



National Background Checks Becoming Mandatory in Some States

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Statewide background checks are common among adult day services providers according to a recent poll of NADSA members, but that will not be enough to meet the requirements of new rules that some states are adopting as a result of federal incentives to comply with the Affordable Care Act. Title VI, Subtitle B, Part III, Subtitle C, section 6201 of the Affordable Care Act directs the Secretary of Health and Human Services (HHS), to establish a nationwide program to identify efficient, effective, and economical procedures for long term care facilities and providers to conduct background checks on a statewide basis on all prospective direct patient access employees.

Background

Since the Omnibus Budget Reconciliation Act passed in 1987, long term care patient abuse, neglect and misappropriation of funds have been identified as a widespread problem for millions of Americans receiving long term care services. Protecting this vulnerable population continues to be a national challenge. Over the years Congress has initiated several measures to address this challenge. CMS established regulations that prohibit long term care facilities and providers from employing individuals found guilty of abuse, neglect, or misappropriation of patient funds. In 1998 Congress enacted Public Law 105-277 which allows long term care facilities to request the Federal Bureau of Investigation (FBI) search its fingerprint database for criminal history matches. During 2003-2007 CMS piloted a program to evaluate the effectiveness of conducting background checks on prospective employees of long term care facilities and providers who had direct access to patients. The pilot supported the importance of background screening which included fingerprinting for individuals who have direct access to patients of nursing facilities, skilled nursing facilities, home health agencies, hospice care providers, long term care hospitals, long term care residential care providers (including assisted living facilities), personal care services providers, adult day care services providers, intermediate care facilities for the mentally retarded, and all other long term care providers. The pilot evaluation final report can be found at: <https://www.cms.gov/reports/downloads/White8-2008.pdf>.

Key Requirements for State Participation in the National Background Check Program

The State Office of the Governor, State Medicaid Agency, or the State Survey Agency may apply for funding under this grant opportunity. CMS will accept only one application per state, so state offices and agencies are encouraged to work collaboratively to develop one application packet when deemed appropriate. All states and U.S. territories have been invited by CMS to

submit proposals be considered for inclusion in this National Background Check Program. This grant is not competitive. All applying states submitting an application that is scored by the Federal technical evaluation panel at 70.2 out of the possible 101 points or greater shall receive a grant. Applications that score below 70.2 points will not be included as grantees. In addition to the minimum score all applicants must meet all statutory requirements as described in section 6201 of the Patient Protection and Affordable Care Act (Affordable Care Act). Do you know if your state has applied? If so, did their application specify adult day services centers among the services that would be covered?

The national program will be evaluated by the HHS Office of Inspector General (OIG). The specific requirements that applicant states must meet are in accordance with the legislative language. Participating states must guarantee non-federal funds to cover a portion of the cost to conduct the program in their state. CMS will provide a three-to-one match for state funds to each grantee. The participating state must require fingerprint checks as part of the criminal background check for all direct patient access employees. The participating state must have a plan to implement the program (a) statewide and (b) in all long term care entities specified in section 6201 of the Affordable Care Act. States may phase-in the program over a multi-year period, and the phase-in may be accomplished by geographical location, provider type, or other factors determined by the State. Key provider types identified by CMS must be phased-in by specified time periods.

Participating states must ensure background checks include checks of state criminal history records for all relevant states, and the records of any proceedings that may contain disqualifying information (such as licensing and disciplinary boards and State Medicaid Fraud Control Units). According to the stipulations in section 6201, the participating state must require providers to search the abuse registries of all known states in which the employee lived. The background checks must include FBI fingerprint checks. The state must describe and test methods to reduce duplication of fingerprinting including rap back capabilities which will include a provision for state law enforcement departments to immediately inform the State of any criminal offenses by the employee that occur following the pre-employment background check. Participating states must have a procedure for (1) monitoring provider compliance with the National Background Check Program; (2) providing privacy and security safeguards; and (4) providing an independent dispute/appeal process.

P.L. 111-148 requires the OIG to evaluate certain aspects of participating States' programs. One aspect is to determine the extent to which conducting background checks led to any unintended consequences, including a reduction in the available workforce for long-term care providers. The National Adult Day Services Association recently gathered information from its members in response to a request for information from the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Evaluation and Inspections. They plan to follow up in 2013. Respondents who provided contact information in their response will receive a copy of the findings from the recent NADSA survey. Although information has already been given to the OIG based on responses received as of June 30, if you have not already responded and wish to do so, [click here](#) to respond and help shape future policy for adult day services and health care nationally.

Impact on Adult Day Services

Some organizations already perform national background checks, so the new rulings likely would not affect them. It is critical that adult day services centers inquire of their state regulators regarding the state's participation. The National Adult Day Services Association supports background checks and encourages adult day centers to comply with their state and local rules for the level of background checks screening to ensure safety for employees, participants and volunteers.

Reference: Centers for Medicare & Medicaid Services, 2011.

https://www.cms.gov/SurveyCertificationGenInfo/04_BackgroundCheck.asp accessed 07/11/2011.