	0.00%
Other	14	34.15%	36.84%

2 Choose the category that best describes your position (choose only one):

	Count	Percentage
Administrator (HR, Manager, CEO, etc.)	16	42.11%
Licensed Professional Staff (MD, RN, LPN, etc.)	2	5.26%
Other Facility Staff (maintenance, cleaning staff, etc.)	0	0.00%
Certified Nurse Aide	2	5.26%
Other Direct Care staff (CBRF staff, Personal Care Worker, etc.)	6	15.79%
Non-Medical Professional Staff (Social Worker, etc.)	7	18.42%
Other	5	13.16%

3 In what county do you work?

	Count	Percentage
Dane	3	7.89%
Kenosha	4	10.53%
La Crosse	1	2.63%
Shawano	2	5.26%
Other	28	73.68%

As a result of this training program... I have used the 'poker chip' theory by supporting, cheering on, or paying a compliment to a client in order to help the person feel joy, accomplishment and self-satisfaction.

4

Rating	Meaning	Count	Percentage
[1]		4	10.53%
[2]		2	5.26%
[3]		7	18.42%
[4]		13	34.21%
[5]		12	31.58%

Average Rating

3.71

5 I have a better understanding of the changes in the brain that are caused by dementia.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		3	7.89%
[4]		18	47.37%
[5]		17	44.74%
Average Rating		4.37	
6 I am better able to see a challenging situation as a sign of my client's unmet need instead of bad behavior.			
Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		3	7.89%
[4]		16	42.11%
[5]		19	50.00%
Average Rating		4.42	
7 I have identified a possible cause of the challenging behavior of one or more of my clients.			
Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		8	21.05%
[4]		17	44.74%
[5]		13	34.21%
Average Rating		4.13	
8 I have used a new approach with a client in a challenging situation, e.g. wandering, bathing, dressing, dining, etc.			
Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		2	5.26%
[3]		8	21.05%
[4]		17	44.74%
[5]		11	28.95%
Average Rating		3.97	
9 I am less stressed when my client(s) demonstrates challenging behavior.			
Rating	Meaning	Count	Percentage

[1]	1	2.63%
[2]	0	0.00%
[3]	11	28.95%
[4]	14	36.84%
[5]	12	31.58%

Average Rating 3.95

10 I have used the materials I received at the training. For example, the challenging situations chart, the pictures of brain changes, the fact sheet on dementia, etc.

	Count	Percentage
Yes	27	71.05%
No	11	28.95%

11 I have recommended this training to co-workers.

	Count	Percentage
Yes	27	71.05%
No	11	28.95%

12 Do you have any additional comments about the training?

	Count	Percentage
#1) support for clients in independent apartment living situations. #3) Dodge county #11) I would recommend, but haven't yet, would like to do this as a company exclusive training.	1	8.33%
Great Training!	1	8.33%
Hi, I feel that I have better knowledge of what happens to the brain. I like the posters and the pictures of the brain. I think that they are good teaching materials. I appreciate the ability to be able to attend the workshop and the fact that they exist. Thank You! Sherri Jones.	1	8.33%
I enjoyed it, came back to your facility and shared with co-workers.	1	8.33%
I enjoyed this training and have tried to apply those things learned.	1	8.33%
I have used some of the materials for training.	1	8.33%
I may not have benefited as much as a person with less formal education. The information was basic and I use much of the same information in trainings that I provide.	1	8.33%
I really enjoyed the role playing and the hands on training. I have talked about this training in a positive way because I learned so much.	1	8.33%
I really learned alot and it has helped me in my job.	1	8.33%
None.	1	8.33%
These trainings are excellent and I hope they continue to have them.	1	8.33%

EXPERIENTIAL TRAINING ON-SITE EVALUATIONS

Total Participants: 691

Total Responses: 688

Average Score
1=worst;
5=best

Did you learn more about:

- | | |
|---|-----|
| 1. How to protect residents and patients and prevent abuse and neglect? | 4.3 |
| 2. How to recognize the signs and red flags of abuse and neglect? | 4.4 |
| 3. How, when and why an incident should be reported? | 4 |
| 4. How to respond better in serious situations? | 4.2 |

Feedback:

- | | |
|---|-----|
| 1. Will you use the materials we gave you? | 4.5 |
| 2. Did you like this style of training? | 4.6 |
| 3. Would you recommend this training to co-workers? | 4.6 |

Overall Average: 4.4

Comments--Liked Best:

- Hearing different perspectives from other facilities
- Interaction and group discussion
- Role playing
- Showing that caregivers are not alone
- Walking in other people's shoes
- Giving us different characters in true situations
- Handouts

CONDUCTING INTERNAL INVESTIGATIONS OF CAREGIVER MISCONDUCT ON-SITE EVALUATIONS

Total Participants: 328

Total Responses: 322

Average Score
1=worst;
5=best

Did you learn more about:

- | | |
|---|-----|
| 1. How to develop an investigation protocol | 4.1 |
| 2. Conducting an internal investigation | 4.1 |
| 3. Interviewing skills | 4 |
| 4. Resources for reporting requirements | 3.9 |

Feedback:

- | | |
|---|-----|
| 1. Will you use the materials we gave you? | 4.5 |
| 2. Did you like this style of training? | 4.6 |
| 3. Would you recommend this training to co-workers? | 4.2 |

Overall Average Evaluation: 4.2

Comments--Liked Best:

- Interviewing video and handouts
- Well organized. Gave a step-by-step-process. Very useful.
- Breaking into groups and hearing examples from others
- Interaction from the audience
- Clear steps that can be easily placed into practice
- Group activity. "Hands on" learning
- Open discussion
- Definitions of the laws, principles of investigations and interviews
- Involvement of trainees
- Examples; case studies

Follow-up survey for Conducting Internal Investigations of Caregiver Misconduct Training

<http://www.quia.com/sv/112856.html>

Total Number of Surveys Sent

Number of respondents

42

Choose the Provider Type(s) that best describes your organization:

1

	Count	Count Percentage
CBRF (>8 beds)	9	20.45%
LTC (Swing Bed) Hospital	0	0.00%
FDD (ICF/MR)	1	2.27%
Medicaid-Funded PCW Agency	1	2.27%
Home Health	4	9.09%
Nursing Home	9	20.45%
Hospice	1	2.27%
Other	19	43.18%

Choose the category that best describes your position (choose only one):

2

	Count	Percentage
Administrator (HR, Manager, CEO, etc.)	20	47.62%
Licensed Professional Staff (MD, RN, LPN, etc.)	3	7.14%
Other Facility Staff (maintenance, cleaning staff, etc.)	0	0.00%
Certified Nurse Aide	1	2.38%
Other Direct Care staff (CBRF staff, Personal Care Worker, etc.)	1	2.38%
Non-Medical Professional Staff (Social Worker, etc.)	12	28.57%
Other	5	11.90%

3 In what county do you work?

	Count	Percentage
Dane	7	16.67%
Kenosha	2	4.76%
La Crosse	4	9.52%
Shawano	1	2.38%
Other	28	66.67%

As a result of this training program... I have assessed the abuse prevention strategies in my facility and either suggested/implemented additional strategies or verified that my facility's strategies are already comprehensive.

4

Rating	Meaning	Count
[1]		2
[2]		2
[3]		6
[4]		25
[5]		7

Average Rating

3.79

- 5 I have improved or suggested improvements to my facility's investigation protocol or verified that my facility's investigation protocol is well organized and complete.

Rating	Meaning	Count
[1]		3
[2]		2
[3]		10
[4]		20
[5]		7

Average Rating

3.62

- 6 I have used or will use the information I learned about conducting investigations or caregiver misconduct.

Rating	Meaning	Count
[1]		2
[2]		2
[3]		2
[4]		19
[5]		17

Average Rating

4.12

- 7 I have used or will use the tips for conducting interviews.

Rating	Meaning	Count
[1]		1
[2]		2
[3]		4
[4]		20
[5]		15

Average Rating

4.1

- 8 I believe my facility is well-equipped to immediately protect clients upon hearing of an allegation of abuse, neglect or misappropriation.

Rating	Meaning	Count
[1]		2
[2]		1
[3]		3
[4]		16
[5]		20

Average Rating

4.21

9 I have the resources necessary to find answers about the Caregiver Law including where to find necessary forms, information and requirements for my facility.

Rating	Meaning	Count
[1]		2
[2]		2
[3]		2
[4]		13
[5]		23

Average Rating

4.26

10 I have used the materials I received at the training. For example, the investigation protocol, examples of caregiver misconduct and/or interviewing tips.

	Count	Percentage
Yes	35	83.33%
No	7	16.67%

11 I have recommended this training to co-workers.

	Count	Percentage
Yes	29	69.05%
No	13	30.95%

12 Do you have any additional comments about the training?

	Count	Percentage
Great training - facilitators were great and met the needs of the group. Other trainings related to nursing home social worker such as dementia, behaviors and care planning would be great.	1	8.33%
Hi, I am very glad to see this happen and appreciate being able to attend. Thank You! Sherri Jones.	1	8.33%
I am new to the Personal Care services by our agency as I have only been employed for one year here. The training was very informative and helpful to me.	1	8.33%
I work in a clinic setting and found the information to be geared for Long Term Care facilities. Much of what I heard was not applicable to my situation but interesting and will be used in a round-about manner.	1	8.33%
It was very informative and helpful. Thank you!	1	8.33%
Presenters were well prepared and interesting.	1	8.33%

Abuse and Neglect Prevention Experiential Follow-Up Survey for Managers

<http://www.quia.com/sv/95206.html>

Number of respondents

15

1 Choose the Provider Type(s) that best describes your organization:

	Count	Count Percentage
CBRF (>8 beds)	4	22.22%
FDD (ICF/MR)	1	5.56%
Home Health	5	27.78%
Hospice	0	0.00%
LTC (Swing Bed) Hospital	0	0.00%
Nursing Home	1	5.56%
PCW Agency	7	38.89%

2 In what county do you work?

	Count	Percentage
Dane	11	73.33%
Kenosha	0	0.00%
La Crosse	3	20.00%
Shawano	1	6.67%

3 How many of your staff attended the experiential training in Spring 2006?

	Count	Percentage
1	1	6.67%
10	1	6.67%
14	1	6.67%
2	2	13.33%
3	4	26.67%
5	1	6.67%
6	2	13.33%
7	1	6.67%
8	2	13.33%

4 Have your staff members discussed the training since attending it?

	Count	Percentage
Yes	14	100.00%
No	0	0.00%

5 What have you heard about the training from your staff?

	Count	Percentage
A Program Coordinator and I (Training Manager) attended 2 different sessions. Both of us were significantly impressed with the experiential aspect of this training and how effective the hands-on/actual demo experience is in getting essential points across and in stimulating critical thinking skills.	1	6.67%
How much good information was shared.	1	6.67%
It is a helpful tool to help us better understand our residents.	1	6.67%

It was helpful and well done.	1	6.67%
Liked the break out groups.	1	6.67%
My staff felt that is was a good experience. They felt that more of the facilities in our corporation should take the training also. They liked the format and the role playing.	1	6.67%
No staff attended except me.	1	6.67%
Nothing but positive comments about the presentation and participation.	1	6.67%
People took away from training to ask additional questions and to not take things so lightly.	1	6.67%
That it was very helpful and gave staff a different perspective on the caregiver role and client's role in their care and comfort level.	1	6.67%
That it was very informative.	1	6.67%
They said it was very good and highly recommended it for others doing direct care to attend.	1	6.67%
This training was opened to management staff. No field workers attended. This information was shared with caregivers and at monthly meetings. They are very aware of abuse situations (appearances of red flags). Reporting questionable situations has increased. Handouts and literature also given to caregivers.	1	6.67%
Very informative. Very detailed topics.	1	6.67%
Very positive experience. Great format to discuss issues and opinions.	1	6.67%

6 Please rate your staff's comments about the training:

	Count	Percentage
very negative	0	0.00%
negative	0	0.00%
neutral	1	7.14%
positive	7	50.00%
very positive	6	42.86%

7 Have staff members used the information presented at the training?

	Count	Percentage
Yes	13	100.00%
No	0	0.00%

8 If yes, please describe how staff members have used the information presented at the training. (check all that apply)

	Count	Percentage
Participants made individual changes	6	20.00%
Participants shared materials with co-workers	6	20.00%
Participants described training to co-workers	8	26.67%
Participants asked for additional training/information on related topics	4	13.33%
Participants engaged co-workers in a discussion about abuse and neglect prevention	6	20.00%

9 Other

	Count	Percentage
Information was provided to field workers in staff meetings	1	25.00%

	Other than the Program Coordinator sharing her positive reflections with me, and to agree that this program would be beneficial for REM staff to have offered to them, I do not know how she may or may not have further utilized the information.	1	25.00%
	Staff were more aware of everyone's role in the care of clients and more empathetic to the clients' needs and comfort level.	1	25.00%
	We deal with abuse/neglect situations within one's job roles and responsibilities.	1	25.00%
10	What behavior changes have you seen in staff that you could attribute to their participation in the training?		
		Count	Percentage
	As listed above in number 9.	1	11.11%
	Changes in attitude and approaches.	1	11.11%
	Increased awareness.	1	11.11%
	Increased awareness of different types of potential abuse and neglect.	1	11.11%
	More patience and calmer moods.	1	11.11%
	More reporting and awareness.	1	11.11%
	N/A. I do not have direct supervision of staff. The one manager who did attend has not shared with me further impressions of her use of the material. Please note that all unanswered questions are due to their being N/A for me.	1	11.11%
	None as everyone who attended the training was a manager.	1	11.11%
	On-going awareness of potential abuse and neglect in various settings.	1	11.11%
11	How would you rate the behavior changes you have seen in staff.		
		Count	Percentage
	very negative	0	0.00%
	negative	0	0.00%
	neutral/ no change	3	25.00%
	positive	9	75.00%
	very positive	0	0.00%
12	Do your staff members seem to be motivated to prevent abuse and neglect as a result of the training?		
		Count	Percentage
	Yes	11	100.00%
	No	0	0.00%
13	Would you send more staff to future abuse and neglect prevention training events?		
		Count	Percentage
	Yes	13	100.00%
	No	0	0.00%
14	If no, please explain why you would not send more staff.		
		Count	Percentage
	Comment on #12: We have done this annually at our agency for years (inservicing) Comment on #13: Other disciplines like home health aides	1	100.00%
15	What suggestions or changes do you have to improve the training?		
		Count	Percentage

As stated before: excellent training. Wouldn't change a thing.	1	20.00%
Being able to customize the content of this training for particular populations and organizations/agencies (managers) would be most effective and useful. It's a fabulous experiential and learning opportunity.	1	20.00%
None other than offering it again.	1	20.00%
You do a nice job. My only problem is finding the time for staff to attend.	1	20.00%
You need to talk more about how to handle violent residents that hit, punch, bite, scratch, kick and what to do for elopements.	1	20.00%

KEYS TO PROFESSIONAL CAREGIVING ON-SITE EVALUATIONS

Total Participants:	258	Total Responses:	258
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Average Score
1=worst;
5=best

Did you learn more about:

1. How to identify your communication style and the communication style of others?	4.3
2. How style affects communication?	4.6
3. How to use your communication style more effectively?	4.3
4. How to maintain professional boundaries?	4

Feedback:

1. Will you use the materials we gave you?	4.7
2. Did you like this style of training?	4.7
3. Would you recommend this training to co-workers?	4.6

Overall Average Evaluation: 4.5

Comments--Liked Best:

- Looking at things in a different way
- Involvement of the class
- Was like stepping stones-one thing building on another
- Small groups and interaction
- Handouts
- How to communicate with resident or client
- Discussion and exercises
- Color styles
- Easy to understand
- A lot of information I never knew. Will help communicate with other people.

Follow-up Survey for Keys to Professional Caregiving

<http://www.quia.com/sv/112821.html>

Number of respondents
27

1 Choose the Provider Type(s) that best describes your organization:

	Count	Count Percentage	Respondent Percentage
CBRF (>8 beds)	13	48.15%	48.15%
LTC (Swing Bed) Hospital	0	0.00%	0.00%
FDD (ICF/MR)	0	0.00%	0.00%
Medicaid-Funded PCW Agency	1	3.70%	3.70%
Home Health	2	7.41%	7.41%
Nursing Home	5	18.52%	18.52%
Hospice	0	0.00%	0.00%
Other	6	22.22%	22.22%

2 Choose the category that best describes your position (choose only one):

	Count	Percentage
Administrator (HR, Manager, CEO, etc.)	6	22.22%
Licensed Professional Staff (MD, RN, LPN, etc.)	4	14.81%
Other Facility Staff (maintenance, cleaning staff, etc.)	0	0.00%
Certified Nurse Aide	5	18.52%
Other Direct Care staff (CBRF staff, Personal Care Worker, etc.)	5	18.52%
Non-Medical Professional Staff (Social Worker, etc.)	4	14.81%
Other	3	11.11%

3 In what county do you work?

	Count	Percentage
Dane	9	33.33%
Kenosha	3	11.11%
La Crosse	3	11.11%
Shawano	5	18.52%
Other	7	25.93%

4 As a result of this training program... I learned to identify my communication style: red, blue, brown or green.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		5	18.52%
[4]		9	33.33%
[5]		13	48.15%

Average Rating

4.3

- 5 I have been able to identify the communication style of others.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		6	22.22%
[4]		13	48.15%
[5]		8	29.63%

Average Rating

4.07

- 6 I have used my knowledge of communication styles to better communicate with my co-workers, supervisors and/or clients.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		6	22.22%
[4]		12	44.44%
[5]		9	33.33%

Average Rating

4.11

- 7 I am more likely to communicate assertively, rather than communicate passively or aggressively, with others.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		0	0.00%
[3]		7	25.93%
[4]		14	51.85%
[5]		6	22.22%

Average Rating

3.96

- 8 I am more aware of the professional boundaries that caregivers must observe to maintain a helpful relationship with clients.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		1	3.70%
[3]		3	11.11%
[4]		12	44.44%
[5]		11	40.74%

Average Rating

4.22

9	I have used the materials I received at the training. For example, the color cards, the communication style grid, the professional boundaries chart.	Count	Percentage
	Yes	23	85.19%
	No	4	14.81%
10	I have recommended this training to co-workers.	Count	Percentage
	Yes	22	81.48%
	No	5	18.52%
11	Do you have any additional comments about the training?	Count	Percentage
	As the Staff Development Coordinator I have used many of the tools in orientation and annual training to all staff. We have done the color analysis for the past 3 years before this training. Professional Boundaries was new and very useful, the table that defines abuse, neglect and misappropriation is clear, concise and very useful, I use all the time.	1	7.69%
	I thought the training was very informative and helpful. It was also interactive. Looking forward to additional trainings through the state of WI.	1	7.69%
	I was very appreciative of being able to participate in the training offered. It was one of the best trainings I have ever attended! the staff was very informative, friendly, and professional. the facility where the event was held was very nice-spacious, comfortable and newer. The snacks and meal were all very nice. Appreciated that everything was given at no charge to participants. Feel that all professional staff would greatly benefit from this training and do hope that it will continue and new grant monies will come available to bring this program statewide-or nationwide. Thank you for this opportunity!	1	7.69%
	Instructors were terrific. My only wish is that more classes will be held at Kemper Center. If cost is a factor, charge accordingly.	1	7.69%
	It was a very valuable experience for me. I hope it will be offered again for my co-workers. Thank you so much for investing such a great program.	1	7.69%
	It was very interesting.	1	7.69%
	Outstanding training.	1	7.69%
	The system of communication style works. I find though, I fall back out of use. I am hoping the FOCUS conference coming up touches on ideas to keep the communication style system alive once we have been trained to see it.	1	7.69%
	The teacher made it very interesting. She did a really great job.	1	7.69%

The way the class was taught was nice. The length of the training and the snacks were nice-good training experience.	1	7.69%
Very good training. I am a 'shy' individual by nature. This training has helped me become more assertive than aggressive when I become frustrated or angry. Thanks for the great training.	1	7.69%
Very well presented, environment comfortable sitting.	1	7.69%
Was very worthwhile	1	7.69%

SUPPORTING THE PROFESSIONAL CAREGIVER ON-SITE EVALUATIONS

Total Participants: 224

Total Responses: 221

Average Score
1=worst;
5=best

Did you learn more about:

- 1. How to understand and encourage cooperation and teamwork among staff members? 4.3
- 2. How to identify your communication style and the style of others? 4.4
- 3. How to provide effective feedback? 4.3
- 4. How to coach and support caregivers through challenging situations? 4.3

Feedback:

- 1. Will you use the materials we gave you? 4.4
- 2. Did you like this style of training? 4.6
- 3. Would you recommend this training to co-workers? 4.7

Overall Average Evaluation: 4.4

Comments--Liked Best:

Well organized-good back up info provided in handouts
 Good handouts--made me sit back and look at myself a bit
 Exercises and discussions
 Group activities
 Interactive-the group was responsible for problem solving

Follow-up Survey for Supporting the Professional Caregiver Training

<http://www.quia.com/sv/112850.html>

Number of respondents
23

Choose the Provider Type(s) that best describes your organization:

	Count	Count Percentage	Respondent Percentage
CBRF (>8 beds)	10	43.48%	43.48%

LTC (Swing Bed) Hospital	0	0.00%	0.00%
FDD (ICF/MR)	1	4.35%	4.35%
Medicaid-Funded PCW Agency	2	8.70%	8.70%
Home Health	1	4.35%	4.35%
Nursing Home	4	17.39%	17.39%
Hospice	0	0.00%	0.00%
Other	5	21.74%	21.74%

2 Choose the category that best describes your position (choose only one):

	Count	Percentage
Administrator (HR, Manager, CEO, etc.)	7	30.43%
Licensed Professional Staff (MD, RN, LPN, etc.)	5	21.74%
Other Facility Staff (maintenance, cleaning staff, etc.)	0	0.00%
Certified Nurse Aide	0	0.00%
Other Direct Care staff (CBRF staff, Personal Care Worker, etc.)	2	8.70%
Non-Medical Professional Staff (Social Worker, etc.)	7	30.43%
Other	2	8.70%

3 In what county do you work?

	Count	Percentage
Dane	9	39.13%
Kenosha	2	8.70%
La Crosse	6	26.09%
Shawano	3	13.04%
Other	3	13.04%

4 As a result of this training program... I learned to identify my communication style (red, blue, brown or green) and the style of others.

Rating	Meaning	Count	Percentage
[1]		1	4.35%
[2]		1	4.35%
[3]		2	8.70%
[4]		10	43.48%
[5]		9	39.13%

Average Rating

4.09

5 I have been able to better encourage teamwork and cooperation among staff members.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		2	8.70%
[3]		5	21.74%
[4]		11	47.83%
[5]		5	21.74%

Average Rating

3.83

6 I feel I have provided more effective feedback to staff, co-workers, and/or managers.

Rating	Meaning	Count	Percentage
[1]		0	0.00%
[2]		2	8.70%
[3]		3	13.04%
[4]		15	65.22%
[5]		3	13.04%

Average Rating

3.83

7 I am better able to coach and support caregivers through challenging situations.

Rating	Meaning	Count	Percentage
[1]		1	4.35%
[2]		2	8.70%
[3]		7	30.43%
[4]		8	34.78%
[5]		5	21.74%

Average Rating

3.61

8 I believe that increased positive support of caregivers helps to prevent abuse and neglect of clients.

Rating	Meaning	Count	Percentage
[1]		1	4.35%
[2]		1	4.35%
[3]		2	8.70%
[4]		7	30.43%
[5]		12	52.17%

Average Rating

4.22

9 I believe that caregivers are less likely to abuse or neglect clients when caregivers observe the professional boundaries outlined in the training.

Rating	Meaning	Count	Percentage
[1]		2	8.70%
[2]		0	0.00%
[3]		1	4.35%
[4]		9	39.13%
[5]		11	47.83%

Average Rating

4.17

- 10 I have used the materials I received at the training. For example, the color cards, the communication style grid, the professional boundaries chart.

	Count	Percentage
Yes	12	52.17%
No	11	47.83%

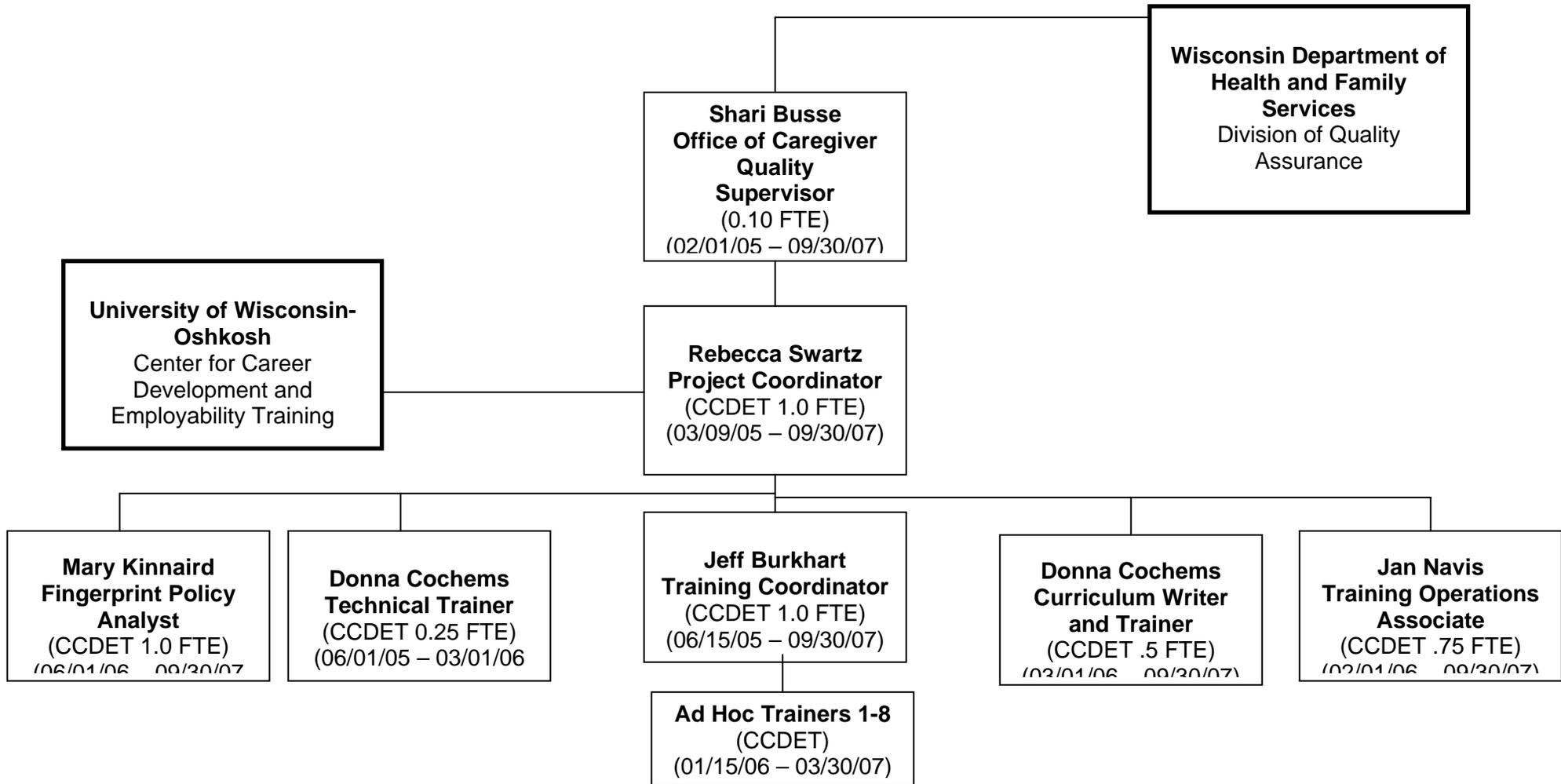
- 11 I have recommended this training to co-workers.

	Count	Percentage
Yes	20	86.96%
No	3	13.04%

- 12 Do you have any additional comments about the training?

	Count	Percentage
I found this to be one of the most interesting and enjoyable trainings! I was shocked at how much of the training was 'new material' to me, especially since I have been an RN for 20 years! The comfort of the room and quality of the snacks/meal were exceptional. Would like to see this training be offered statewide, or better yet... nationwide! Thank You! Karen.	1	16.67%
I thought the training was very helpful. It helped learn different/better ways to communicate with other caregiving staff.	1	16.67%
Insufficient financial resources cripple the facilities ability to train the people who need to be trained or provide adequate follow up to make the training an integrated part of practice.	1	16.67%
The only reason I have not used the materials from this training is that we had an Emotional Intelligence specialist as keynote speaker at one of our recent conferences and have trained with and used the same materials (colors) etc. Very important & useful information!	1	16.67%
This training was very beneficial. In some areas review, but also makes us look back and try to apply more of what we learned.	1	16.67%
We haven't used the training because it is geared primarily to nursing home and other care facility-type staff. We may incorporate bits of the training, i.e. the color cards, into other trainings that we do.	1	16.67%

Wisconsin Caregiver Background Check Pilot Organization Chart



Caregiver Abuse Prevention FY 05 - FY 08 Revenues and Expenditures

Revenues and Expenditures	Budgeted	Total For All Years	
Account			
REVENUES			
Total Revenue & Sales Credits			
Revenue (Non Sales Credit)			
Other Revenue			
Miscellaneous Revenue			
[9230] Federal Aid		\$717,251.08	
Transfers			
[9942] Trfs-Same Funds/Same Unit		\$0.00	
TOTAL		\$717,251.08	\$717,251.08
EXPENSES			
Expenses			
Salary Permanent			
Unclassified Salary			
Faculty/Academic Salary			
[1051] Academic Staff - Annual		\$142,208.82	
Classified Salary			
Permanent Classified			
Permanent Classified			
[1531] Classified - Hourly		\$1,409.31	
[1532] Classified - Lump Sum		\$10.15	
[1533] Classified Project - Hourly		\$36,928.69	
Class Differential		\$0.00	
[1543] Classified - Differential		\$13.91	
LTE/Student			
LTE Salary			
LTE Salaries			
[1601] LTE - Hourly		\$155,515.75	
Student Salary			
Student Wages Regular			
[1771] Student - Hourly	\$406,457.91	\$2,256.35	\$338,342.98
Fringe Benefits			
Fringes Benefits			
Classified Fringes			
[1951] Classified - Unemployment Comp		\$1,128.00	
Other Fringes			
[1975] Academic-Fringe-Gift/Fed Trf		\$61,325.39	
[1979] Classified-Fringe-Gift/Fed Trf		\$22,671.09	
[1983] LTE-Fringe-Gift/Fed Trf		\$70,592.08	
[1984] Student-Fringe-Gift/Fed Trf	\$176,891.53	\$142.87	\$155,859.43
Supplies & Expense			
Supplies & Expense			
Travel Expenses			
[2100] Travel-Employe-In State Bus		\$35,948.95	
[2101] Travel Empl Reportable Meals		\$185.28	

[2115] Travel-Employe-In State-Conf		\$1,351.60	
[2130] Travel-Employe-Out State-Conf		\$1,525.76	
[2140] Travel-Fleet Charges-Vehicles		\$0.59	
[2162] Travel-NonEmpl,Student,Job			
App	\$58,482.89	\$2,740.27	\$41,752.45
Training			
[2184] Training & Development-Job Rel	\$4,250.00	\$1,611.22	\$1,611.22
Telephones			
[2201] Telecomm Services-Centrex		\$498.61	
[2210] Telephone Service-NonSTS Tolls		\$147.53	
[2230] Telephone Service-Install, etc		\$1.16	
[2240] Telephone Service-STS		\$2.67	
[2260] Communication-Miscellaneous	\$6,080.00	\$283.88	\$933.85
Rent/Leases		\$0.00	
[2310] Rental of Space-UW/State Owned		\$3,182.49	
[2320] Rental of Space		\$12,987.65	
[2325] Lease of Space		\$30.00	
[2360] Rental of Other Equip	\$33,253.00	\$647.80	\$16,847.94
Maintenance & Repair			
[2420] Maintenance & Repair-Structure		\$4.40	
General Services			
[2600] DP Services-State & Univ Dept		\$0.00	
[2620] Services - Professional	\$31,050.00	\$54,990.28	\$71,469.91
[2623] Services - Miscellaneous		\$1.53	
[2650] Services - Internal	\$250.00	\$7,510.43	
[2670] Printing & Duplicating-State		\$8,931.71	
[2675] Printing & Duplicating-NonStat		\$15.50	
[2680] Serv-Houskeeping & Janitorial		\$16.06	
Consumable Supplies		\$0.00	
[3100] Supplies		\$5,561.81	
[3165] Food & Food Service Contracts		\$15,927.79	
[3195] Equip & Furnit not Capitalized	\$36,391.67	\$4,581.13	\$26,070.73
Miscellaneous Expenses			
[3700] Postage		\$595.27	
[3710] Freight		\$7.15	
[3720] Subscriptions		\$12.36	
[3740] Advertising & Notices		\$379.69	
[3780] Conference/Workshop Expenses		\$46.68	
[3805] Interest Expense-Prompt Pay	\$150.00	\$0.00	\$1,041.15
Expense Transfers			
[3930] Transfer-Ovrhead Allow-			
133&144	\$105,002.90	\$88,250.84	\$88,250.84
Capital Expense Budget			
Capital Exp(Trf to Assets)			
Capital			
[4800] Domestic Books (monographs)		\$267.62	
[4910] Audio/Visual Media	0	\$10.95	\$278.57
TOTAL	\$858,259.90	\$742,459.07	\$742,459.07
Current Year Operating Net	\$858,259.90	-\$25,207.99	\$0.00
Add Prior Year Cash Balance			

Sub-Total	-	\$25,207.99
Conversion to Cash Basis:		
Current Year Adjustment: Deferred Revenue		
Current Year Adjustment: Accounts Payable		
Current Year Adjustment: Accounts Receivable		
Calculated Cash Balance (Periods 0-13)		\$0.00
Actual Cash - Account 6100		\$0.00

**EXPERIENTIAL TRAINING FOR TRAINERS
ON-SITE EVALUATIONS**

Total Participants: 139

Total Responses: 112

Average Score
1=worst;
5=best

Did you learn more about:

- | | |
|--|-----|
| 1. The experiential training model? | 4.6 |
| 2. How to facilitate a scenario? | 4.6 |
| 3. Adapting the training to your facility's needs? | 4.4 |
| 4. Obtaining the training materials online? | 4.7 |

Feedback:

- | | |
|--|-----|
| 1. Will you use the materials we gave you? | 4.8 |
| 2. Did you like this style of training? | 4.9 |
| 3. Do you think the facilitator practice was valuable? | 4.2 |

Overall Average Evaluation: 4.6

Comments--Liked Best:

- Living in someone else's shoes
- Facilitating a scenario and getting feedback from my peers
- All the scenarios could be adapted to any facility
- The interaction of all participants--role playing and feedback
- Important information. Reminders of the importance of reviewing policies and procedures
- Having the materials scripted and packaged
- Got my brain churning with ideas

TOPICAL TRAINING FOR TRAINERS ON-SITE EVALUATIONS

Total Participants: 68 Total Responses: 63

Average Score
1=worst;
5=best

Did you learn more about:

- 1. The topical training model? 4.3
- 2. How to facilitate the four topical trainings? 4.3
- 3. Adapting the training to your facility's needs? 4.2
- 4. Obtaining the training materials online? 4.4

Feedback:

- 1. Will you use the materials we gave you? 4.4
- 2. Did you like this style of training? 4.5
- 3. Was the facilitator guide review valuable to you? 4.5

Overall Average Evaluation: 4.4

Comments--Liked Best:

Interaction and written materials were great
 Thank you so much for the opportunity to participate
 Thorough detail in materials
 Handouts
 Great instructors
 Page by page overview
 The facilitator guides-seem like they will be very easy to use
 Organized-really pertained to my job
 Materials are user-friendly
 Free and easy to adapt to individual agencies
 I firmly believe that assertive communication is the "key" to everyone's success
 Dementia information very good