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SUBJECT: Memorandum Report: *Nationwide Program for National and State Background Checks for Long-Term-Care Employees —Results of Long-Term-Care Provider Administrator Survey*, OEI-07-10-00421

The Patient Protection and Affordable Care Act (ACA) mandates that the Office of Inspector General (OIG) submit a report to Congress evaluating the Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term-Care Facilities and Providers not later than 180 days after the program's completion. This memorandum report provides the results of a survey of long-term-care provider administrators. The purpose of the survey was to collect baseline data on current practices regarding conducting background checks on potential employees and the effects on the long-term-care workforce. We plan to use this information in the mandated report to assess the effects of background checks on the availability of long-term-care workers.

SUMMARY

Section 6201 of the ACA established the Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term-Care Facilities and Providers.¹ This voluntary program provides grants to States, the District of Columbia, and U.S. territories (States) to implement programs to conduct background checks on prospective long-term-care employees, and mandates an OIG evaluation of the State programs. ACA requires OIG to evaluate certain aspects of participating States' programs. For example, OIG must determine the extent to which conducting background checks leads to any unintended consequences, including a reduction in the available workforce for long-term-care providers.

¹ P.L. 111-148, enacted March 23, 2010.

In May 2011, we surveyed long-term-care provider administrators in participating States about their current procedures for conducting background checks, the effects of background checks on the pool of prospective employees, and the availability and quality of prospective employees. Survey results indicate that 94 percent of administrators conducted background checks on prospective employees. Only 4 percent of those administrators encountered individuals who were unwilling to undergo a background check. Twenty-three percent of administrators believed that their organizations' current background check procedures reduced the pool of prospective employees. Overall, 81 percent of administrators believed that there is a sufficient pool of qualified applicants for job vacancies. However, survey results indicate that 9 percent of administrators did not receive applications from qualified individuals for at least some job vacancies.

BACKGROUND

Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term-Care Facilities and Providers

Section 6201 of ACA requires the Secretary of Health and Human Services to carry out a nationwide program in which States conduct national and State background checks of prospective direct patient access employees of nursing facilities and other long-term-care providers.² The program is administered by the Centers for Medicare & Medicaid Services (CMS) in cooperation with the Federal Bureau of Investigation (FBI). ACA provides up to \$160 million in Federal funds for the program.

To implement the nationwide program, CMS began soliciting applications for grant awards in June 2010. Program start dates for each participating State vary based on when the State received a grant award. Once grants are awarded, it is expected that States may need some preparation time before they require long-term-care providers to begin conducting background checks. For example, States may need to set up information systems to accommodate the background check process or enact legislation that amends the requirements for long-term-care providers. Therefore, there may be some lag time between the program start date and the date that long-term-care providers begin conducting background checks. Some States had background check programs in place before they received their grants. The grants require these States to expand or improve their programs in some way.³ For example, a State that had a program requiring background checks only on employees of nursing facilities would have to expand the program to include employees of other provider types (e.g., hospices, home health agencies). CMS plans to make all grant awards by September 30, 2012; however, the completion date of the program (i.e., the date that participating States deplete their grant funds) is unknown at this time. As of October 2011, 17 States had received grants.

² Section 6201(a)(6)(D) defines "direct patient access employee" as any individual who 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 and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program.

³ CMS, *Funding Opportunity Announcement for Nationwide Program for National and State Background Checks*, p. 14.

Mandated OIG Evaluation

The ACA mandate requires OIG to submit a report to Congress evaluating the program not later than 180 days after its completion. In July 2010, we began an evaluation entitled *Nationwide Program for National and State Background Checks for Long-Term-Care Employees* (OEI-07-10-00420). To comply with the required timeframe, the evaluation follows the progress of the nationwide program in each State as it is carried out, rather than conducting a retrospective review at the end of the program.

According to ACA, OIG must include the following in its evaluation:

1. A review of the various procedures implemented by participating States for long-term-care facilities or providers, including staffing agencies, to conduct background checks of prospective direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks;
2. An assessment of the costs of conducting such background checks (including startup and administrative costs);
3. A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term-care facilities or providers;
4. An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable; and
5. An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.⁴

The information in this memorandum report pertains to the third issue above and will serve as a baseline in determining the effects of background checks on long-term-care workforce availability in the mandated report. The mandated report will also cover all other issues listed above.

METHODOLOGY

Sample Selection

In February 2011, we obtained data for the following provider types from the Online Survey, Certification, and Reporting (OSCAR) system: nursing facilities, skilled nursing facilities, home health agencies, hospices, and Intermediate Care Facilities for the Mentally Retarded (ICF/MR). As of March 2011, 10 States had been awarded funding under the nationwide program: Alaska, California, Connecticut, Delaware, District of Columbia, Florida, Illinois, Missouri, New Mexico, and Rhode Island. We stratified the population of long-term-care providers by the number in each participating State to

⁴ P.L. 111 148 § 6201(a)(7)(A)(ii).

ensure that States with smaller numbers of providers were represented. One stratum consisted of providers in States with 500 or fewer providers (Alaska, Delaware, District of Columbia, New Mexico, and Rhode Island), and the other stratum consisted of providers in States with more than 500 providers (California, Connecticut, Florida, Illinois, and Missouri). We selected a stratified random sample of 100 providers from each stratum. If we had not stratified the population, the sample would likely not have included providers from each of the 10 States. Table 1 shows the number of providers in the population and sample by stratum and State.

Table 1: Number of Providers in Population and Sample by Stratum and State

Stratum	State	Providers in Population	Providers in Sample
1	Alaska	89	4
	Delaware	157	8
	District of Columbia	330	21
	New Mexico	489	33
	Rhode Island	450	34
Stratum 1 Total		1,515	100
2	California	6,200	40
	Connecticut	932	4
	Florida	3,399	23
	Illinois	3,534	22
	Missouri	2,065	11
Stratum 2 Total		16,130	100
Overall Total		17,645	200

Source: OSCAR database, 2011.

Our population of long-term-care providers included only those that were in operation at the time of our data collection. In May 2011, we mailed a survey to the administrators of the sampled providers. We asked about their current procedures for conducting background checks on prospective employees and whether they believe that their background check procedures reduce the pool of prospective employees. We requested workforce data on the number of applicants and the number of persons hired for recently filled positions, if available. Finally, we solicited administrators' opinions regarding the availability and quality of long-term-care applicants. We did not independently validate the survey responses.

Response Rate

We received responses from 153 sampled providers. We determined that the remaining 47 sampled providers were no longer in operation through telephone contact attempts and Internet searches. Therefore, we received responses from 100 percent of providers that were eligible to respond to the survey. Table 2 shows the number of responses for each provider type in each State by stratum.

Table 2: Number of Eligible Sample Responses by Stratum, State, and Provider Type

Stratum	State	Nursing Facilities/ Skilled Nursing Facilities	Home Health Agencies	Hospices	ICF/MRs	Total
1	Alaska	0	1	3	0	4
	Delaware	4	3	0	0	7
	District of Columbia	5	2	0	9	16
	New Mexico	7	9	4	3	23
	Rhode Island	13	4	1	7	25
2	California	12	10	2	6	30
	Connecticut	1	2	0	0	3
	Florida	7	12	0	0	19
	Illinois	7	4	0	4	15
	Missouri	9	1	1	0	11
Total		65	48	11	29	153

Source: Administrator responses to OIG survey, 2011.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

RESULTS

Current Background Check Procedures

Ninety-four percent of administrators in the 10 participating States conducted background checks on prospective employees.⁵ Of the administrators who conducted background checks, 82 percent conducted a State criminal history check, 41 percent conducted an FBI criminal history check, and 63 percent used other sources, such as sex offender registries

⁵ Appendix A presents point estimates and 95-percent confidence intervals for all population estimates. We projected our results to the population of long-term-care providers in operation at the time of our data collection.

and the OIG List of Excluded Individuals/Entities. Of the administrators who conducted background checks, 95 percent conducted them for all prospective employees, while 5 percent conducted them only for certain positions.

The information reported by administrators for this survey is consistent with information reported by nursing facility administrators for a survey we conducted in June 2009 for the report entitled *Nursing Facilities' Employment of Individuals With Criminal Convictions* (OEI-07-09-00110). That report found that 98 percent of nursing facilities conducted some type of background check on prospective employees. We note that the statistics from both surveys suggest that because most long-term-care providers were already conducting background checks prior to the implementation of the State background check programs, implementation of the new programs may not actually require much change, if any, in the providers' current procedures.

Administrators' Experiences With Conducting Background Checks

We asked administrators who conducted background checks whether they encountered any prospective employees who were unwilling to undergo one. Four percent of administrators had this experience. According to these administrators, prospective employees may have been unwilling to undergo a background check because their criminal history included convictions that might disqualify them from employment. The six administrators who responded affirmatively estimated that between 1 and 5 percent of prospective employees were unwilling to undergo a background check. In addition, they estimated that between 1 and 6 percent of prospective employees withdrew their applications after learning of the background check. While only 4 percent of administrators encountered prospective employees who were unwilling to undergo a background check, a much higher percentage held beliefs about the link between background check requirements and a reduction in the pool of prospective employees. Twenty-three percent of administrators believed that their organization's current background check procedures reduced the pool of prospective employees. A similar percentage of administrators, 27 percent, believed some prospective employees did not apply because of their organization's background check procedures.

Thirty-two percent of administrators commented on the link between background check requirements and a reduction in the pool of prospective employees. Eleven administrators expressed their belief that the reduction in the pool occurs because the background check requirement is commonly known to prospective employees before applying, which results in individuals with disqualifying convictions not submitting applications. In support of the background checks, 11 administrators commented that the elimination of individuals with disqualifying convictions from the workforce pool is appropriate to protect the safety of their organizations' clients and staff. Nine administrators commented that they believe background check requirements have not reduced their number of prospective employees. These administrators said that few prospective employees have disqualifying convictions and that they consistently receive a sufficient number of applications for job vacancies. However, one administrator commented that the amount of time needed to process background checks reduces the

pool of prospective employees. Another stated that a time limit on disqualifying offenses should be established.

Workforce Data

We asked administrators for the number of (1) job vacancies, (2) applications received for job vacancies, and (3) filled job vacancies for the period January 1 to May 1, 2011. Of the 153 respondents to our survey, 122 were able to provide definitive numbers for each of these three elements. Nine percent of administrators had no job vacancies for the period; accordingly, they received no applications and did not fill any vacancies. Demonstrating the variety of sizes of providers in our sample, the number of job vacancies ranged from 0 to 180, the number of applications received from 0 to 2,422, and the number of job vacancies filled from 0 to 164. On average, administrators received approximately six applications for every job vacancy and filled nearly all of their vacancies. The results of the administrators' responses are shown in Table 3.

Table 3: Workforce Data

Element	Average	Median
Job Vacancies	11	6
Applications Received	61	24
Job Vacancies Filled	10	4

Source: OIG analysis of administrator responses, 2011.

Availability and Quality of Long-Term-Care Employees

Overall, survey results indicate that 81 percent of administrators had a sufficient pool of applicants for job vacancies. Administrators who did not have a sufficient pool of applicants cited prospective employees' preferences for working in health care settings other than long-term care, low pay, and lack of desire to work in a rural area. We asked administrators whether they received applications for job vacancies from qualified individuals. Nine percent of administrators did not. None of these administrators believed that their organization's background check requirement was a reason that applications from qualified individuals were not received. Instead, they said that individuals who applied did not have the requisite education, skills, or certification for the position.

We also asked administrators if there were particular job positions that they had difficulty filling with qualified individuals. Unrelated to background checks, nearly half of administrators (45 percent) had difficulty filling certain positions, such as registered nurse; physical, occupational, and speech therapist; social worker; and certified nurse aide.

CONCLUSION

The survey results provide a baseline of information regarding the effects that conducting background checks have on the long-term-care workforce in the first 10 States to receive background check program grants. Nearly all administrators conduct background checks on prospective employees and current background check procedures do not appear to greatly reduce the available workforce. When State programs are complete or nearing completion, we will conduct a second survey to determine whether changes in background check procedures decrease the workforce pool. We will request the same workforce data and opinions as in the first survey. We will present the results in the mandated report entitled *Nationwide Program for National and State Background Checks for Long-Term-Care Employees* (OEI-07-10-00420).

CMS may wish to provide the information in this memorandum report to States that participate in the background check program as well as those States that are considering participation. This report is being issued directly in final form because it contains no recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-07-10-00421 in all correspondence.

APPENDIX A**Table A-1: Point Estimates and Confidence Intervals**

Estimate	Sample Size	Point Estimate	95-Percent Confidence Interval
Current Background Check Procedures			
Administrators who conducted background checks	153	94.0	86.5–97.5
Administrators who conducted State criminal history checks	147	81.9	72.1–88.8
Administrators who conducted FBI criminal history checks	147	40.9	30.5–51.2
Administrators who conducted other checks (e.g., sex offender registries, Office of Inspector General (OIG) List of Excluded Individuals/Entities)	147	62.5	52.2–72.8
Administrators who conducted background checks on all prospective employees	147	94.6	87.2–97.9
Administrators who conducted background checks only for certain positions	147	5.4	2.1–12.8
Administrators who encountered prospective employees who were unwilling to undergo a background check	153	4.2	1.5–11.1
Administrators who believed that their organization's current background check procedures reduce the pool of prospective employees	153	23.4	15.6–33.5
Administrators who believed that prospective employees do not apply because of their organizations' background check procedures	153	27.0	17.6–36.5
Administrators who offered comments about the link between background check requirements and a reduction in the pool of prospective employees	147	32.1	22.2–41.9
Workforce Data			
Average number of job vacancies	122	10.9	8.2–13.6
Average number of applications received	122	61.0	42.3–79.6
Average number of job vacancies filled	122	9.7	7.2–12.2
Median number of job vacancies	122	6.1	3.5–9.8
Median number of applications received	122	24.1	14.9–38.9
Median number of job vacancies filled	122	3.8	2.5–9.4
Availability and Quality of Long-Term-Care Employees			
Administrators who had a sufficient pool of qualified applicants for job vacancies	153	80.8	71.6–87.5
Administrators who did not receive applications for job vacancies from qualified individuals	153	8.9	4.5–16.8
Administrators who had difficulty filling particular job positions with qualified individuals	153	45.2	35.0–55.4

Source: OIG analysis of administrator responses, 2011.