

INTRODUCTION

Mr. Chairman and members of the Committee, I am Thomas D. Roslewicz, Deputy Inspector General for Audit Services of the Department of Health and Human Services. I am pleased to be here today to discuss safeguards for identifying people who pose a possible threat of abuse and neglect to residents of nursing homes and other long-term-care facilities. We share the Committee's longstanding interest in preserving the safety of these residents.

We recently completed a review in this area which demonstrated that there is no nationwide assurance that nursing home staff who could place elderly residents at risk are systematically identified and excluded from employment. We are recommending stronger Federal oversight, as well as stepped-up collaboration with the States, to improve the safety of the elderly. Our recommendations, as well as a detailed discussion of our findings, are provided in a report which we are releasing at this hearing. The report consolidates information gathered during audits of two States and surveys of State and nursing home officials.

My testimony today will highlight our significant findings on the States' requirements for and use of criminal background checks and registries, the employment of nursing home staff with criminal convictions, and the impact of the various safeguards on elder abuse prevention. First, however, I would like to briefly describe current Federal requirements for identifying and preventing potential abusers from working in nursing homes.

Current Requirements

Residents of nursing homes and other long-term-care facilities have the right to reside in a safe and secure environment, free from abuse and neglect, as reflected in the Medicare statute and regulations. To help achieve this type of environment, each State is required to establish and maintain a registry of nurse aides which includes information on any finding by the State survey and certification agency of abuse, neglect, or misappropriation of property involving the elderly. The Health Care Financing Administration (HCFA), which administers the Medicare program, does not require registries for other health care providers, such as registered nurses (RN), licensed practical nurses (LPN), or medical practitioners.

Nursing facilities must report to the State nurse aide registry or appropriate licensing authorities any knowledge they have of court actions against an employee that would indicate unfitness for service as a nurse aide or other facility staff. Additionally, HCFA prohibits facilities from employing individuals who have been found guilty by a court of law or who have had a finding entered into the registry for abuse, neglect, or mistreatment of residents or misappropriation of their property.

Although the Violent Crime Control and Law Enforcement Act of 1994 permits States to conduct national criminal background checks, there is no Federal requirement to conduct these checks of current or prospective employees of federally assisted long-term-care facilities. States, however, are expected to provide the Office of Inspector General (OIG) with information on individuals convicted of elder abuse or neglect. Using this information, the OIG excludes those individuals from participation in Federal health care programs and publishes a monthly Cumulative Sanction Report, available on the Internet, which identifies those individuals and entities excluded from participation. No program payments may be made for items and services furnished, ordered, or prescribed by excluded parties.

Objectives and Scope of Review

The objectives of our review were twofold. First, we determined whether States required background checks of current and prospective employees of long-term-care facilities and, if so, we solicited their assessment of the results achieved. Second, we determined if States maintained registries on various health care workers. At a selected number of States, we also assessed whether registries properly identified individuals involved with elder abuse or other crimes.

We reviewed applicable State laws for the 33 States that require criminal background checks. We interviewed officials of 52 nursing homes in 6 States (Illinois, Indiana, Maryland, Minnesota, Ohio, and Virginia) about their procedures and experiences relating to background checks. In a few selected States, we also tested the accuracy of the registries in recording (flagging) individuals who abused residents of nursing homes.

In Maryland, we used the FBI criminal history record system to obtain criminal background data on all employees at eight randomly selected nursing homes receiving Medicare and/or Medicaid funds. We also compared the individuals convicted of elder abuse by the Maryland Medicaid Fraud Control Unit (MFCU) with those cited in the FBI system and in Maryland's registry to determine if that information was properly recorded and if individuals had prior convictions. In Illinois, we obtained criminal background data on a selected number of individuals who had a substantiated finding of abuse to determine if any had a prior criminal record.

Criminal Background Checks

Overall, Mr. Chairman, the States we reviewed used a patchwork of measures to identify persons posing a possible threat of elder abuse in nursing homes and to minimize and prevent such abuse. While 33 States require criminal background checks, coverage varies widely. For example:

- Not all facilities serving the elderly are included.
- A majority of States require checks of nurse aides seeking employment but not already-employed nurse aides or other personnel, such as owners, nurses, dietitians, housekeeping staff, contractor staff, or volunteers.
- The sources used to make criminal background checks vary. State records are used by 24 States. Nine States have laws permitting the use of both State and FBI records, although two of these States do not, in practice, use FBI records.
- Many States have specified crimes which, when individuals are convicted of such crimes, would automatically disqualify a person from employment, but these crimes vary by State. Also, only a few States have identified factors to consider in determining suitability for employment when a person has a disqualifying conviction, such as the level, seriousness, and date of the crime. Thus, nursing home officials, particularly in States without disqualifying crimes, use their own judgment in deciding whether to employ applicants with criminal records.

Many facilities conducted more comprehensive checks than required by their State law. Some said they requested Statewide criminal background checks on all of their applicants, not merely those covered by State requirements. Others indicated they automatically excluded from employment everyone with a criminal conviction, including convictions for crimes not specifically cited as disqualifying. Regardless of how they applied the various requirements, nursing home officials generally believed that background checks provided the most reliable source of information during the employment process. I will elaborate on this later in my statement.

State Registries

In addition to background checks, registries can be an effective tool for identifying known abusers, provided they are promptly updated with court and independent investigative findings. All 37 States we contacted maintained registries for nurse aides, LPNs, RNs, and medical practitioners, although only the nurse aide registry is required by HCFA regulations.

In our opinion, Mr. Chairman, the usefulness of the registries could be improved. For instance, all registry officials indicated that convictions for crimes committed outside nursing facilities were not systematically reported to the nurse aide registry. Such information could be obtained during background checks and recorded in the registry. Also, of the 37 registries surveyed:

- 94 percent did not initiate criminal background checks on applicants when they applied for certification or licensing,
- 29 percent did not require prior arrest or conviction information on renewal applications, and
- 13 percent did not provide a penalty for making false statements on the certification or license application.

According to registry officials in all 37 States, facilities are required to report alleged abuse and neglect so that an investigation can determine if the allegations are substantiated. If so, the findings must be recorded in the nurse aide registry. In Maryland, the registry did not always record findings of abuse or convictions. For 45 alleged abuse cases we reviewed, the nursing homes believed they had sufficient evidence to take action on 7 cases and either terminated or suspended all 7 employees. However, these cases were neither substantiated nor prosecuted and consequently not flagged in the registry.

In addition, as described in our November 1997 report to Maryland, many aides convicted of abuse by the State Medicaid Fraud Control Unit (MFCU) were not flagged on the registry. Of the 24 aides who were found guilty or who pled guilty in a court of law for elder abuse, 12 were not flagged.

Our May 1998 report, which focused on Illinois, also noted some shortcomings. We sampled 88 closed cases of alleged abuse by nurse aides and found that in 13 cases, Illinois did not substantiate, through independent investigations, whether these allegations had occurred. Although all 13 aides were terminated from employment or had disciplinary actions imposed, they were not annotated on the registry and were free to seek employment at other long-term-care facilities or allowed to continue their employment, which could place residents at further risk. We also noted that Illinois is the only State that records background check results (both positive and negative) in the registry. However, convictions for crimes other than those designated as disqualifying by State law are not provided to the registry or the employing facility. The disqualifying crimes in Illinois are abuse/neglect of an adult or child, arson, assault, kidnaping and abduction, murder, and theft.

Employed Nursing Home Staff with Criminal Convictions

Since Maryland's background check requirements do not cover on-board staff, we obtained criminal data on all 1,068 current employees at 8 randomly selected nursing homes. Of this total, 51, or 5 percent, had been convicted of a variety of crimes--many involving serious offenses. We believe this number is actually understated because both the FBI and the State criminal information systems lacked conviction data on more than half of the crimes committed. If that information were available, the numbers of

people with criminal convictions working in nursing homes could be as high as 10 percent.

Many of the individuals with convictions worked in occupations providing direct care to residents. They included nurse aides, as well as staff holding jobs not subject to criminal background checks, such as nurses, dietitians, and housekeeping staff.

Based on data from the FBI and State systems, the 51 employees had 97 convictions for such crimes as assault; child abuse; possession, manufacturing, and distribution of illicit drugs; robbery with a deadly weapon; theft; and handgun violations. On their job applications, 43 of these employees did not truthfully state that they had been convicted and 4 did not respond to the question.

Although contractor staff are not required under Maryland law to undergo background checks, the dietary service contractor at one nursing home allowed us to obtain criminal background data on all 26 current contract employees. The data showed that 5 of the 26 had been arrested for 55 crimes. According to the FBI system, 4 of these employees had 18 convictions for such crimes as fourth degree sex offense, various assault charges, battery, larceny, and armed robbery. Records did not show conviction information on the fifth employee.

In Illinois, the only State in our survey that requires checks on current and prospective employees, a similar number of convictions was found for currently employed nursing home staff. Of 21,000 checks conducted, 5 percent had disqualifying crimes; 759 nurse aides were fired and 216 were granted waivers.

However, before Illinois implemented the law which now requires background checks, we noted that many individuals with a disqualifying criminal conviction were employed in nursing homes. We found that 15 nurse aides and 2 other employees with prior disqualifying criminal backgrounds would have been identified and excluded had the Illinois law been in place prior to their employment. All 17 of these employees were later involved in instances of alleged elder abuse. Fourteen of the 15 nurse aides are no longer employed by nursing facilities; 7 were terminated as a result of substantiated findings of abuse and 7 were dismissed or resigned subsequent to the abuse allegation. The remaining aide was transferred to a non-direct resident care position. The two non-nurse aide employees were terminated by the facility due to elder abuse. We also noted in Maryland that 6 of the 24 nurse aides who were convicted of abuse or neglect by the MFCU had prior convictions.

Impact and Shortcomings of Current Safeguards

So what is the impact of the States' screening systems? Although we attempted to answer that question, data was not available to conclude with certainty on an increase or decrease in elder abuse or in the employment of abusive employees. However, we did gather evidence--some of it anecdotal--suggesting the benefits of current safeguards, and we want to share this evidence with you today, along with our thoughts on how these safeguards could be improved.

In general, nursing home officials viewed background checks as a strong, but not absolute, deterrent to elder abuse because applicants with a history of criminal offenses are either identified through the checks or do not apply because they know the checks will disclose their crimes. A number of officials also believed that background checks had reduced the instances of abuse. However, of the 33 States that required checks, only Maryland maintained data to measure their effectiveness. Maryland's legislatively mandated review of the impact of criminal background checks credited the checks for reducing the number of applicants with criminal records from 22 percent in the third quarter of 1996 to 19 percent in the fourth quarter.

Our attempt to obtain nationwide data on the trends in elder abuse from AoA Headquarters was also unsuccessful. The AoA was able to furnish elder abuse data only for 1995, which 29 States had voluntarily provided, but did not have data on all States or for any States over a multiyear period.

We believe that criminal background checks offer long-term care facilities an important safeguard against hiring persons who abused or neglected vulnerable elderly residents or who have been convicted of other serious crimes. The effectiveness of these checks is, of course, only as good as the criminal data in the State and FBI systems--which we have found incomplete. For instance, between 1989 and 1996, Maryland's MFCU identified 35 nursing home staff (including the 24 nurse aides mentioned earlier) who were found guilty or pled guilty in a court of law to elder abuse. All of these individuals were sanctioned/excluded from participation in Federal health care programs by the OIG, but arrest and conviction data on 10 of the 35 individuals was not recorded in either the State system or the FBI system. Clearly, more comprehensive and accurate reporting to these criminal information systems would improve the effectiveness of background checks. Also, as mentioned earlier, most States do not subject prospective employees--other than nurse aides--or any current employees to background checks. We believe both of these requirements would add a large degree of protection to the elderly.

Similarly, State registries can be an effective preventive measure, provided that abusers are promptly flagged for all substantiated findings. As we have already stated, however, the Maryland and Illinois registries omitted some abusers, and most State registries did not include information on substantiated crimes committed outside nursing facilities. So this, too, is an area where improvements are needed. Additional opportunities for identifying potential risk to the elderly are available from the OIG Cumulative Sanction Report. But none of the nursing homes surveyed in six States was aware of this list or its availability on the Internet.

To conclude, Mr. Chairman, there is certainly no question of the value in the States' use of current safeguards. But the situation remains that the safety of the elderly cannot be assured because potentially abusive nursing home staff are not fully and systematically identified and excluded from employment.

Recommendations for Improving Safeguards

While we support the States' efforts, we believe that HCFA and AoA should consider additional measures, at the Federal level, to provide a safe and secure environment for residents in nursing homes and other long-term-care facilities reimbursed by the Department. As a result, in our report to HCFA and AoA, we recommended that they:

- Consider (1) establishing Federal requirements and criteria for performing criminal background checks of all workers in nursing homes and other long-term care facilities and (2) assisting in the development of a national abuse registry and expansion of the current State registries to include all workers who have abused or neglected residents or misappropriated their property in facilities that receive Federal reimbursement.
- Work collaboratively with the States to improve the safety of long-term-care residents and to strengthen safeguards against the employment of abusive workers by elder care facilities.
- Require improved State reporting of abuse statistics to better monitor national trends in the rise or decline of abuse.

As we indicate in our report, HCFA and AoA agreed with our recommendations and have taken action

to implement them. Specifically, on July 29, 1998, the Administration forwarded proposed legislation to the Congress, based on HCFA's recommendations, which addresses the need for criminal background checks, the expansion of State registries, and the development of a national abuse registry. We note, Mr. Chairman, that you and others are co-sponsors of an earlier bill introduced by Senator Kohl, that would establish a national registry of abusive workers in the health field. The HCFA is also considering, in consultation with AoA, further studies to identify additional preventive measures. This would include examining the relationship between abuse of residents and such factors as employee working conditions and pay. In addition, AoA plans to determine the extent and types of data appropriate for focusing on the incidence of abuse and neglect and to delineate related State and Federal roles.

If a national abuse registry is approved, we suggest that it be included in an expanded version of the current Healthcare Integrity Protection Data Bank (HIPDB), which the OIG is developing as required by the Health Insurance Portability and Accountability Act of 1996. The expanded data bank would be a Healthcare Integrity and Patient Protection Data Bank.

Our work in the area of nursing homes is continuing. We are, for example, examining trends in data maintained by State Adult Protective Services, Survey and Certification programs, and Ombudsman regarding conditions of nursing home residents.

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify today. At this time, I will be happy to answer any questions you may have.