

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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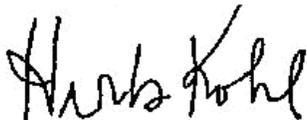
Preface

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

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.

criminal history checks. In addition, pilot programs were charged with identifying “efficient, effective, and economical procedures” for conducting comprehensive 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	Effectiveness			Efficiency				Sustainability
	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 women 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/LTCWqaales.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 Applicants 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

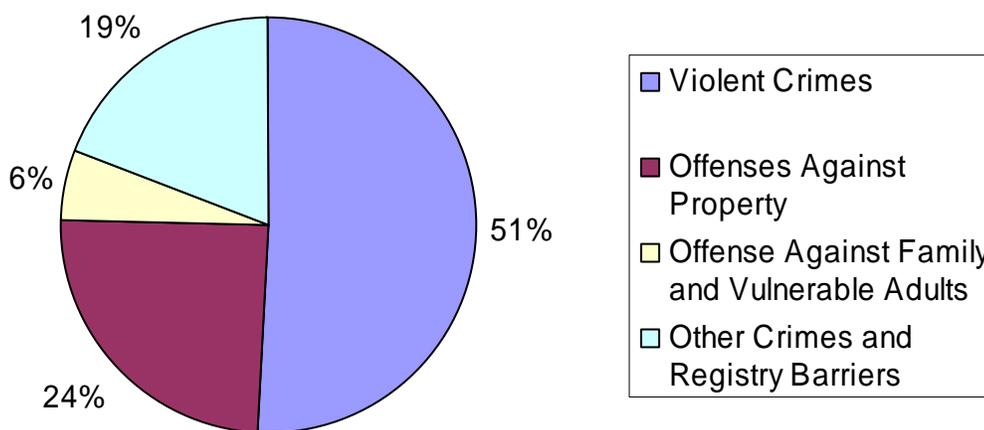
[‡] Idaho did not report the distribution of exclusions by type of check.

[§] 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

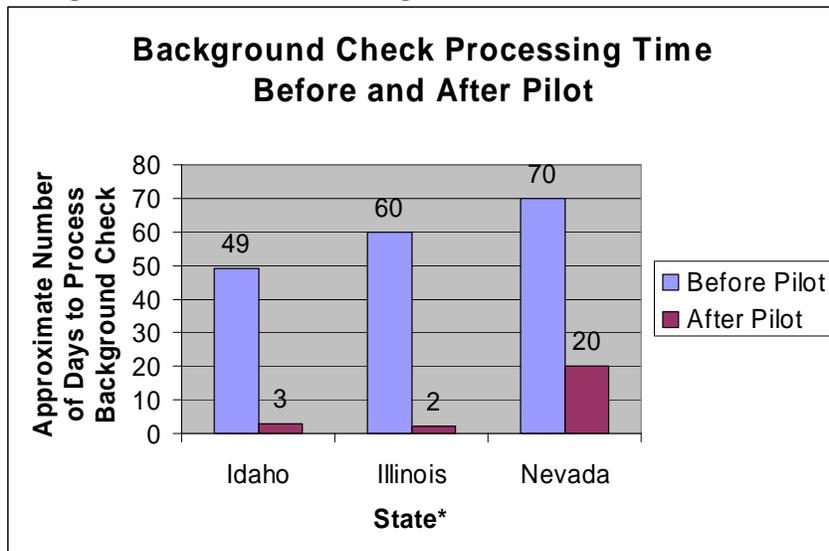
addition, digital livescan fingerprint technology allowed for faster processing of fingerprint checks.

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.

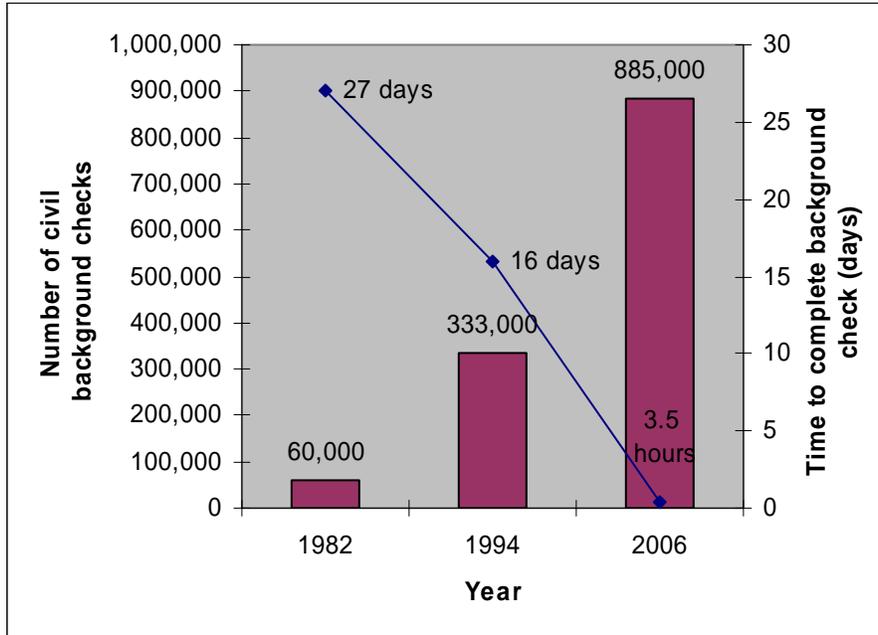
Some states were able to apply the improvements in their screening programs for long-term care workers to other existing background check programs. Alaska, for example, uses its newly improved state criminal history database (APSIN) to screen many employees who work with children.

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/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

(Available upon request)