

Health Reform Details #1

Background checks on direct patient access employees in long-term care facilities

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The federal Centers for Medicare & Medicaid Services (CMS) has for a number of years operated a [pilot program](#) whereby 7 States (AK, ID, IL, MI, NV, MN, WI) conducted comprehensive background checks on potential direct-patient-access employees of long-term care facilities. Both the House and Senate health reform bills would extend this program “nationwide” – with the proviso that for it to be applicable to a particular State, the State must submit an application to participate. Thus, these requirements may not apply in all States.

Under the program, participating States must establish procedures requiring long-term care facilities to conduct background checks on prospective direct patient access employees (including contractors). A prospective employee who is found to have “disqualifying information” may not be employed by a long-term care facility, subject to some limited employee appeal rights as described below. States may impose penalties on facilities that do not comply with the background-check requirements or that hire disqualified employees.

“Disqualifying information includes a conviction for any of the offenses described in [42 U.S.C. § 1320a-7](#) or other types of offenses as specified by the State, or a substantiated finding (by the state Medicaid agency or by a federal agency) of –

- An act of patient or resident abuse or neglect;
- A misappropriation of patient or resident property; or
- Such other types of acts as the participating State may specify.

Long-term care facilities to which the program applies include –

- Nursing homes (i.e., skilled nursing facilities and nursing facilities);
- Home health agencies;
- Hospices;
- Long-term care hospitals;
- Providers of personal care services;
- Adult day care providers;

- Residential care providers (such as many continuing care retirement communities and some assisted living facilities) that arrange for, or directly provide, long-term care services, “including an assisted living facility that provides a nursing home level of care conveyed by State licensure or State definition;”
- Intermediate care facilities for the mentally retarded; and
- Any other long-term care facility that the State wishes to specify.

To participate, a State must sign an agreement that it will have procedures in place to –

- Require that long-term care facilities (or a facility’s designated agent, such as an employment agency) obtain State and national criminal or other background checks on prospective direct-patient-care employees through such means HHS determines appropriate. These include a search of (i) state-based abuse and neglect registries and databases (including the abuse and neglect registries of any other State where a prospective employee previously resided), (ii) state criminal history records, and (iii) the records of any proceedings in the State that may contain disqualifying information about prospective employees (such as proceedings conducted by State professional licensing and disciplinary boards and State Medicaid Fraud Control Units). They also must include searches of federal criminal history records, including a fingerprint check using the FBI’s Integrated Automated Fingerprint Identification System.
- Monitor compliance by long-term care facilities with the procedures and requirements of the new background-check program.
- As appropriate, provide for a [provisional period of employment](#) by a long-term care facility of direct patient access employees, pending completion of the required criminal history background check and, if requested, an [appeal](#) by the employee.
- Designate a single state agency (I’ll call it the “background check agency”) as responsible for (i) overseeing the coordination of any state and national criminal history background checks requested by a long-term care facility, utilizing a search of state and federal criminal history records, including a fingerprint check; (ii) overseeing the design of appropriate privacy and security safeguards for use in the review of the results the criminal history background checks conducted; (iii) immediately reporting to the requesting long-term care facility the results of that check; and (iv) reporting appropriate convictions to the appropriate federal data bank.
- Determine which individuals are “direct patient access employees for purposes of the background-check program (i.e., which employees or contractors may have access to a patient or resident of a long-term care provider).

- As appropriate, specify offenses, including convictions for violent crimes, for purposes of the background-check program.
- Describe and test methods that reduce duplicative fingerprinting, including providing for the development of [“rap back” capability](#).

The procedures established by a participating State should be designed to –

- Give a prospective direct-access employee notice that the long-term care facility is required to perform background checks with respect to new employees;
- Require, as a condition of employment, that the employee: (i) provide a written statement disclosing any disqualifying information and a signed statement authorizing the facility to request national and State criminal history background checks; (2) provide the facility with a rolled set of the his or her fingerprints; and (3) provide any other identification information the participating State may require;
- Require the facility to check any available registries that would be likely to contain disqualifying information about a prospective employee; and
- Permit the facility 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 FBI’s Integrated Automated Fingerprint Identification System.

The procedures established by a participating State must permit a long-term care facility to terminate the background check at any stage at which the facility obtains disqualifying information regarding a prospective direct patient access employee.

Background checks and screenings under the program will be valid for no more than two years.

A participating State may provide for reimbursement of facilities’ costs in conducting the background checks, but this is not required and might or might not be supplemented by a limited pool of federal funds. Such funding would apply only to background checks that the long-term care facility was not required to provide prior to enactment of the new law.